

M/s Athena Infrastructure Ltd. Vs. Rakesh Verma & anr.
Appeal No.304 of 2019

Present: Shri Ajiteshwar Singh, Advocate, ld. Counsel for the appellant.
Shri Saurav Verma, Advocate, ld. Counsel for the respondents.

Vide our last order dated 14.10.2019, the application moved by the appellant 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 respondents/allottees, as imposed by the learned Authority vide impugned order, with this Tribunal on or before 04.11.2019. As per the report of the office, no amount has been deposited by the appellant promoter till date.

Learned counsel for the appellant/promoter pleaded that the appellant has preferred Civil Writ Petition No.32110 of 2019 before the Hon'ble High Court assailing the order dated 14.10.2019 passed by this Tribunal. He further contended that though this writ petition was listed before the First Division Bench of the Hon'ble High Court but no interim order has been passed and the writ petition has been ordered to be listed before the Regular Division Bench. He has requested that the present appeal may be taken up after hearing of the writ petition by the Hon'ble High Court.

We have duly considered the aforesaid contentions.

It is an admitted fact that no interim order has been passed by the Hon'ble High Court in the writ petition filed by the appellant/promoter in its favour. It is settled principle of law that mere filing of the writ petition/appeal does not automatically amount staying the operation of the order passed by the court below. Thus, mere filing of the writ petition by the appellant against the order passed by this Tribunal is no ground to adjourn the case.

It is settled principle of law that the provisions of proviso to section 43(5) of 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
05.11.2019

Inderjeet Mehta
Member (Judicial)
05.11.2019

Anil Kumar Gupta
Member (Technical)
05.11.2019