

Magic Eye Developers Pvt. Ltd.

Vs.

J.M. Chhabra

Appeal No.475 of 2021

Present: Shri G.P.S. Baveja, Advocate on behalf of Ms. Neelam Gupta, Advocate, learned Counsel for the appellant.

[Through video conferencing]

The present appeal was filed by the appellant on 28.09.2021 and for the first time it was put up before this Tribunal for hearing on 16.11.2021. Instead of depositing the requisite amount with this Tribunal to comply with the mandatory provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), the appellant had moved an application for waiver of the condition of pre-deposit. However, on the statement made at bar by learned counsel for the appellant on 16.11.2021, the above said application for waiver of the condition of pre-deposit was dismissed as withdrawn. Further, on the request made by learned counsel for the appellant, the appellant was given one month time to deposit the requisite amount of pre-deposit, as calculated by the office of this Tribunal, on or before 13.12.2021 and the case was adjourned to 14.12.2021 for seeing the compliance of the order dated 16.11.2021.

2. However, on 14.12.2021 instead of complying with the directions given in the order dated 16.11.2021, the appellant moved an application for disposal of the appeal in view of the judgment dated 11.11.2021 handed down by the Hon'ble Supreme Court in Civil Appeal No.6745-6749 of 2021 titled as "**Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & Ors.**" Since the Coram was not complete on that date i.e. 14.12.2021, so as per the directions given by this Tribunal

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vide order dated 16.11.2021, the appellant was again directed to deposit the requisite amount of pre-deposit as calculated by the office of this Tribunal on or before 10.01.2022 and the case was adjourned to 12.01.2022 i.e. for today for seeing the compliance of the same. However, as per the report of the office no amount has been so far deposited by the appellant with this Tribunal to comply with the aforesaid provisions.

3. On being confronted by this Tribunal for not complying with the mandatory provisions of proviso to Section 43(5) of the Act, learned proxy counsel has submitted that since the impugned order dated 20.08.2021 handed down by the learned Authority, Gurugram, is without jurisdiction in view of the law laid down by the Hon'ble Supreme Court in the judgment ***Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & Ors.*** (Supra), so the application moved by the appellant may be disposed of accordingly.

4. Regarding this submission of learned proxy counsel for the appellant, it is suffice to say that dwelling on the submission that the impugned order handed down by the learned Authority is without jurisdiction, would amount to dealing with the appeal on merits. Unless and until the compliance of the mandatory provisions of proviso to Section 43(5) of the Act is not made by the appellant, the present appeal preferred by the appellant cannot be entertained at all.

5. 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 has not complied with the

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mandatory provisions of proviso to Section 43(5) of the Act inspite of sufficient opportunities provided to it. Consequently, the present appeal cannot be entertained and the same is hereby dismissed.

6. Copy of this order be sent to all the concerned.
7. File be consigned to the record.

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

January 12, 2022

Anil Kumar Gupta
Member (Technical)
(Through V.C.)

CL