

M/s Supertech Ltd. Vs. Ashok Kumar Madan  
Appeal No.487 of 2019

Present: Shri Akshat Mittal, Advocate, for the appellant.  
Shri Aseem Gupta, Advocate, Counsel for the respondent.

Vide our order dated 03.10.2019, 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 whole of the amount payable to the respondent/allottee, as imposed by the learned Authority vide impugned order, on or before 29.10.2019 with this Tribunal. As per the report of the office, no amount has been deposited by the appellant/promoter.

Learned counsel for the appellant/promoter has pleaded for extension of time on the ground that some of the matters in which waiver applications were dismissed by this Tribunal are pending before the Hon'ble High Court in appeals or Civil Writ Petitions.

We have duly considered this plea. Mere pendency of the appeal is no ground for extension of time. It is settled proposition of law that mere filing of appeal does not amount to staying the operation of the order passed by the court below. Moreover, in this case the appeal was filed on 18.07.2019. It was put up for the first time before this Tribunal on 30.08.2019. Thereafter the case remained pending for disposal of the application filed by the appellant for waiver of the condition of pre-deposit which was dismissed by this Tribunal on the last date of hearing i.e. 03.10.2019. Even on that date, the appellant was granted more than three weeks time to deposit the requisite amount. So, sufficient time has already been granted to the appellant/promoter. There is no justification to further extend time.

It is settled principle of law that the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act,

2016 (hereinafter called 'the Act') are mandatory. 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.

File be consigned to records.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh  
30.10.2019

Inderjeet Mehta  
Member (Judicial)  
30.10.2019

Anil Kumar Gupta  
Member (Technical)  
30.10.2019