

Oasis Landmark LLP Vs. Vastuvidha (India) LLP  
Appeal No.494 of 2019

Present: Shri Amandeep Singh, Advocate, Id. Counsel for the appellant.  
Ms. Rakhi Poonia, Advocate, Id. Counsel for the respondent.

Vide our order dated 01.10.2019, 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, with this Tribunal on or before 22.10.2019. The said period has already expired. As per the report of the office, no amount has been deposited by the appellant/promoter till date.

Learned counsel for the appellant has moved an application for extension of time in depositing the pre-deposit by two weeks on the ground that there has been a procedural delay in getting an instrument for the said amount made as the concerned official of the company was not available.

We have duly considered the plea raised in this application.

The present appeal was filed on 03.07.2019 and the same was put up before this Tribunal for the first time on 06.08.2019. Thereafter, the case remained pending for disposal of the application filed by the appellant/promoter for waiver of the condition of pre-deposit which was dismissed by this Tribunal on 01.10.2019.

Again, the appellant/promoter was granted time to deposit the requisite amount by 22.10.2019. Thus, sufficient time has already been granted to the appellant to comply with the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') by depositing the requisite amount. The plea raised in the application that the necessary instrument could not be got prepared due to non-availability of the concerned official of the Company, does not appeal

to the reasons as it cannot be presumed that there was only one employee in the appellant company handling such matters. So, we do not find any merits in the present application and the same is hereby dismissed.

As already mentioned, the appellant/promoter was directed to deposit the requisite amount to comply with the provisions of proviso to section 43(5) of the Act, on or before 22.10.2019. The said period has already expired.

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  
23.10.2019

Inderjeet Mehta  
Member (Judicial)  
23.10.2019