

**HARYANA REAL ESTATE APPELLATE TRIBUNAL
CHANDIGARH**

Appeal No. 04/2018

1. Bestech India Pvt. Ltd. through its Authorized Signatory Mr. Rajesh Saini
Regd. Office at Bestech House, Plot No.51, Sector-44, Gurugram.

A.A. Chopra & Associates, resident of house no.112, Sector-16-A, Chandigarh-160015.
2. Sunil Satija, Director, resident of Bestech House, Plot No.51, Sector-44, Gurugram.
3. Dharmendra Bhandari, Director, resident of Bestech House, Plot No.51, Sector-44, Gurugram.

...Appellants

Versus

1. Ms Mridula Parti, resident of D-99, South City-II, Gurugram-122018, Haryana, IInd Address: #45, Lewis Jones Cross Stration, Perth, WS, Australia 6056.
2. Haryana Real Estate Regulatory Authority, Gurugram, regd. Office at PWD Rest House, Civil Line, Gurugram.

....Respondents

**Coram: Justice Darshan Singh (Retd), Chairman
Sh Inderjeet Mehta, Member (Judicial)
Sh Anil Kumar Gupta, Member (Technical)**

Present: Sh Ashish Chopra, Advocate, Ld counsel for the appellant.
None for the respondent.

ORDER :-

The present appeal was presented before this Tribunal for the first time on 11.09.2018. The appellant has deposited only a sum of Rs.4,20,000/- in order to comply with the provisions of proviso to section 43(5) of the Haryana Real Estate (Regulation and Development) Act 2016 (hereinafter called the Act). Thereafter a sum of Rs.42,000/- was further deposited. Then vide order dated 08.02.2019 the appellant was directed to deposit 30% of the amount imposed by the Ld Real Estate

Regulatory Authority, Gurugram with this Tribunal within a period of one month. It was made clear that the said amount was only a provisional amount and will not be taken as a final opinion of this Tribunal for compliance of provisions of proviso to Section 43(5) of the Act. Thereafter the appellant deposited a sum of Rs.17,77,551/- but the said amount was short by 4,57,513/- of 30% of the amount and again the time was sought to deposit the remaining amount. The said amount of Rs.4,57,513/- was deposited vide demand draft dated 12.03.2019. It shows that even the 30% of the amount has been deposited by the appellant after about 7 month of the filing of the appeal that too as a result of repeated directions by this Tribunal.

2. Ultimately vide our detailed order dated 11.04.2019 it was directed that the appellant is required to deposit the total amount payable to the allottee. The appellant was granted one month time to deposit the requisite amount but instead of depositing the requisite amount the appellant/promoter moved an application for waiver of the condition of pre-deposit. The said application has been dismissed by this Tribunal vide detailed order dated 29.07.2019. The appellant was again granted time to deposit the requisite amount on or before 26.08.2019. As per the report of the office the requisite amount was not deposited till date.

3. Shri Ashish Chopra, Ld counsel for the appellant contended that due to the strike by the Local Bar Association, the appellant could not avail the appropriate legal remedy to assail the order dated 29.07.2019. He has pleaded for the extension of the time, so that the appellant may avail the legal remedy.

4. We have duly considered the aforesaid contentions as mentioned above, this appeal was presented before this Tribunal for the

first time on 11.09.2018. The appellant/promoter has not fully complied with the provisions of proviso to section 43(5) of the Act. Ultimately vide order dated 11.04.2019 this Tribunal has made it clear that the whole amount payable to the allottee is required to be deposited by the promoter in order to get its appeal entertained. One month time was given to deposit the requisite amount vide order dated 11.04.2019 but instead of complying with that order the appellant/promoter adopted the delayed tactics and moved an application for the waiver of the condition of the pre-deposit. The said application has been dismissed vide our detailed order dated 29.07.2019 and again the appellant was given time to deposit the requisite amount by 26.08.2019 but again the compliance of that order has not been made.

5. Mere this fact that the Local Bar Association was on strike is not a ground to enlarge the time to comply with the provisions of proviso to Section 43(5) of the Act. The order dated 29.07.2019 pronounced by this Tribunal was uploaded on the website of this Tribunal on 01.08.2019. It is also an admitted fact that the strike of the Bar Association was called off w.e.f. 17.08.2019. So, there was sufficient time with the appellant to avail the appropriate legal remedy within time.

6. Needless to say, that the provisions of proviso to Section 43(5) of the Act are mandatory in nature. The said provision read as under:-

“43. Establishment of Real Estate Appellate Tribunal-

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”

7. The aforesaid provision of law makes it clear that the deposit of whole of the amount payable to the allottee, which has been imposed by the Ld Authority is a condition precedent to entertain the appeal filed by the promoter. 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 availing sufficient time and opportunities. So, the present appeal filed by the appellant/promoter cannot be entertained and the same is hereby dismissed.

8. The amount, if any, deposited by the appellant/promoter with this Tribunal be transferred to the account of the Ld Real Estate Regulatory Authority, Gurugram.

9. File be consigned to record-room.

Pronounced on:
27.08.2019

Justice Darshan Singh(Retd)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
27.08.2019

Inderjeet Mehta
Member (Judicial)
27.08.2019

Anil Kumar Gupta
Member (Technical)
27.08.2019