

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No. 12154 of 2020
Date of Decision: 19th August, 2020

Neo Developers Pvt. Ltd.Petitioner

VERSUS

Union of India and othersRespondents

2. CWP No. 12176 of 2020
Date of Decision: 19th August, 2020

Neo Developers Pvt. Ltd.Petitioner

VERSUS

Union of India and othersRespondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Navdeep Kalair, Advocate
for the Petitioner in both the cases.

Mr. Satya Pal Jain, Senior Advocate
Additional Solicitor General of India with
Mr. Ajay Kalra, Advocate for Respondent No. 1.

Mr. Ankur Mittal, Additional Advocate General, Haryana
for Respondent No. 2.

None for remaining Respondents.

Dr. S. Muralidhar, J.

1. The challenge in the present petitions is to the orders dated 11th October, 2019 passed by the Haryana Real Estate Appellate Tribunal ('HREAT') dismissing the appeals (Appeal Nos. 106-107 of 2019) filed by the Petitioner on the ground of non-payment of entire pre-deposit as required under the proviso to Section 43 (5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter, 'the Act'). The said appeals were in turn directed

against orders dated 22nd October, 2018 passed by the Real Estate Regulatory Authority, Gurugram, Haryana.

2. It should be noted at the outset that in the main prayer in the writ petition there is no specific prayer seeking the striking down of the proviso to Section 43 (5) of the Act as being *ultra vires* the Constitution of India. It is merely urged that the requirement under the aforesaid proviso is onerous and unreasonable.

3. The requirement of pre-deposit is mandated under the proviso to Section 43 (5) of the Act and it is not open to the HREAT to waive that requirement. In fact, when the appeal before the HREAT was listed on 17th September, 2019, three weeks' time had been granted to the Petitioner to deposit the entire amount payable to the allottee on or before 10th October, 2019. Consequently, as rightly noted by the HREAT, sufficient time had already been granted.

4. It appears that more than a month after the dismissal of the appeals by the impugned orders dated 11th October, 2019, the Petitioner on 24th December, 2019 filed applications seeking restoration of the appeals by allowing the Petitioner to deposit the balance 70% amount in terms of the proviso to Section 43 (5) of the Act. This too was dismissed by the HREAT on 10th January, 2020 noting that Counsel for the Appellant sought withdrawal of the application, reserving his right to file a fresh appeal on the same cause of action by complying with the provisions of proviso to Section 43 (5) of the Act. Accordingly, the demand draft dated 2nd December, 2019 for the balance deposit amount tendered by the Petitioner was directed to be returned.

5. The Petitioner has waited thereafter till 10th August, 2020 to file the present petitions.

6. In the circumstances, the Court is unable to find any error in the impugned orders dated 11th October, 2019 passed by the HREAT, which are clearly in accordance with the provisions of the governing statute i.e. the Act and, in particular, the proviso to Section 43 (5) of the Act, the *vires* of which is not under challenge. The Court sees no reason to interfere with the said impugned orders of HREAT.

7. The petitions are dismissed.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

19th August , 2020
jk

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No