

Fantasy Buildwell Pvt. Ltd.  
Vs.  
Gaurav Manohar Negi and others  
CM No.291-A of 2023  
In Appeal No. 299 of 2022

Present: Shri Amandeep Singh Talwar, Advocate,  
for the applicant-appellant.

Shri Rishab Jain, Advocate,  
for the respondents.

An application bearing CM No.291-A of 2023 dated 27.03.2023 has been preferred by the applicant-appellant seeking review of the findings of this Tribunal as contained in Para No.28 of the order dated 09.12.2022 handed down in Appeal No.299 of 2022, wherein a cost of Rs.5,000/- per day has been imposed on the appellant-promoter payable to the respondents-allottees for non-delivery of possession.

2. We have heard learned counsel for the applicant-appellant and thoroughly perused the record.

3. The relevant findings in Para No.28 which have been sought to be reviewed are as follows:

*“It is felt that appellant-promoter is deliberately not handing over the physical possession to the respondents-allottees being in dominant position having received almost whole of the consideration, rather much amount being due to the respondents-allottees on account of the delayed possession interest, therefore, a cost of Rs.5,000/- per day is imposed on the appellant-promoter payable to respondents-allottees, w.e.f. 20.07.2022 the date up to which it was*

*ordered for the first time on 23.05.2022 to hand over of the possession, till the date possession is actually handed over to the respondents-allottees.”*

4. During the hearing, on being confronted by this Tribunal as to how the findings given on merit by this Tribunal can be reviewed, learned counsel for the appellant has very fairly stated that he would avail the appropriate remedy to assail these findings and, in fact, he does not intend to pursue the present application and has prayed for withdrawal of the same.

5. Ordered accordingly.

6. The present application (CM No.291-A of 2023) stands dismissed as withdrawn.

7. Papers be tagged with the main appeal.

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

Anil Kumar Gupta  
Member (Technical)

29.04.2023  
Manoj Rana

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Shri Rishab Jain, Advocate,  
for the respondents.

An application bearing CM No.291 of 2023 dated 27.03.2023 has been preferred by the appellant for disbursement of additional (excess amount) i.e. Rs.70,54,210/- to the applicant-appellant in Appeal No.299 of 2022. The said appeal was disposed of by this Tribunal vide order dated 09.12.2022 and the operative part as contained in para No.31 thereof is as follows:

*“31. Vide our order dated 23.05.2022, the 50% of the amount i.e. Rs.63,97,378.50 out of Rs.1,27,94,757/- was remitted to the Ld. Authority for disbursement to the respondents-allottees. The remaining amount of Rs.63,97,378.50 deposited by the appellant-promoter with this Tribunal as pre-deposit to comply with the provisions of Section 43(5) of the Act along with interest accrued thereon, be remitted to the Ld. Authority for disbursement of the same to the respondents-allottees as per their entitlement, excess amount may be remitted to the appellant, subject to tax liability, if any, as per Act, Law and Rules.”*

2. We have heard learned counsel for the applicant-appellant and thoroughly perused the record.

3. Admittedly, at the time of filing of appeal, the applicant-appellant had deposited an amount of Rs.1,98,48,967/- to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act'), with this Tribunal. In para No.27 of the order dated 09.12.2022 passed by this Tribunal, due to inadvertence, it was mentioned that the appellant had deposited an amount of Rs.1,27,94,757/- whereas the applicant-appellant had actually deposited an amount of Rs.1,98,48,967/- to comply with the proviso to Section 43(5) of the Act.

4. In view of this admitted factual position, the observation made by this Tribunal that the appellant had deposited an amount of Rs.1,27,94,757/- to comply with the proviso to Section 43(5) of the Act, needs to be corrected. So now in Para No.27 same be corrected as an amount of Rs.1,98,48,967/- in place of Rs,1,27,94,757/-.

5. It is also an admitted fact that in fact the applicant-appellant was only required to deposit an amount of Rs.1,27,94,757/- to comply with the proviso to Section 43(5) of the Act and 50% of the said amount i.e. Rs.1,27,94,757/- was ordered to be remitted to the learned Authority for disbursement to the respondents-allottees as per Rules, in the pending execution petition,

as observed by this Tribunal in its interlocutory order dated 23.05.2022.

6. Thus, in view of the aforesaid facts and circumstances, the said Para No.31 in the order dated 09.12.2022 requires to be modified in view of the aforesaid arithmetical error and said para No.31 is corrected as follows:-

“The appellant had deposited an amount of Rs.1,98,48,967/- in compliance of the proviso to Section 43(5) of the Act. Vide interlocutory order dated 23.05.2022, the amount of Rs.63,97,378.50 (being 50% of the required amount i.e. Rs.1,27,94,757/-) was remitted to the learned Authority for disbursement to the respondents-allottees. The balance amount of Rs.1,34,51,589/- (Rs.1,98,48,967/- - (minus) Rs.63,97,378.50) along with interest accrued thereon be remitted to the learned Authority for disbursement of another amount of Rs.63,97,378.50 to the respondents-allottees to make the total payment of Rs.1,27,94,357/-.

However, the excess amount i.e. Rs.70,54,210/- (Rs.1,98,48,968/- - (minus) Rs.1,27,94,757/-) after disbursing the amount to the respondents-allottees may be remitted to the appellant. The amount may be disbursed

to the respondents-allottees as well as the appellant-promoter subject to tax liability, if any, as per Act, law and rules.

7. The application (CM No.291 of 2023), accordingly, stands disposed. of.

8. Papers be tagged with the main appeal.

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

Anil Kumar Gupta  
Member (Technical)

29.04.2023  
*Manoj Rana*

