

M/s BPTP Pvt. Ltd. Vs. Sushil Kumar Kaushik & Anr.  
Appeal No. 199 of 2020

Present: Shri Hemant Saini, Advocate, Id. Counsel for the appellant.

Previous costs of Rs.20,000/- deposited by the appellant with the District Legal Services Authority. Photocopy of the receipt has been placed on record.

2. The present appeal was filed by the appellant without complying with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). In order to evade the compliance of the aforesaid provisions, the appellant had moved an application for waiver of the condition of pre-deposit. The said application was dismissed by this Tribunal vide order dated 18.08.2020 and the appellant was granted time to deposit the requisite amount on or before 15.09.2020 and the case was listed for 16.09.2020 for seeing the compliance of the order.

3. Thereafter, it was informed to this Tribunal that the appellant had filed a joint writ petition bearing CWP No.14427 of 2020 but the said writ petition was withdrawn to file writ petitions separately.

4. Learned counsel for the appellant informs that thereafter the appellant preferred appeal against the order dated August 18, 2020 before the Hon'ble Punjab and Haryana High Court, Chandigarh and the said appeal has been dismissed by the Hon'ble High Court on 27.10.2020. On the last date of hearing, it was informed by learned counsel for the appellant that he has filed some civil miscellaneous before the Hon'ble High Court for extension of time to deposit the amount. Today, learned counsel for the appellant has informed this Tribunal that even the civil miscellaneous filed by the appellant has been got dismissed as withdrawn from the Hon'ble High Court.

5. Learned counsel for the appellant has very fairly conceded that at present neither any appeal nor any writ petition is pending against the order dated 18.08.2020 passed by this Tribunal.

6. We have granted more than adequate opportunities to the appellant to comply with the provisions of proviso to section 43(5) of the Act. The compliance of the aforesaid provisions is a condition precedent to entertain the appeal filed by the promoter. In spite of availing number of opportunities, the compliance is not being made. This Tribunal has even granted the last opportunity vide order dated 16.12.2020 to the appellant to deposit the requisite amount but in spite of that the compliance has not been made.

7. Thus, as the appellant/promoter has not complied with the mandatory provisions of the proviso to section 43(5) of the Act, so the present appeal cannot be entertained and the same is hereby dismissed.

8. Copy of the order be communicated to the parties/Ld. counsel for the parties and the Ld. Authority.

9. File be consigned to the records.

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

March 05, 2021

CL