

M/s Pivotal Infrastructure Ltd. Vs. Adhir Kapoor & Ors.

Appeal No. 491 of 2019

Present: Shri Mayank Gupta, Advocate, Ld Counsel for the appellant.

Ms Palak Dev, Advocate, Ld counsel for the respondent.

At the time of filing this appeal no amount was deposited by the appellant/promoter 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). Rather an application was moved by the appellant/promoter for waiver of the condition of pre-deposit. On the statement of Ld counsel for the appellant the application for waiver of the condition of pre-deposit was dismissed as withdrawn vide our order dated 20.09.2019. The appellant had sought time to deposit the amount to comply with the provisions of proviso to section 43(5) of the Act. The appellant/promoter was directed to deposit the requisite amount with this Tribunal on or before 14.10.2019 and file was ordered to be put up on 15.10.2019. On 15.10.2019 it was found that the appellant/promoter has deposited only a sum of Rs.2,03,451/- within the stipulated period i.e. up to 14.10.2019. A calculation sheet was also filed by the appellant/promoter on that day, copy thereof was supplied to Ld counsel for the respondent. But the said calculation was disputed by her, so a date was given to check up the statement of account furnished by the appellant.

2. Today the appellant/promoter has filed the fresh calculation sheet as per this calculation sheet the total interest payable has been shown to be Rs.3,59,793.60/- after making the adjustments of EDC, enhanced EDC, VAT taxes and amount due against the respondent/allottee. However, the amount of discount,

which was ordered by the Ld Authority to be refunded to the respondent/allottee has been added. The appellant/promoter has deposited a sum of Rs.2,03,451/- vide draft dated 14.10.2019. Ld counsel for the appellant states that today the appellant/promoter has further deposited a sum of Rs.1,56,343/- vide UTR-ORBCH-19295074300 through NEFT, in the account of this Tribunal. In this way the appellant/promoter has deposited total a sum of Rs.3,59,794/-with this Tribunal.

3. But Ld counsel for the respondent pointed out that the amount so deposited by the appellant/promoter is substantially less than the amount required to be deposited. We have perused the impugned order, which shows that though the respondent/allottee has been directed to pay service tax, Centre GST and the State GST with the respondent in accordance with law. But the appellant was directed to communicate the advice of the tax expert explaining the basis of these charges to the complainant within 45 days. It has been admitted at bar by the Ld counsel for the appellant that no such advice has been communicated by the appellant to the respondent/allottee till date. So, it is not know as to how much amount of tax was directed to be paid. So, the interest has to be calculated on whole of the amount deposited by the respondent/allottee.

4. We have also sought the report of the office. As per the report of the office the amount of interest comes to Rs.10,07,382/- (41,71,235/- (the amount received by the appellant/promoter from the respondent/allottee as shown in the calculation sheet) x 10.75 x 820 Days (from 17.03.2016 to 27.06.2018) / 365 x 100). The appellant was also directed to refund a discount of Rs.66,290/- by the Ld Authority in the impugned order this amount is also to be added in the aforesaid

amount of interest, so the total amount, which was payable by the appellant to the respondent/allottee comes to Rs.10,73,672/- as per the order passed by the Ld Authority. Out of that the appellant/promoter has deposited only a sum of Rs.3,59,793/-. So, the amount deposited by the appellant/promoter is far less than the requisite amount, meaning thereby the appellant/promoter has not complied with the provisions of proviso to section 43(5) of the Act.

5. 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.

6. The amount deposited by the appellant/promoter be remitted to the Ld Real Estate Regulatory Authority, which shall be at liberty to disburse the aforesaid amount to the respondent/allottee after the expiry of the period of appeal or the result thereof as the case may be as per rules.

7. File be consigned to records.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh  
22.10.2019

Inderjeet Mehta  
Member (Judicial)  
22.10.2019

Anil Kumar Gupta  
Member (Technical)  
22.10.2019