

S.S. Group Pvt. Ltd. Vs. Ravinder Jain and anr.
Appeal No.368 of 2019

Present: Ms. Swati Dayalan, Advocate, ld. Counsel for the appellant.
Shri Sanjeev Gupta, Advocate, ld. Counsel for the respondents.

Vide our order dated 23.10.2019 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 the requisite amount i.e. whole of the amount payable to the respondents/allottees, as imposed by the learned Haryana Real Estate Regulatory Authority (hereinafter called 'the Authority'), vide impugned order dated 12.03.2019 with this Tribunal on or before 07.11.2019. By that date, the appellant has deposited Rs.2,13,884/- i.e. only a part amount.

2. On 08.11.2019 when the case was taken up, learned counsel for the respondents pointed out that the amount deposited by the appellant was substantially short. It was clarified that the appellant/promoter was directed to hand over the possession within one month from the date of the impugned order dated 12.03.2019 but the possession was not offered till date after passing of the impugned order. The present appeal was filed on 03.06.2019. So, the appellant/promoter was directed to deposit the delayed interest up to 02.06.2019 with effect from the deemed date of possession i.e. 04.01.2016.

3. On the request made by learned counsel for the appellant and the concession given by learned counsel for the respondents, the appellant was granted time to deposit the deficient amount by 11.11.2019. Thereafter, the appellant has deposited a sum of Rs.3,38,548/- through RTGS on 11.11.2019. In this way, the appellant/promoter has deposited a total sum of Rs.5,52,432/- in order to comply with the provisions of proviso to section 43(5) of the

Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act').

4. The said amount deposited by the appellant is again short. The appellant/promoter has itself placed on record the ledger of the respondents/allottees which is available at page 61 of the paper book which shows that as on 27.05.2019 a total sum of Rs.13,24,304/- was due against the respondents/allottees whereas the appellant/promoter was liable to pay a sum of Rs.19,47,785/- towards interest on delayed payment up to the date of filing the present appeal.

5. Learned counsel for the respondents/allottees has contended that the interest on delayed payment has been wrongly charged. He contended that the interest could have only been charged on the date of issuance of the notice for handing over possession, whereas no notice has been issued till date. We need not to go into this issue, at this stage. Even if the calculation placed on record by the appellant/promoter is taken into consideration, still the appellant/promoter was required to deposit a sum of Rs.6,23,481/- (19,47,785 minus 13,24,304) but the appellant/promoter has deposited only a sum of Rs.5,52,432/-. Thus, the appellant/promoter has not deposited the whole of the amount payable by it to the respondents/allottees as imposed by the learned Authority vide impugned order.

6. As per the proviso to section 43(5) of the Act where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard. The provisions of proviso to section 43(5) of the Act are mandatory in nature. Thus, it was a

condition precedent for the appellant/promoter to deposit the whole of the amount i.e. Rs.6,23,481/-, which was payable to the respondents/allottees as per the impugned order passed by the learned Authority, to get its appeal entertained. But, inspite of sufficient opportunities the total amount payable to the respondents/allottees has not been deposited.

7. As discussed above, the amount deposited by the appellant/promoter is short. The deficiency in the said amount has not been made good inspite of the fact that everything was made clear to the learned counsel for the appellant on 08.11.2019 when the case was adjourned on his request to deposit the remaining amount. But even then, the amount deposited by the appellant/promoter is short. Therefore, the appellant/promoter has not intentionally and deliberately complied with the provisions of proviso to section 43(5) of the Act inspite of adequate opportunity.

8. Consequently, the present appeal cannot be entertained due to non-compliance of the provisions of proviso to section 43(5) of the Act and the same is hereby dismissed.

9. The amount deposited by the appellant/promoter be remitted to the learned Real Estate Regulatory Authority, Gurugram for disbursement to the respondents/allottees as per law.

10. File be consigned to records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
13.11.2019

Inderjeet Mehta
Member (Judicial)
13.11.2019

Anil Kumar Gupta
Member (Technical)

