

Apex Buildwell Pvt. Pvt. Ltd. VS. Aditya Asija**Appeal No.556 of 2019**

Present: Shri Rohan Gupta, Advocate, learned counsel for the appellant.
Shri Ishaan Mukherjee, Advocate, learned counsel for the respondent.

ORDER:

Learned counsel for the appellant has filed the affidavit of Shri Gagan Deep Panwar, Legal Manager of the appellant/promoter wherein it is mentioned that the Company had given instructions to file appeal to the counsel on 03.09.2019 as the copy of the order was received only on 28.08.2019. Thereafter, the counsel for the company initiated the process of drafting and filing the appeal as per the instructions against the order dated 22.08.2019 passed by this Tribunal. It is mentioned that appeal has been filed before the Hon'ble Punjab & Haryana High Court vide diary No.30952301 dated 07.09.2019 but objections were raised. It is further mentioned in the affidavit that after removing objections, the appeal was re-filed on 12.09.2019 and the same is expected to be listed on 13.09.2019 or day after.

2. Learned counsel for the appellant has contended that as the appellant has filed the appeal against the order dated 22.08.2019 passed by this Tribunal which is likely to be listed very soon, so the present case should be adjourned in the interest.

3. We have duly considered the pleas raised by the learned counsel for the appellant. The appellant did not deposit any amount in order to comply with the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). Section 43(5) of the Act reads 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.”

4. As per the provisions of proviso to section 43(5) of the Act, the appellant/promoter was required to deposit whole of the amount payable to the allottee, imposed by the learned Real Estate Regulatory Authority, to get its appeal entertained but in this case instead of depositing the amount, the appellant moved an application for waiver of the condition of pre-deposit. The said application has been dismissed by this Tribunal vide order dated 22.08.2019. The appellant/promoter was given time to deposit the requisite amount up to 09.09.2019, as required under the provisions of proviso to section 43(5) of the Act. But no amount has been deposited by the appellant/promoter in compliance of that order.

5. Today, learned counsel for the appellant has sought adjournment on the ground that the appeal against the order dated

22.08.2019 has been filed before the Hon'ble Punjab and Haryana High Court. It has not been clearly mentioned as to whether the said appeal has been listed for hearing before the Hon'ble High Court or not. Moreover, it is settled principle of law that mere filing of the appeal does not amount to stay the operation of the order passed by the court below.

6. As per the provisions of proviso to section 43(5) of the Act, the deposit of whole of the amount payable to the allottee was a condition precedent for getting its appeal entertained by the appellant/promoter but the appellant/promoter had not complied with the said mandatory provision of the Act. Consequently, the appeal filed by the appellant/promoter cannot be entertained and the same is hereby dismissed.

7. File be consigned to records.

Inderjeet Mehta
Member (Judicial)
13.09.2019

Anil Kumar Gupta
Member (Technical)
13.09.2019