

M/s Root Developers Pvt. Ltd.

Vs.

Gurneek Singh & Ors.

Appeal No.605 of 2021

Present: Shri Rajeev Anand, Advocate, learned Counsel for the appellant.

[Through V.C.]

ORDER

As per the report of the office, the appellant has not deposited any amount to comply with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act').

2. Learned counsel for the appellant states that the appellant has filed Civil Writ Petition bearing No.3638 of 2022, which is pending before the Hon'ble High Court for 18.05.2022 and notice of motion has been issued to the respondents therein. However, he has very fairly stated that no stay order has been issued by the Hon'ble High Court in the said writ petition.

3. The application for waiver of the condition of pre-deposit was dismissed by this Tribunal vide order dated March 02, 2022. The impugned order in this case was passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram on 20.09.2021. The appellant-promoter filed the present

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appeal on 22.11.2021 and it was put up before this Tribunal for the first time on 25.01.2022. Thereafter, learned counsel for the appellant sought date for preliminary hearing and the case was adjourned for this purpose for 31.01.2022, 07.02.2022 and 02.03.2022. While dismissing the application for waiver of the condition of pre-deposit vide order dated 02.03.2022, this Tribunal had granted time to the appellant to make the requisite pre-deposit on or before 16.03.2022. Thus, the appellant has availed more than adequate opportunities to deposit the requisite amount in order to comply with the provisions of proviso to Section 43(5) of the Act, but, in spite of that, the appellant-promoter has failed to make the necessary pre-deposit.

4. Mere this fact that the appellant has filed CWP No.3638 of 2022, is itself no ground to condone the default of the appellant and to keep the present appeal pending. Moreover, it is fairly stated at bar by learned counsel for the appellant that no stay order has been issued by the Hon'ble High Court. So, there is no justification with this Tribunal to adjourn the case in spite of the fact that the appellant has not complied with the mandatory provisions of proviso to Section 43(5) of the Act and the direction of this Tribunal.

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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-promoter has not complied with the mandatory provisions of proviso to Section 43(5) of the Act inspite of sufficient opportunities. Consequently, the present appeal cannot be entertained and the same is hereby dismissed.

6. Copy of this order be sent to the parties/learned counsel for the appellant and the learned Authority.

7. File be consigned to the record.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

March 17, 2022
CL