

Pioneer Urban Land and Infrastructure  
Vs.  
Mrs. Anju Jindal and another  
Appeal No.36 of 2021

Present: Shri Yashvir Singh Balhara, Advocate,  
Ld. counsel for the appellant.

Shri Akshat Mittal, Advocate,  
Ld. counsel for the respondent.

As per our order dated 28<sup>th</sup> April, 2022, after scrutinizing the calculations, it was ordered that there was deficiency of Rs.60,94,868/- in the amount of pre-deposit for compliance of Section 43(5) of the Real Estate (Regulation & Development) Act, 2016 (for short, 'the Act').

2. As per report of the office, the appellant has not deposited the deficient amount till date. Rather, the appellant has moved an application for waiver of the deposit of the said amount, wherein it has been pleaded that the interest awarded by the Learned Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') to the respondent-allottee in the impugned order is the subject matter of challenge in the present appeal.

3. It is further pleaded that the amount of pre-deposit has been calculated up to the date of filing of the present appeal. It is further pleaded that the appellant is aggrieved by the impugned order, and imposition of the amount till the date of filing of the present appeal, as recorded by this Tribunal in the order dated 28<sup>th</sup> April, 2022. That the Ld. Authority has wrongly allowed the complaint and directed the appellant to reckon the interest till the date of actual handing over of the possession, whereas the possession had been offered to the respondent on 17<sup>th</sup> June, 2019. The Ld. Authority has failed to recognise the fact that occupancy certificate has been issued to the appellant-company. It is further pleaded that in the aforesaid

prevailing circumstances, the real estate industry is facing innumerable encumbrances due to rising inflation and affected economy. So, the stipulation for pre-deposit of the remaining amount of Rs.60,94,868/- may be waived off.

4. We have heard Ld. counsel for the appellant.

5. It is settled principle of law that as per the proviso to Section 43(5) of the Act, where a promoter files an appeal, he is required to deposit the total amount to be paid to the allottee including interest and compensation imposed upon the promoter by the Authority. This pre-deposit is a condition precedent for entertainment of the appeal. In the instant case, the Ld. Authority, in the impugned order, has directed the payment of interest for delay in delivery of possession w.e.f. 14<sup>th</sup> March, 2016 till the handing over of the physical possession of the allotted unit. In view of this direction, the registry of this Tribunal has calculated that a sum of Rs.1,95,11,442/- is required to be deposited by the appellant. The appellant has been allowed an adjustment of Rs.72,94,350/- as per the stipulation in the impugned Order dated 21<sup>st</sup> October, 2020. The appellant has so far deposited only a sum of Rs.61,22,224/-. Thus, there is deficiency of Rs.60,94,868/-. Ld. counsel for the appellant on 28<sup>th</sup> April, 2022 had sought three weeks' time to deposit the deficient amount and considering the request of the appellant this Tribunal had adjourned the case for today i.e. on 24.05.2022. Despite availing more than three weeks' time, the deficient amount has not been deposited, rather today the appellant has moved an application for waiver of the remaining amount.

6. The pleas raised in the application that the Ld. Authority has wrongly imposed the amount; the Ld. Authority has wrongly awarded the interest till the date of handing over of the physical

possession and the Ld. Authority has failed to recognise the fact that the occupancy certificate has already been issued are the issues touching the merits of the case. If these issues are considered at this stage, it will virtually amount to entertainment of the present appeal even without compliance of Section 43(5) of the Act. So, the adjudication of these issues is not permissible under law.

7. The fact that real estate industry is facing the financial hardship is no ground to waive off the amount of pre-deposit. Moreover, it is well settled that this Tribunal is not legally competent to waive of whole or any part of the amount of pre-deposit. The application filed by the appellant is just a device to further prolong the present appeal. On the last date of hearing, Ld. counsel for the appellant had sought three weeks' time to make good the deficiency in the amount of pre-deposit, but the appellant has not deposited the deficient amount so far. Thus, the application moved by the appellant is not bona fide, the same is without any merit and is hereby dismissed.

8. As the appellant has not deposited the deficient amount of the pre-deposit in spite of adequate opportunities, so the appellant has failed to comply with the provisions of proviso to Section 43(5) of the Act. It is settled principle of law that the compliance of proviso to Section 43(5) of the Act is mandatory and the same is a condition precedent for entertainment of the appeal. As the appellant has failed to comply with the aforesaid provisions, so the present appeal filed by the appellant cannot be entertained and the same is hereby dismissed.

9. The amount of Rs.61,22,224/-, deposited with this Tribunal as pre-deposit, along with interest accrued thereon be sent

to the Ld. Authority for disbursement to the respondents/allottees subject to tax liability, if any, as per law and rules.

10. Copy of this order be conveyed to the parties/Ld. counsel for the parties and the Ld. Haryana Real Estate Regulatory Authority, Gurugram for information and necessary compliance.

11. File be consigned to the record.

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

Inderjeet Mehta  
Member (Judicial)

24.05.2022  
Manoj Rana