

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**C.M. Nos.13, 14 & 90 of 2023
In
Appeal No.36 of 2021
Date of Decision: 15.01.2024**

Pioneer Urban Land & Infrastructure Ltd. through its authorised representative Rajender Kumar authorised vide Board Resolution dated 25.01.2021

Applicant/Appellant

Versus

Mrs. Anju Jindal and Mr. Rajesh Jindal
R/o CCY-042, DLF Capital Green Phase-3, Shivaji Marg,
Kalampura.

Respondents

CORAM:

Justice Rajan Gupta Chairman
Shri Anil Kumar Gupta, Member (Technical)

Argued by: Mr. Anand Chibber Sr. Advocate, assisted by
Mr. Rajat Khanna, Advocate,
Mr. Nikhil Ahuja, Advocate and
Mr. Vishal Saini, Advocate
for the appellant.

Mr. Akshat Mittal, Advocate along with
Mr. Harsh Sharma, Advocate
for the respondents.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL)

The applicant/appellant has filed Miscellaneous Application Nos.13, 14 and 90 of 2023 in Appeal No.36 of 2021, under Section 53(4)(e) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') for

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revival of Appeal No.36 of 2021 filed by the applicant/appellant, which was dismissed vide our order dated 24.05.2022 on the ground that the applicant/appellant has failed to deposit whole of the amount payable to the allottees as per the order of the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Authority') as a pre-deposit which is mandatory provisions as envisaged in Section 43(5) of the Act.

2. The applicant/appellant through the aforesaid application has sought the following reliefs:-

- “1. Restore the Appeal No.36 of 2021 filed by the Appellant;*
- 2. Allow the Appellant/Applicant to deposit the differential amount of Rs.50,24,182/- towards pre-deposit in sufficient compliance with Section 43(5) of the RERA Act;*
- 3. Alternatively, allow the Appellant/Applicant to deposit the entire amount of Rs.60,94,868/- (Rupees Sixty Lakhs Ninety Four Thousand Eight Hundred and Sixty Eight only) directed to be deposited vide Order dated 28.04.2022;*
- 4. Allow the Appeal No.36 of 2021 titled as 'Pioneer Urban Land & Infrastructure Ltd. v. Mrs. Anju Jindal & Anr.' to be heard on merits;*
- 5. Pass any other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

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3. Appeal No.36 of 2021 was dismissed by this Tribunal vide order dated 24.05.2022, the same reads as under:-

“As per our order dated 28th April, 2022, after scrutinizing the calculations, it was ordered that there was deficiency of Rs.60,94,868/- in the amount of pre-deposit for compliance of Section 43(5) of the Real Estate (Regulation & Development) Act, 2016 (for short, ‘the Act’).

2. As per report of the office, the appellant has not deposited the deficient amount till date. Rather, the appellant has moved an application for waiver of the deposit of the said amount, wherein it has been pleaded that the interest awarded by the Learned Haryana Real Estate Regulatory Authority, Gurugram (for short, ‘the Ld. Authority)’ to the respondent-allottee in the impugned order is the subject matter of challenge in the present appeal.

3. It is further pleaded that the amount of pre-deposit has been calculated up to the date of filing of the present appeal. It is further pleaded that the appellant is aggrieved by the impugned order, and imposition of the amount till the date of filing of the present appeal, as recorded by this Tribunal in the order dated 28th April, 2022. That the Ld. Authority has wrongly allowed the complaint and directed the appellant to reckon the interest till the date of

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actual handing over of the possession, whereas the possession had been offered to the respondent on 17th June, 2019. The Ld. Authority has failed to recognise the fact that occupancy certificate has been issued to the appellant-company. It is further pleaded that in the aforesaid prevailing circumstances, the real estate industry is facing innumerable encumbrances due to rising inflation and affected economy. So, the stipulation for pre-deposit of the remaining amount of Rs.60,94,868/- may be waived off.

4. *We have heard Ld. counsel for the appellant.*

5. *It is settled principle of law that as per the proviso to Section 43(5) of the Act, where a promoter files an appeal, he is required to deposit the total amount to be paid to the allottee including interest and compensation imposed upon the promoter by the Authority. This pre-deposit is a condition precedent for entertainment of the appeal. In the instant case, the Ld. Authority, in the impugned order, has directed the payment of interest for delay in delivery of possession w.e.f. 14th March, 2016 till the handing over of the physical possession of the allotted unit. In view of this direction, the registry of this Tribunal has calculated that a sum of Rs.1,95,11,442/- is required to be deposited by the appellant. The appellant has been allowed an adjustment of Rs.72,94,350/-*

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as per the stipulation in the impugned Order dated 21st October, 2020. The appellant has so far deposited only a sum of Rs.61,22,224/-. Thus, there is deficiency of Rs.60,94,868/-. Ld. counsel for the appellant on 28th April, 2022 had sought three weeks' time to deposit the deficient amount and considering the request of the appellant this Tribunal had adjourned the case for today i.e. on 24.05.2022. Despite availing more than three weeks' time, the deficient amount has not been deposited, rather today the appellant has moved an application for waiver of the remaining amount.

6. *The pleas raised in the application that the Ld. Authority has wrongly imposed the amount; the Ld. Authority has wrongly awarded the interest till the date of handing over of the physical possession and the Ld. Authority has failed to recognise the fact that the occupancy certificate has already been issued are the issues touching the merits of the case. If these issues are considered at this stage, it will virtually amount to entertainment of the present appeal even without compliance of Section 43(5) of the Act. So, the adjudication of these issues is not permissible under law.*

7. *The fact that real estate industry is facing the financial hardship is no ground to waive off the amount of pre-deposit. Moreover, it is well settled that this Tribunal is not legally competent to waive of whole or any part of the*

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amount of pre-deposit. The application filed by the appellant is just a device to further prolong the present appeal. On the last date of hearing, Ld. counsel for the appellant had sought three weeks' time to make good the deficiency in the amount of pre-deposit, but the appellant has not deposited the deficient amount so far. Thus, the application moved by the appellant is not bona fide, the same is without any merit and is hereby dismissed.

8. as the appellant has not deposited the deficient amount of the pre-deposit in spite of adequate opportunities, so the appellant has failed to comply with the provisions of proviso to Section 43(5) of the Act. It is settled principle of law that the compliance of proviso to Section 43(5) of the Act is mandatory and the same is a condition precedent for entertainment of the appeal. As the appellant has failed to comply with the aforesaid provisions, so the present appeal filed by the appellant cannot be entertained and the same is hereby dismissed.

9. The amount of Rs.61,22,224/-, deposited with this Tribunal as pre-deposit, along with interest accrued thereon be sent to the Ld. Authority for disbursement to the respondents/allottees subject to tax liability, if any, as per law and rules.

10. Copy of this order be conveyed to the parties/Ld. counsel for the parties and the Ld. Haryana Real Estate Regulatory Authority,

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Gurugram for information and necessary compliance.

11. File be consigned to the record.”

4. The applicant/appellant against the above said order of dismissal of the appeal passed by this Tribunal, filed RERA Appeal No.39 of 2022 (O&M) before the Hon'ble High Court of Punjab and Haryana, Chandigarh. The order dated 01.08.2022 of the Hon'ble High Court in the said appeal reads as under:-

“1. The learned counsel representing the appellant, after arguing for some time, prays for permission to withdraw the appeal with liberty to file an application before the Haryana Real Estate Appellate Tribunal in order to point out the calculation error, if any, in calculating the amount required to be deposited, in accordance with the proviso to sub-Section 5 of Section 43 of the Real Estate (Regulation and Development) Act, 2016.

2. Ordered accordingly.”

5. The applicant/appellant, thereafter, preferred an application (page 507 of the paper book) before this Tribunal for bringing on record the calculation sheet for determining the amount of pre deposit. This matter was taken up by this Tribunal on 15.11.2022. However, learned counsel appearing for the applicant/appellant then decided to withdraw the

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application and expressed an intention to submit a new application to revive the appeal. The applicant/appellant was given permission to proceed, and the order dated 15.11.2022 reads as under:-

“ Though, file of the appeal bearing no. 36 of 2021 has been taken up today, on an application preferred on behalf of the applicant/appellant from bringing on record the calculations sheet in accordance with order dated 01.08.2022 passed by the Hon’ble High Court in RERA Appeal No. 39 of 2022 but a perusal of the file shows that the said appeal preferred by the appellant has already been dismissed vide order dated 24.05.2022.

Ld. counsel for the applicant/appellant states that he intends to withdraw the present application and intends to move a fresh application for revival of the appeal as well as for moving of the aforesaid application afresh.

Ordered accordingly.”

6. Thereafter, the applicant/appellant moved C.M.No.90 of 2023 on 22.02.2023 with the following prayer:-

“1. To take on record the present application along with the Demand Draft dated 08.02.2023 bearing No.000418 for an amount of Rs.10,70,686/- (Rupees Ten Lakhs Seventy Thousand Six Hundred Eighty-Six Only).

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2. *To take on record that the Appellant/Applicant has only complied with the deficit in the pre-deposit under Section 43(5) and the Order dated 24.05.2022 passed by this Ld. Tribunal.*
3. *To list the Review Application, Review Application dated 11.01.2023 bearing No.CM No.13/2023 and the Appeal bearing No.36 of 2021 on an urgent basis.*
4. *To grant any other relief(s) that this Ld. Tribunal may be pleased to grant in the present facts and circumstances.”*

7. During the proceedings on 19.10.2023 learned counsel for the applicant/appellant submitted that if there is any deficiency in the amount of pre deposit, the same shall be made good. The order dated 19.10.2023 of this Tribunal reads as under:-

“ Mr. Mittal submits that he intends to move an application today itself in light of order passed on the last date of hearing. In case, such application is received in the Registry, same be entertained. Copy thereof be furnished to Mr. Goel, Sr. Advocate.

Mr. Goel, Sr. Advocate, submits that he has instructions to state that if there is any deficiency in the amount of pre-deposit in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, same shall be made good.

Adjourned to 03.11.2023.”

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8. As per the record maintained by the Registry, the applicant/appellant has so far deposited the amount as detailed below:-

Sr.No.	DD No.	Dated	Amount
1.	000282	21.04.2021	Rs. 9,31,183
2.	000210	16.08.2021	Rs. 51,91,041
3.	000407	12.01.2023	Rs.50,24,182
4.	000418	08.02.2023	Rs.10,70,686

9. In summary, the applicant/appellant submitted two demand drafts, one dated April 21, 2021, for Rs. 9,31,183/-, and another dated August 16, 2021, for Rs. 51,91,041/-, totaling Rs. 61,22,224/- to this Tribunal, when the appeal was filed on February 2, 2021. The Tribunal determined the required deposit under Section 43(5) of the Act to be Rs. 1,22,17,092/-, factoring in an adjustment of Rs. 72,94,350/- as per the stipulation in the impugned order dated October 21, 2020. This left a shortfall of Rs. 60,94,868/- compared to the payable amount to the respondent/allottees on the filing date of the appeal. Consequently, the appeal was dismissed on May 24, 2022, for non-compliance with the mandatory provision of Section 43(5) of the Act and the amount of Rs.61,22,224/- deposited with this Tribunal as pre-deposit was sent to the Authority for disbursement to the respondent/allottees. The applicant/appellant against the

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order passed by this Tribunal on 24.05.2022 filed RERA Appeal No.39 of 2022 before the Hon'ble High Court of Punjab and Haryana, withdrawing the same with liberty to file application before this Tribunal to point out the error, if any, in calculating the amount required to be deposited, in accordance with the proviso to sub-Section 5 of Section 43 of the Act. The applicant/appellant, thereafter, filed an application before this Tribunal for bringing on record the calculation sheet for determining the amount of pre-deposit. However, when this matter was taken up on 15.11.2022, the applicant/appellant's counsel opted to withdraw the application, intending to file a new one to revive the appeal. Permission was granted, as stated in the order dated 15.11.2022. The applicant/appellant filed the present two application bearing CM No. 13, 14 of 2023 both dated 11.01.2023 with supporting affidavit dated 04.04.2023 and CM no. 90 on 22.02.2023 for revival of the appeal and for depositing the demand drafts bearing no 000407 dated 12.01.2023 amounting to Rs.50,24,182/- and demand draft no 000418 dated 08.02.2023 amounting to Rs. 10,70,686/- respectively totaling Rs.60,94,868/-. The total amount deposited with the Tribunal by the applicant/appellant so far is Rs. 1,22,17,092/-, the same amount calculated at the appeal filing on February 2, 2021, after adjusting Rs.

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72,94,350/-. The respondent/allottees are still not in possession of the unit. As per the impugned order dated 21st October, 2020 the respondent/allottees are entitled for the interest at the prescribed rate of 9.3% per annum till the handing over the physical possession of the unit.

10. The respondent/allottees and the applicant/appellant, on the date of arguments, has brought to our notice, that a Recovery Certificate No.3934 dated 20.11.2023 amounting to Rs.2,71,57,702/- has been issued by the office of Tehsildar, Wazirabad, Gurugram under Section 68 of Punjab Land Revenue Act, 1887 asking the applicant/appellant to deposit the aforementioned amount immediately.

11. The learned counsel representing the applicant/appellant has argued that the appellant is required to deposit as a pre-deposit with the Tribunal in accordance with Section 43(5) of the Act, as payable to the respondent/allottees as per the impugned order on the appeal filing date i.e. 02.02.2023. We have thoroughly considered this argument and firmly believe that since the applicant/appellant's appeal was dismissed earlier and is being reconsidered for the revival, it should be treated as fresh appeal for the purpose of pre-deposit under Section 43(5) of the Act, filed on the date of submitting the revival application

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i.e. 11.01.2023. As a result, the entire amount payable to the allottees as of the appeal revival date must be deposited, to comply with the proviso to Section 43(5) of the Act. However, there remains a shortfall in the pre-deposit amount as of the date of filing the application for appeal's revival.

12. The applicant/appellant failed to deposit the requisite amount payable to the allottees at the time of the filing of the revival of the appeal i.e. on 11.01.2023 as envisaged by mandatory provisions of section 43(5) of the Act. Therefore, the applications for revival of the appeal stand dismissed

13. No other issue was pressed before us.

14. In view of the aforesaid finding the application bearing CM nos.13, 14 and CM no 90 of 2023 in Appeal No. 36 of 2021 for revival of appeal are dismissed. With these all-other applications filed in this appeal are also disposed of.

15. The amount of Rs.60,94,868/-, deposited with this Tribunal as pre-deposit, along with interest accrued thereon be sent to the learned Authority to be retained by it and to be remitted to the parties concerned as per their entitlement in execution after expiry of period of limitation for filing appeal as

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stipulated under the Act, subject to tax liability, if any, as per law and rules.

16. No order to cost.

17. Copy of this order be conveyed to the parties/learned counsel for the parties and the Haryana Real Estate Regulatory Authority, Gurugram for information and necessary compliance.

18. All the applications/papers and this order be tagged with the appeal file.

Announced:
January 15, 2024

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

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