

TDI Infrastructure Ltd.
Vs.
Brijesh Kumar Singh
C.M No. 542 of 2023
in C.M No.62 of 2022
in Appeal No. 505 of 2019

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

ORDER

By virtue of present order C.M. No.542 of 2023 dated 20.04.2023 for restoration of application bearing C.M. No.62 of 2022, filed by the applicant/appellant for revival of Appeal No.505 of 2019, titled “M/s TDI Infrastructure Ltd. vs. Brijesh Kumar Singh” 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.505 of 2019 to impugn the order dated 23.04.2019 passed by Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the ‘Authority’), in Complaint No.684 of 2018, titled “Brijesh Kumar Singh & Smt. Chitrlekha vs. M/s TDI Infrastructure Ltd.”, vide which the applicant-promoter was directed as under:-

“ *The Authority considers it fair and just to order that the actual cost of the steel staircase plus 15% profit thereon shall be proportionately divided amongst all the residents of the building.*

Thus the proportionate actual cost of steel staircase plus 15% profit only shall be charged from the complainants.

In accordance with the principles laid down in complaint case No.607 of 2018 with one modification stated above, the area of 160.5 Sq. ft. shall be deducted from the 1456.56 Sq. ft. super area proposed to be charged by the respondent. The respondent accordingly shall charge the complainants for only 1456.56 minus 160.5=1296.06 Sq. ft.

6. Now, the respondent is directed to issue a fresh statement of accounts to the complainants after recalculating the amounts payable by the complainants and compensation payable to the complainants by the respondent in accordance with above principles. The net payable/receivable shall be clearly communicated after accounting for each item. The accounts statement shall be issued by the respondent within a period of 45 days. Respondent shall also periodically apprise the complainants of the stage of construction of the project and the status of the application for obtaining Occupation Certificate.

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.62 of 2022 for restoration of the aforesaid appeal 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 Act. However, the said application was dismissed by this Tribunal vide detailed order dated 15.02.2023 which reads as under:-

“ 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.62 of 2022 has been filed by the applicant/appellant for restoration of appeal no.505 of 2019 titled as 'M/s TDI Infrastructure Limited Vs. Brijesh Kumar Singh', 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.8,65,483/-, 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."*

6. Now, for restoration of said C.M. No.62/2022, which has been dismissed by this Tribunal vide aforesaid order dated 15.02.2023, the present application has been preferred.

7. As back as in the year 2019, vide order dated 22.10.2019, appeal no.505/2019 was dismissed for non-compliance of the provisions of proviso to Section 43(5) of the Act. As referred to above, vide order dated 15.02.2023 the said C.M. No.62/2022 for restoration of appeal no.505/2019 was also 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/appellant failed to deposit the required amount of Rs.8,65,483/-.

8. 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.62/2022, 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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