

Ashiana Dwellings Pvt. Ltd.

Vs.

Praval Agarwal & Anr.

Appeal No.386 of 2022

Present: Shri Gunjan Rishi, Advocate, learned counsel for
the appellant.

ORDER

At the time of filing this appeal the appellant has not deposited any amount to comply with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). The application moved by the appellant for waiver of the condition of pre-deposit was dismissed by this Tribunal on 31.08.2022 with costs of Rs.50,000/-. The appellant was directed to make the pre-deposit as required under Section 43(5) of the Act on or before 29.09.2022 and the case was adjourned to 30.09.2022 for seeing the compliance of the order and further appropriate proceedings.

2. However, on 30.09.2022 learned counsel for the appellant had stated at bar that the writ petition preferred by the appellant to challenge the order dated 31.08.2022 handed down by this Tribunal, had been disposed of by the Hon'ble High Court, whereby the appellant had been

provided six weeks time from the date of handing down of the order by the Hon'ble High Court i.e. 27.09.2022 to deposit the amount with this Tribunal to comply with the proviso to Section 43(5) of the Act. However, the order of this Tribunal qua the payment of Rs.50,000/- as costs was set aside.

3. Accordingly, learned counsel for the appellant was directed to deposit the amount as calculated by the office of this Tribunal on or before 11.11.2022 and the case was adjourned for 14.11.2022 i.e. today for seeing the compliance of the order. Even till date, as per the report of the office and the fact not disputed by learned counsel for the appellant, no amount has been so far deposited by the appellant with this Tribunal to comply with the aforesaid provisions.

4. It is settled principle of law that the provisions of proviso to Section 43(5) of the Act are mandatory. It is a condition precedent for entertainment of the appeal filed by the promoter to deposit the requisite amount. In the instant case, the appellant/promoter has not complied with the mandatory provisions of proviso to Section 43(5) of the Act inspite of sufficient opportunity. Consequently, the present

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appeal cannot be entertained and the same is hereby dismissed.

5. Copy of this order be sent to all the concerned.
6. File be consigned to the record.

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal
Chandigarh

Anil Kumar Gupta
Member (Technical)

November 14, 2022.

CL