

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.17677 of 2020

Date of Decision:-17.11.2020

M/s Apex Buildwell Pvt. Ltd.

.....Petitioner.

Versus

Union of India & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present:- Mr. Sandeep Choudhary, Advocate for the Petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India
assisted by Mr. Dheeraj Jain, Advocate for the respondents.

JASWANT SINGH, J.

*[The aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual court]*

Petitioner- Builder has filed the present writ petition seeking quashing of order dated 17.12.2019 (P-9) passed by Real Estate Regulatory Authority (hereinafter referred to as RERA)-respondent no 3 in complaint No. 3874 of 2019 titled as “Kapur Singh Vs M/s Apex Buildwell Pvt. Ltd”; as also order dated 24.08.2020 (P-12) passed by Real Estate Appellate Tribunal, Chandigarh (hereinafter referred to as Appellate Tribunal)-respondent no 4 passed in appeal filed by writ petitioner titled as “M/s Apex Buildwell Pvt. Ltd. Vs Kapur Singh” whereby the appellate tribunal has dismissed the writ petitioner’s application seeking waiver/ exemption from

condition of pre-deposit of the amount ordered by RERA.

A bare perusal of the prayers made in the writ petition would show that it has challenged the validity of the order dated 17.12.2019 (P-9) passed by RERA on the ground that it lacked jurisdiction to adjudicate the issue involved in the complaint as per the provisions of the Act. The order dated 24.08.2020 (P-12) has been challenged on account of the fact that writ petitioner's application seeking waiver/ exemption from condition of pre-deposit of amount ordered by RERA has been rejected without considering the facts of the case.

During the course of hearing, it has been brought to our notice by the counsel for the parties that the prayers made in the present writ petition are covered by the Judgment dated 16.10.2020 rendered by a co-ordinate bench of this court in **CWP No. 38144 of 2018 and other connected matters tiled as "Experion Developers Pvt. Ltd. Vs State of Haryana and others"**.

Ld. Counsel for the petitioner has prayed that his matter be also disposed off in view of the judgment passed in *Experion Developers Pvt Ltd case (supra)*, especially the directions issued in paragraphs 94 to 96 of the judgment.

This prayer has fairly not been opposed by Ld. Counsel for the respondents.

We have heard Ld. Counsel for the parties at length and have also perused the judgment dated 16.10.2020 passed by Co-ordinate bench. A bare perusal of the said judgment shows that in paragraph 89, the conclusion has been summarized, which reads as follows:

“ 89. To summarise the conclusions:

- (i) The challenge to the constitutional validity of the proviso to Section 43 (5) of the Act is rejected.
- (ii) The orders of the Appellate Tribunal declining to grant the Petitioners further time to make the pre-deposit beyond the date as stipulated by the Appellate Tribunal or where the appeals have been rejected on account of the Petitioners' failure to make the pre-deposit as directed, are hereby affirmed. Nevertheless, this Court has in paragraphs 94 and 95 hereafter issued directions giving one last opportunity to the Petitioners to make the pre-deposit in a time-bound manner.
- (iii) In the facts and circumstances of the individual cases, no grounds have been made out to persuade this Court to exercise its writ jurisdiction under Article 226 of the Constitution to grant any relief in respect of waiver of pre-deposit. In none of the cases is the Court satisfied that a case of 'genuine hardship' has been made out.
- (iv) On the interpretation of the provisions of the Act, the conclusions in this judgment on the scope of jurisdiction of the Authority and the AO respectively, and given the prayers in the individual complaints from which these writ petitions arise, in none of the cases the Authority can be held to have exercised a jurisdiction that it lacked and its orders cannot be said to be without jurisdiction. No interference under Article 226 is warranted on that score.
- (v) As regards the merits of the order of the Authority the remedy of an appeal before the Appellate Tribunal is in any event available. Even where according to the party aggrieved the Authority lacked jurisdiction to decide the complaint, it would be for the Appellate Tribunal to decide that issue in light of the legal position explained in this judgment on the respective adjudicatory powers of the Authority and the AO. In such instance too the pre-deposit would be mandatory.
- (vi) A collective reading of provisions makes it apparent that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the

Authority which has the power to examine and determine the outcome of a complaint. When it comes to question of seeking the relief of compensation or interest by way of compensation, the AO alone has the power to determine it on a collective reading of Sections 71 and 72 of the Act.

(vii) Rules 28 and 29 of the Haryana Rules as amended seek to give effect to the harmonized construction of the provisions of the Act concerning the powers of the Authority and of the AO. They are not *ultra vires* the Act. The Court rejects the challenge to the validity of the amended Rules 28 and 29 of the Rules and the amendments to Forms CRA and CAO.

(viii) A complaint yet to be decided as on the date of the notification of the Haryana Amendment Rules 2019, will now be decided consistent with the procedure outlined under the amended Rules 28 and 29 of the Haryana Rules.

(ix) The challenge to Sections 13, 18 (1) and 19 (4) of the Act and Rules 8 and 15 of the Haryana Rules as regards their retroactive applicability to ‘ongoing projects’ is hereby rejected.

Further, in paragraph no. 94 to 96 of the same judgment, certain directions have been issued, which reads as under:

“ 94. Since these writ petitions have been pending for some time and interim orders have also been passed in many of them, as a one-time measure permission is granted to the Petitioners to make the pre-deposit in terms of the proviso to Section 43 (5) of the Act before the Appellate Tribunal, wherever appeals have already been filed and are pending, not later than 16th November, 2020. This will also be available to those Petitioners in whose cases the registry of the Appellate Tribunal did not process the appeals for failure to make the pre-deposit. Upon the making of such pre-deposit within the time granted by this Court, the Appellate Tribunal, where the appeal is still pending, will then proceed to hear the appeal on merits, which would include a challenge to the validity of the order of the Authority. On failure of the Petitioners to make the pre-deposit even within the extended time as granted by this Court, the Appellate Tribunal will proceed to pass appropriate consequential orders in the appeal.

95. Where the Petitioner’s appeal already stands dismissed by the Appellate Tribunal for a failure to make the pre-deposit as directed, and that order is challenged in the writ petition, this Court as a one-time measure, permits the Petitioner to make the pre-deposit in terms of the proviso to Section 43 (5) of the Act before the Appellate Tribunal not later than 16th November, 2020. Upon making of the

pre-deposit within the time granted by this Court, the Appellate Tribunal will recall its order dismissing the appeal, restore the appeal to file and proceed to dispose of the appeal on merits, which will include examining the validity of the order of the Authority. On failure of the Petitioners to make the pre-deposit with the time as granted by this Court, the order of the Appellate Tribunal dismissing the appeal will stand affirmed without any further recourse to this Court.

96. Where no appeal has yet been filed before the Appellate Tribunal, it is open to the Petitioner to challenge the order of the Authority before the Appellate Tribunal in accordance with law. The fact of pendency of present petitions will be taken into account by the Appellate Tribunal while examining the question of condoning the delay in filing the appeal. ”

In view of the admitted stand taken by the parties as also considering the judgment dated 16.10.2020 passed by Co-ordinate Bench of this court in detail, we are of the view that the issue involved in the present case is squarely covered by this judgment. Consequently, we direct that the present writ petition be also disposed off in the same terms as those of CWP No. 38144 of 2018 and other connected matters tiled as “Experion Developers Pvt. Ltd. Vs. State of Haryana and others with liberty to the petitioner to make the required pre-deposits in terms of the proviso to Section 43(5) of the Act before the Appellate Tribunal not later than 17th November 2020 wherever applicable.

Disposed off accordingly.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

November 17, 2020
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>