

TDI Infrastructure Ltd.
Vs.
Vivek Kadyan
C.M No. 530 of 2023
in C.M No.51 of 2022
In Appeal No. 332 of 2019

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

ORDER

By virtue of present order C.M. No.530 of 2023 dated 20.04.2023 for restoration of application bearing C.M. No.51 of 2022, filed by the applicant/appellant for revival of Appeal No.332 of 2019, titled "M/s TDI Infrastructure Ltd. vs. Vivek Kadyan" 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. The applicant/appellant preferred an appeal No.332 of 2019, to impugn the order dated 29.01.2019 passed by Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the 'Authority'), in Complaint No.607 of 2018, titled "Vivek Kadyan vs. M/s TDI Infrastructure Ltd.", vide which following directions were issued to the applicant-promoter:-

"10. Now, the respondent no.1 is directed to issue a fresh statement of accounts to the complainant after recalculating the amounts

receivable/payable from the complainant in accordance with this order. Further, the compensation payable to the complainant on account of delayed delivery of possession shall be shown in the statement of accounts and the net payable/receivable shall be calculated after accounting for the same. This statement shall be issued by the respondent no.1 within a period of 45 days of uploading of this order on the website. He shall also periodically apprise the complainant of the stage of construction of the project.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.”

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.171 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.51 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.11,01,009/-, but the same was not deposited by the applicant.

7. Since, in spite of availing two opportunities the required amount to the tune of Rs.11,01,009/-, was not deposited, so, this Tribunal dismissed the said C.M. No.51 of 2022 vide order dated 15.02.2023, which is as follows:-

“ 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.51 of 2022 has been filed by the applicant/appellant for restoration of appeal No.332 of 2019 titled as ‘M/s TDI Infrastructure Limited Vs. Vivek Kadyan’, 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.11,01,009/-, but*

the applicant/appellant has not deposited the amount till date.

4. *Since, the applicant/appellant has not deposited the requisite amount 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. *Papers be consigned to the record.”*

8. Now, for revival of said C.M. No.51/2022, 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.51/2022 for restoration of appeal No.332/2019 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 required amount of Rs.11,01,009/-. As back as in the year 2019, vide order dated 22.10.2019, said appeal No.332/2019 was dismissed for non-compliance of the proviso to Section 43(5) of the Act and even another application bearing C.M. No.171/2021 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.51/2022, 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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