

02.11.2023
Item No.12
Court No.5.
S. De/ b.das

WPA 25781 of 2023

Janapriyo Real Estate Pvt. Ltd. & Anr.
Vs.
The Department of Housing, Government of West Bengal & Ors.

Mr. Anjan Bhattacharya,
Mr. Pramit Mukherjee,
Mr. Sudip Basu,
Mr. Dibyanjona Das ...for the petitioners.

Mr. Santanu Kr. Mitra,
Mr. Shamim-Ul-Bari, ...for the State.

Affidavit-of-service filed on behalf of the petitioner is taken on record. Despite service, no one appears on behalf of the private respondent.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners had preferred an appeal before the West Bengal Real Estate Appellate Tribunal challenging an order passed by the W.B.R.E.A.T. By an order dated 10.10.2023 passed by the Tribunal in Appeal No. WBREAT/Appeal No.08/2023, the Tribunal directed the petitioners to comply with the mandatory provisions of Section 43(5) of the Act of 2016 by depositing the entire principal money by demand draft or online payment of Rs.1107000/- + interest till the date of filing of the appeal of 19/09/2023 in favour of the West Bengal Real Estate Appellate Tribunal, Kolkata within

07.11.2023. Non payment of such sum will automatically lead to dismissal of the appeal for non-compliance. Section 43(5) of the relevant provisions gives that an appeal can be preferred by depositing at least 30% of the sum. Although there is also a provision for payment of higher sums, the same cannot be a automatic outcome. Moreover, such an order should not have been passed as the question of maintainability of the appeal itself has been kept pending.

Learned counsel appearing on behalf of the State denies the allegations made in the writ petition and submits that there is no violation of the provision of Section 43(5) of the said Act.

Section 43(5) provides that any person aggrieved by any direction or decision may prefer an Appeal before the Appellate Tribunal having Jurisdiction over the matter provided that where a promoter files an Appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at lest 30 per cent of the penalty or such highest percentage as may be determined by the Appellate Tribunal or the total amount to be paid to the allottee including interest and compensation imposed on him if any or with both as the case may be, before the said Appeal is heard.

Therefore, there is no stipulation that an appeal can be preferred only by depositing 30% of the penalty. The Tribunal was within its powers to direct the petitioners to submit such sum of money.

Moreover, it is not the question of maintainability of the original complaint that is an issue here. The Tribunal has kept the issue of maintainability of the appeal itself pending.

Therefore, I find no illegality in the impugned order. Accordingly, the writ petition being WPA 25781 of 2023 is dismissed.

However, there shall be no order as to costs.

The Tribunal is requested to conclude the proceeding as expeditiously as possible.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Jay Sengupta, J.)