

M/s Pioneer Urban Land & Infrastructure Ltd.

Vs.

Ashish Bhanhdari

Appeal No. 481 of 2019

Present: Shri Amit Jhanji, Advocate, Ld counsel for the appellant.  
Shri Kailash Prshad Pandey, Advocate, Ld counsel for the respondent.

The appellant/promoter has moved an application for extension of time by 12 weeks to deposit the remaining amount on the ground of financial crunch and difficulty.

2. Ld counsel for the respondent has orally opposed this application.

3. We have heard Ld counsel for the parties on this application.

4. The only plea raised in the application for seeking extension of time is the financial hardship. This Tribunal is to balance the right of the parties. The respondent/allottee has deposited huge amount with the appellant/promoter since long and the appellant/promoter is using his money. The Ld Authority has awarded the interest on the said amount which is being used by the appellant/promoter. The deposit of the amount as imposed by the Ld Authority with this Tribunal is a condition precedent for entertainment of the appeal. The present appeal was filed on 28.06.2019 without depositing any amount. The appeal was put up before this Tribunal for the first time on 29.07.2019. Thereafter the case remained pending for adjudication of the application for the waiver of the condition of pre-deposit, moved by appellant, which was dismissed by this Tribunal vide order dated 19.09.2019 and the appellant/promoter was directed to deposit the whole of the

amount payable to the allottee as imposed by the Ld Authority on or before 17.10.2019, so sufficient time has already been granted to the appellant/promoter to comply with the provisions of proviso to section 43(5) of the Act by depositing the requisite amount. Thus, there is no justification to further extend time for depositing the amount. Hence the application is hereby dismissed.

5. Vide our order dated 19.09.2019, the application moved by the appellant for waiver of the condition of pre-deposit was dismissed. The appellant/promoter was directed to deposit whole of the amount payable to the respondent/allottee as imposed by the Ld Authority, with this Tribunal on or before 17.10.2019.

6. As per the report of the office only a demand draft of Rs.15,00,000/- has been deposited with this Tribunal whereas the appellant was required to deposit a sum of Rs.1,03,05,616/-. So, the deposit of only Rs.15,00,000/- is not the compliance of the provisions of proviso to section 43(5) of the Act and the order dated 19.09.2019 passed by this Tribunal.

7. It is settled principle of law that the provisions of proviso to section 43(5) of the Act are mandatory in nature. 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 inspite of sufficient opportunity. Consequently, the present appeal cannot be entertained and the same is hereby dismissed.

8. The demand draft handed over by the appellant/promoter be returned under proper receipt.

9. File be consigned to records.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh  
18.10.2019

Inderjeet Mehta  
Member (Judicial)  
18.10.2019

Anil Kumar Gupta  
Member (Technical)  
18.10.2019