

TDI Infrastructure Ltd.

Vs.

Ajay Pal

C.M. No.535/2023 in C.M.No.67/2022

Appeal No.331 of 2019

Present: Mr.Shubhnit Hans, Advocate,
for the applicant/appellant.

ORDER

By virtue of present order C.M. No.535 of 2023 dated 20.04.2023 for restoration of application bearing C.M. No.67 of 2022, filed by the applicant/appellant for revival of Appeal No.331 of 2019, titled "M/s TDI Infrastructure Ltd. Vs. Ajay Pal" shall be disposed of.

2. Learned counsel for the applicant/appellant has been heard and the entire record of the case has been thoroughly gone through.

3. Feeling aggrieved by the order dated 29.01.2019 passed by Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the 'Authority'), in Complaint No.327 of 2018, titled "Ajay Pal vs. M/s TDI Infrastructure Ltd.", vide which the applicant-promoter was directed to hand over the possession of the flat to the respondent-allottee till July, 2019, failing which he would be entitled to refund of Rs.31,68,844/- alongwith interest at the rate stipulated under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to 'Rules,

2017) i.e. State Bank of India highest marginal cost of lending rate plus two percent, it had chosen to prefer appeal no.331/2019.

4. Since, the applicant/appellant failed to comply with the mandatory provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), so, the said appeal was dismissed by this Tribunal vide order dated 22.10.2019 with the following observations:-

“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 appeal cannot be entertained and the same is hereby dismissed.

File be consigned to records.”

5. Thereafter, the applicant/appellant preferred C.M. No.174 of 2021 for restoration of the aforesaid appeal, pursuant to the order dated 16.10.2020 passed by the Hon'ble High Court of Punjab and Haryana in CWP No.15647 of 2019 and the orders dated 05.11.2020 and 25.11.2020 passed by the Hon'ble Apex Court in SLP (Civil) No.13093 of 2020.

However, the said application was dismissed by this Tribunal vide detailed order dated 17.09.2021 with the following relevant observations:-

“12. In the aforesaid order, the Hon’ble Apex Court has clarified that the Appellate Authority under the Act would be entitled to take up the appeal for hearing and decision on merits, in case there is no objection from the respondent. It is evident that the order passed by the Hon’ble Apex Court was applicable only to the cases which were the subject matter of the aforesaid SLPs and the appeals were pending before the Appellate Tribunal. In our opinion, this order passed by the Hon’ble Apex Court was not applicable to the appeals which had already been dismissed due to non-compliance of Section 43(5) of the Act. No direction has been given by the Hon’ble Apex Court in the order dated 25.11.2020 to revive or restore the appeals which have already been dismissed by the Appellate Tribunal due to noncompliance of the statutory provisions of Section 43(5) of the Act.

13. The applicant has tried to take undue advantage of the order dated 25.11.2020 passed by the Hon’ble Apex Court (Annexure A-3), even though the same was not applicable to this case. The applicant has un-necessarily wasted the valuable time of this Tribunal.

14. Consequently, the application moved by the applicant being without any merits is hereby dismissed with Rs.5,000/- as costs. The costs shall

be deposited with the District Legal Services Authority, Panchkula within two weeks, failing which the District Legal Services Authority shall adopt the procedure as per law for recovery of the costs.

15. *Copy of this order be communicated to parties, learned Haryana Real Estate Regulatory Authority, Panchkula and the Secretary, District Legal Services Authority, Panchkula for information and compliance.*

16. *The application along with this order be attached with the appeal file.”*

6. Thereafter, the applicant/appellant preferred another C.M. No.67 of 2022 for revival of the appeal alleging that in accordance with the order handed down by the Hon'ble Supreme Court, the applicant had deposited the required amount to comply with the proviso to Section 43(5) of the Act. The office was directed to calculate the actual amount due as per the impugned order and also to report what amount has been deposited by the applicant and whether there is any deficiency in the amount or not. It was reported by the office that the applicant was required to deposit an amount of Rs.15,25,929/-, but only an amount of Rs.4,06,724/- had been deposited till 27.12.2022 and there was deficiency to the tune of Rs.11,19,205/-.

7. Since, in spite of availing two opportunities the deficient amount to the tune of Rs.11,19,205/-, was not

deposited, so, this Tribunal dismissed the said C.M. No.67 of 2022 vide order dated 15.02.2023, which is as follows:-

“Present: None.

Case called several times but none has put up in appearance on behalf of the applicant/ appellant. It is already 4:00 P.M.

2. *The present C.M. No.67 of 2022 has been filed by the applicant/appellant for restoration of appeal no.331 of 2019 titled as ‘M/s TDI Infrastructure Limited Vs. Ajay Pal’, stating that in accordance with the order dated 13.05.2022 handed down by the Hon’ble Supreme Court in SLP (Civil) No.13093 of 2020, the applicant/appellant is ready to deposit the requisite amount in order to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called ‘the Act’).*

3. *As per the calculations made by the office of this Tribunal, the applicant/appellant was required to deposit an amount of Rs.15,25,929/-, but only an amount of Rs.4,06,724/- has been deposited by the applicant/appellant till 27.12.2022. Thereafter, in spite of availing two opportunities, the deficit amount to the tune of Rs.11,19,205/- has not been deposited till date.*

4. *Since, the applicant/appellant has not deposited the entire amount which is required to be deposited in accordance with the proviso to Section 43(5) of the Act, so, the present application for*

restoration of the appeal cannot be entertained and the same is accordingly dismissed being not maintainable.

5. *The amount of Rs.4,06,724/- deposited by the applicant/appellant with this Tribunal, along with interest accrued thereon be sent to the learned Authority for disbursement to the applicant/appellant subject to tax liability, if any, as per law and rules.*

6. *Papers be consigned to the record.”*

8. Now, for revival of said C.M. No.67/2022, which has been dismissed by this Tribunal vide aforesaid order dated 15.02.2023, the present application has been preferred.

9. As referred above, vide order dated 15.02.2023 the said C.M. No.67/2022 for restoration of appeal no.331/2019 was dismissed by this Tribunal for non-compliance of the proviso to Section 43(5) of the Act as inspite of availing sufficient opportunities, the applicant failed to deposit the deficit amount of Rs.11,19,205/-. As back as in the year 2019, vide order dated 22.10.2019, said appeal no.331/2019 was dismissed for non-compliance of the proviso to Section 43(5) of the Act and even another application bearing C.M. No.174/2021 for restoration of the said appeal was also dismissed vide order dated 17.09.2021.

10. Thus, in view of these facts and circumstances, there appears to be no justification for allowing the present application for restoration of C.M.No.67/2022, which has

already been dismissed by this Tribunal vide detailed order dated 15.02.2023 for non-compliance of the proviso to Section 43(5) of the Act. Consequently, the present application has no merits and deserves to be dismissed. Ordered accordingly.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

07.07. 2023

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