

M/s Apex Buildwell Pvt. Ltd.

Vs.

Rishi Ram

Appeal No.246 of 2020

Present: Shri Sandeep Choudhary, Advocate, Id. Counsel for the appellant.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

Office report perused.

2. The appeal be registered.

3. There is delay of 89 days in filing of the present appeal.

There is also delay in re-filing the appeal but the appellant has not mentioned the number of days of such delay.

4. The appellant has also not complied with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). Rather, the appellant has moved an application for waiver of the condition of pre-deposit.

5. Heard on the application.

6. Learned counsel for the applicant/appellant contended that the appellant is constructing the low cost/affordable group housing colony where the costs of selling is pre-defined and despite the volatility of prices and non-timely renewal of the licence, the applicant/appellant was in the state of difficulty and suffered at multiple ends. The appellant has to spend huge amount for renewal of the licence and seeking other permissions/sanctions. He further contended that the appellant has completed various projects at huge costs. He further contended that the pre-deposit contemplated under Section 43(5) of the Act will be a huge cost to the appellant and will cause further hardship in the completion of the present

project. The appellant is still to recover huge outstanding amount from the sold inventory. Thus, he pleaded that the condition of pre-deposit may be waived of.

7. We have duly considered the aforesaid contentions. The pleas raised by learned counsel for the applicant/appellant that the appellant is constructing the low cost/affordable group housing colony where the price is pre-defined, the appellant has to pay huge renewal fee for renewal of the licence and seeking other permissions/approvals and the appellant is still to recover the outstanding amount from the sold inventory, have been put forwarded in order to show that the appellant will suffer the financial hardship if it is required to pre-deposit the requisite amount to comply with the provisions of proviso to section 43(5) of the Act. The proviso to Section 43(5) of the Act is mandatory in nature which is required to be complied with in order to get the appeal entertained filed by the promoter. The financial hardship likely to be caused to the promoter is no ground to ignore the mandatory provision of Section 43(5) of the Act.

8. There is no statutory provision in the Act which grants any discretion to this Tribunal to waive of the condition of pre-deposit. In the absence of any statutory provision, this Tribunal is not competent to waive of the condition of pre-deposit. Reference can be made to the cases **M/s Tecnimont Pvt. Ltd. (Formerly known as Tecnimont ICB Private Limited) versus State of Punjab & Others, AIR 2019 SC 4489** and **Union Bank of India versus Rajat Infrastructure Pvt. Ltd. & Ors. AIR 2020 SC 1172.**

9. It appears that the present application has been moved by the appellant only to gain time. The present appeal was initially filed on 24.08.2020. Some objections were raised by the Registry

and it was re-filed on 04.01.2021 with a delay of 113 days. The appellant company is also well aware of the legal position as in the previous appeals filed by the appellant company the applications for waiver of the condition of pre-deposit moved on similar lines were dismissed by this Tribunal by passing the detailed orders. Thus, it can be safely concluded that the present application has been moved by the appellant only to gain time knowing fully well that this Tribunal has no discretion to waive of the condition of pre-deposit.

10. Consequently, the present application is hereby dismissed with Rs.10,000/- as costs. The costs be deposited with the District Legal Services Authority, Gurugram.

11. However, in the interest of justice the appellant is granted time to comply with the provisions of proviso to section 43(5) of the Act by depositing the requisite amount i.e. whole of the amount payable to the respondent/allottee as adjudged by the learned Authority in the impugned order and has become due as on the date of re-filing the present appeal, on or before 15.02.2021.

12. Now to come up on 17.02.2021 for seeing the compliance of this order

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

February 09, 2021  
CL