

M/s Ramprastha Promoters & Developers Pvt. Ltd.
Vs.
Sumer Singh Tokas & another
Appeal No.441 of 2019

Present: Shri Dheeraj Kapoor, Advocate, Id. Counsel for the appellant.
Ms. Kriti Sharma, Advocate, Id. Counsel for the respondents.

Vide our order dated 17.09.2019, the application filed by the appellant/promoter for waiver of the condition of pre-deposit was dismissed and the appellant/promoter was directed to deposit the requisite 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'), on or before 10.10.2019. But as per the report of the office, no such amount has been deposited by the appellant/promoter till date.

Learned counsel for the appellant/promoter has filed an affidavit of Shri Shobhit Maheshwari to contend that the appellant has already filed an appeal against the order dated 17.09.2019 passed by this Tribunal, before the Hon'ble High Court of Punjab and Haryana and the same is going to be listed after vacation. He pleaded that the case may be adjourned.

We have duly considered the contentions raised by the learned counsel for the appellant.

It is settled principle of law that mere filing of appeal does not amount to staying the operation of the order passed by the court below. Moreover, the appeal filed by the appellant is yet to be listed.

The present appeal was preferred by the appellant/promoter on 14.06.2019 by depositing only part of the amount to comply with the provisions of proviso to section 43(5) of the Act. Vide our order dated 17.09.2019, the application moved by the appellant/promoter for

waiver of the condition of pre-deposit was dismissed and the appellant/promoter was directed to deposit the requisite amount on or before 10.10.2019 and this period has expired yesterday. Thus, sufficient time has already been granted to the appellant/promoter to deposit the requisite amount to comply with the provisions of proviso to section 43(5) of the Act.

There is no dispute with the proposition of law that provisions of proviso to section 43(5) of the Act are mandatory and deposit of the requisite amount is a condition precedent for entertainment of the appeal. Thus, as the appellant/promoter has not complied with the mandatory provisions of proviso to section 43(5) of the Act, the present appeal filed by the appellant/promoter cannot be entertained and consequently the same is hereby dismissed.

File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
11.10.2019

Inderjeet Mehta
Member (Judicial)
11.10.2019

Anil Kumar Gupta
Member (Technical)
11.10.2019