

TDI Infrastructure Ltd.
Vs.
Madhuri Arya
C.M No. 531 of 2023
in C.M No.54 of 2022
in Appeal No.508 of 2019

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

ORDER

By virtue of present order C.M. No.531 of 2023 dated 20.04.2023 for restoration of application bearing C.M. No.54 of 2022, filed by the applicant/appellant for revival of Appeal No.508 of 2019, titled “M/s TDI Infrastructure Ltd. vs. Madhuri Arya” 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.508 of 2019 to impugn the order dated 28.03.2019 passed by Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the ‘Authority’), in Complaint No.598 of 2019, titled “Madhuri Arya vs. M/s TDI Infrastructure Ltd.”, vide which the applicant-promoter was directed as under:-

“6. *The respondent is directed to calculate and pay the delay compensation from the deemed date of delivery of possession till the actual offer of possession, complete in all respects along with occupation certificate to the complainant.*

Accordingly the respondent is directed to issue a fresh statement of accounts to the complainant after recalculating the amounts payable by the complainant. Further, the compensation payable to the complainant on account of delayed delivery of possession shall also be shown in the statement of accounts and the net payable/receivable shall be clearly written after accounting for the same. The statement shall be issued by the respondent within a period of 45 days and he shall also periodically apprise the complainant of the stage of construction of the project.”

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 in spite 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.54 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.54 of 2022 has been filed by the applicant/appellant for restoration of appeal no.508 of 2019 titled as 'M/s TDI Infrastructure Limited Vs. Madhuri Arya', 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.13,90,186/-, but only an amount of Rs.1,91,231/- 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.11,98,955/- 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.1,91,231/- 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.”*

6. Now, for restoration of said C.M. No.54/2022, 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.508/2019 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.54/2022 for restoration of appeal no.508/2019 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 deficit amount of Rs.11,98,955/-.

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.54/2022, 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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