

Ramprastha Promoter and Developer Pvt. Ltd.

V/s

Kanwal Kishore

Appeal No. 381 of 2020

Present: Shri Tarun Arora, Ld. Authorised Representative for the appellant.

{The Court proceedings conducted through VC}

We have received the order dated 13.01.2022 passed by Division Bench of the Hon'ble High Court in CWP No.6688 of 2021 including Writ Petition No.13878 of 2021. The Hon'ble High Court was pleased to pass the following directions/observations:-

"53. We have considered that submission of the parties on the said issue. It is not in dispute that the petitioners have not made good the pre-deposit within the prescribed time by the Appellate Authority. Instead of raising a challenge to any such order by way of the appellate remedy available to them, the petitioners challenged the said orders by means of writ petitions. It may not be appropriate at this stage to direct the petitioners to move an appropriate application before the Appellate Tribunal and to seek extension of time to make good the pre-deposit. The same, in our view, would only cause a further delay in the proceedings. In order to expedite the process and to balance the equities, we deem it appropriate to grant further period of four weeks, from the date of passing of this order, to the petitioner to make good a pre-deposit and further direct that in the event of the petitioners making the pre-deposit within a period of four weeks from the date of passing of this order, the respective appeals filed by the petitioners may be listed and decided on merit by the Tribunal.

54) The further extension of four weeks is however subject to the petitioners depositing a sum of Rs.5,000/- per case with the Poor Patient Welfare Fund, PGIMER Chandigarh."

2. As per the aforesaid directions, the appellant-promoter was required to deposit the requisite amount and costs of Rs.5000/- within four weeks from the date of the order.

3. As per report of the office, no amount in order to comply with the directions of the Hon'ble High Court has been deposited by the appellant with this Tribunal so far. Shri Tarun Arora, Ld. Authorised Representative of the appellant-company has also very fairly conceded that the appellant-promoter has not deposited any amount as well as the costs as directed by the Hon'ble High Court so far.

4. The order was passed by the Hon'ble High Court on 13.01.2022 whereby the appellant was granted four weeks' time i.e. 28 days from the date of the order to deposit the requisite amount to comply with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act).

5. As per the calculations made by us with the help of Ld. Authorised Representative for the appellant-company, the said period of 28 days has expired on 10.02.2022. Thus, the appellant has not complied with directions of the Hon'ble High Court nor the costs of Rs.5000/- has been deposited. The stipulated period granted by the Hon'ble High Court has already expired. Thus, the appellant has failed to comply with the provisions of proviso to Section 43(5) of the Act within the stipulated period as granted by the Hon'ble High Court.

6. It is settled principle of law that where a promoter files an appeal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal the total amount to be paid to the allottee including interest and compensation imposed on him/it, if any, or with both, as the case may be, before the said

appeal is heard. In the instant case, the appellant has not complied with the provisions of proviso to Section 43(5) of the Act in spite of the time granted by this Tribunal as well as the Hon'ble High Court. So, the appellant has not complied with the mandatory provisions of proviso to Section 43(5) of the Act. Consequently, the present appeal cannot be entertained and the same is hereby dismissed.

7. Copy of this order be sent to the parties/Ld. counsel for the parties.

8. File be consigned to the records.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

11.02.2022
Manoj Rana