

Sana Realtors Private Ltd.
Vs.
Vandana Bhatnagar
CM No.1214 of 2023
In Appeal No.1315 of 2019

Argued by: Mr. Vaneet Thakur, Advocate,
for the applicant-appellant.

Application CM No. 1214 of 2023 has been filed for refund of amount of Rs.6,46,976/- deposited with this Tribunal in Appeal No. 1315 of 2019.

2. Learned counsel for the applicant-appellant, at the outset, submits that initially the applicant-appellant after filing of the appeal had approached the Hon'ble Punjab and Haryana High Court by way of a writ petition in which the applicant-appellant had claimed exemption from depositing the amount as prescribed under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act'). However, the Hon'ble High Court dismissed the said writ petition. He further submitted that the order of the Hon'ble High Court was challenged by the applicant-appellant by filing Special Leave Petition bearing no.SLP (C) 13005 of 2020 before the Hon'ble Supreme Court of India. Said SLP was dismissed by the Hon'ble Supreme Court vide judgment dated 13.05.2022. Thereafter, the applicant-appellant deposited 30% of the amount as per its understanding, however, the office of this Tribunal insisted for deposit of the entire amount of hundred per cent. On the other hand, the respondent/allottee filed execution petition to execute the order dated 02.04.2019 which was passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short 'the Authority').

3. Mr. Thakur, further submitted that during the pendency of the execution petition, the applicant-appellant entered into a

compromise and as per the terms of the compromise, the respondent/allottee withdrew the execution petition and the same was disposed of as such vide order dated 08.12.2022 (Annexure MA-1). The applicant-appellant, thereafter, filed an application before this Tribunal seeking permission to withdraw the appeal and also sought refund of the amount deposited by the applicant-appellant. He further submitted that the counsel for the applicant-appellant, however, later on received a telephonic communication that the appeal was preferred initially but the same was returned by the office after raising certain objections and the appeal was never filed thereafter. He further submitted that the net result of the aforesaid development is that as of today there is no appeal pending before this Tribunal, however, the amount of 30% deposited by the applicant-appellant in pursuance to the decision of the Hon'ble Supreme Court remains deposited.

4. On 12.10.2023, the Registry was asked to submit a report as to how the file was dealt with after appeal was filed way back in the year 2019. In pursuance thereto, Registry submitted report dated 30.10.2023 which was taken on record vide order dated 01.12.2023.

5. It appears that the Appeal No. 1315 of 2019 was received in the Registry on 03.09.2019 vide dairy No.1157. Certain objections were raised by the Registry and counsel for the applicant-appellant (Mr. Shobhit Phutela, Advocate) had taken back the file on 01.10.2019 for removal of the objections. However, thereafter, the counsel never submitted the file in the Registry after removal of the objections. Thereafter, the applicant-appellant deposited Rs.6,46,976/- vide DD No.013423 dated 06.06.2022. Shri Manu K. Bhandari, Advocate has filed the instant application dated 20.01.2023 for refund of the

amount deposited with this Tribunal. However, the original appeal file has been submitted by the representative of the applicant-appellant after filing the instant application dated 20.01.2023 for refund of the amount. The matter is stated to have been settled between the parties during the pendency of the execution petition before the Authority.

6. It is evident that draft of Rs.6,46,976/- has been deposited by the applicant-appellant vide DD No.013423 dated 06.06.2022. It is inexplicable why such a demand draft was deposited with the Registry of this Tribunal. Be that as it may the amount cannot be retained by this Tribunal. It is, thus, directed that same be refunded to the Authority along with interest accrued thereon for disbursement of the same to the appellant-promoter, subject to tax liability, if any, according to law.

7. Application (CM No. 1214 of 2023) is disposed of in the aforesaid terms.

8. Application be tagged with the main file.

Announced:
February 13, 2024

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)