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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05.09.2023

+ CM(M) 1437/2023 & CM APPL. 45922/2023

DR. SUSHMA SINGH

..... Petitioner

Through: Mr. Amarjit Singh Bedi, Mr. Varun Chandiook and Ms. Riya Seth, Advocates

versus

M/S. C J INFRASTRUCTURE PVT. LTD & ANR. Respondents

Through: Mr. Ashim Vachher, Standing Counsel for DDA with Mr. Kunal Lakra, Advocate.

% **CORAM:**

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 45923/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1437/2023 & CM APPL. 45922/2023

1. This petition filed under Article 227 of the Constitution impugns the orders dated 17.04.2023, 19.07.2023 and 11.08.2023 passed by Real Estate Appellate Tribunal ('REAT' or 'Appellate Tribunal').

2. In the facts of this case, Real Estate Regulatory Authority ('RERA' or 'Authority') was pleased to allow the complaint bearing no. 38 of 2019 filed by the Petitioner herein. RERA by its judgement dated 20.09.2022 directed Respondent No. 1 to pay the Petitioner herein interest at 10% (MCLR + 2%) from the date of the promised possession i.e., on all deposits made to them till the date of actual possession of the shops.

2.1. It is stated that in November, 2022 aggrieved by the judgement dated



20.09.2022, Respondent No. 1 preferred an appeal before the Appellate Tribunal bearing Appeal No. 82/2022.

3. The learned counsel for the Petitioner states that the Appellate Tribunal in exercise of its powers under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 ('the Act of 2016') vide order dated 22.05.2023 directed Respondent No. 1 to deposit 100% of the amount awarded by the Authority.

3.1. He states, however, upon an unnumbered application being filed by the Respondent No. 1 on 17.07.2023 seeking clarification and review of the order dated 22.05.2023, the Appellate Tribunal without according any reasons permitted the Respondent No. 1 to deposit a reduced amount equal to 30% of the amount awarded by the Authority vide impugned order dated 19.07.2023.

3.2. The learned counsel for the Petitioner states that Respondent No. 1 has, however, till date, not even deposited the reduced amount in compliance with the order dated 19.07.2023.

3.3. He states that the amount due and payable as per the Authority's order dated 20.09.2022 is about Rs. 37.50 lakhs approximately. He states that 30% of the said amount is Rs. 11,23,548.43/-.

3.4. He states, however, the Respondent No. 1 has only deposited an initial amount of Rs. 49,350/-.

3.5. He states that though the aforesaid non-compliance has been duly brought to the attention of the Tribunal by the Petitioner herein no directions have been issued to the Respondent No. 1 by the Tribunal.

3.6. He states in contrast, the Petitioner herein who despite being a successful judgement holder has been rendered remediless. He states that



vide order dated 17.04.2023, the Appellate Tribunal has stayed the impugned order, thereby, denying the Petitioner herein an opportunity to seek execution of the order dated 20.09.2022.

3.7. He states that in this manner, the Respondent No. 1 has successfully overcome the Bar of Section 43(5) of the Act of 2016 as he has neither complied with the directions of REAT dated 22.05.2023 and/or 19.07.2023 while continuing to enjoy the stay granted by the Tribunal.

3.8. He further states that in terms of the mandate of Section 44(5) of the Act of 2016 an appeal is to be decided by the Tribunal within a period of sixty (60) days. He states in the facts of this case, the appeal was instituted in November, 2022 and notice was issued to the Petitioner herein on 21.11.2022, however, the matter has not been decided as the Respondent No. 1 is taking adjournments on one pretext or the other.

3.9. He therefore states that the order dated 17.04.2023, in so far as, it stays the operation of the order may kindly be vacated.

3.10. He has relied also upon the judgement of Madras High Court in ***T. Chitty Babu v. Union of India***, 2020 SCC OnLine Mad 28019, to contend that the Appellate Tribunal cannot proceed to hear the matter in view of the admitted non-compliance of the condition of deposit and in this regard he places reliance on paragraphs 29 and 30 thereof, which reads as under: -

“29. There is, however, one question which has to be answered, namely, there is no discretion left in the Appellate Authority at all to modify the terms of deposit and the statute requires a total deposit of the entire amount of compensation. The issue of safety valve being provided in a statute, as discussed in the judgment of Gagan Makkar (supra), has to be taken notice of. As observed by the Apex Court in the case of Tecnimont Pvt. Ltd. (supra), we cannot read into the hands of the Appellate Authority any discretionary power in this regard. But, at the same time, we find the observation made therein in paragraph 18 that in case of extreme hardship, a writ petition could be an appropriate remedy. To this extent, it



is open to an aggrieved person, including the petitioner, to explore the possibility of raising a challenge for exercise of any such discretion in a writ petition. But, then, that is not an issue for us to finally pronounce upon, and would depend as and when such an option is exercised by the petitioner. There are no pleadings in the present writ petition to assume that any prejudice has been caused to the petitioner on account of any financial crisis being faced by him nor is there any material to assume that the petitioner is experiencing any indigency so as to meet this contingency of deposit. It will be open to the petitioner to plead this in appropriate proceedings, but the same is not a ground for us in the absence of any material to strike down the provision as onerous.

30. We may, however, clarify that an appeal can be instituted by a ministerial act of its presentation and physical filing in the office of the Appellate Authority, but it cannot be entertained unless the pre-deposit has been made. We also clarify that no orders can be passed by the Appellate Authority by either issuing a notice on such an incompetent appeal or otherwise and it can only be entertained and then heard, provided the aggrieved party, in the present case the petitioner, deposits the amount as per the provision of Section 43(5) of the 2016 Act unless there is an order of the High Court or the Apex Court otherwise.”

(Emphasis supplied)

4. This Court has considered the submissions of the counsel for the Petitioner and perused the record.
5. This Court has been informed that the matter is listed before the Tribunal on 22.09.2023.
6. At the outset it would be relevant to extract the provision of Section 43(5) and Section 44(5) relied upon by the Petitioner. The said provisions read as under:

Section 43(5) of the Act of 2016:

*“(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act 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 least thirty per cent of the penalty, or such higher 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.

Explanation- For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

Section 44(5) of the Act of 2016:

"(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period."

(Emphasis supplied)

7. The said provisions of law make it amply clear that the appellant cannot maintain its appeal before the Appellate Tribunal without complying with the direction of deposit of the awarded amount. In the present case the Respondent No.1 has been granted stay of the order dated 20.09.2022 passed by RERA without ensuring the compliance of the condition of deposit directed by the Tribunal by its orders dated 22.05.2023 and the subsequent order dated 19.07.2023.

8. In view of the facts noted hereinabove as well as the mandatory provision of the Act of 2016 and taking note of the fact that the Respondent no. 1 has not complied with the directions of the Tribunal issued on 22.05.2023 and subsequently on 19.07.2023, the Appellate Tribunal is requested to hear and decide the application filed by the Petitioner herein dated 14.02.2023 (filed as annexure P-12 to this petition) along-with the applications filed by the Respondent No. 1 dated 17.07.2023 (filed as annexure P-16 to this petition) on the next date of hearing i.e., 22.09.2023.

9. The Tribunal is requested to issue appropriate orders for securing the



compliance of its direction of deposit of the awarded amount and pass consequential orders in case of non-compliance, within a period of two (2) weeks thereafter.

10. After the Respondent No.1 has deposited the awarded amount, the Appellate Tribunal may thereafter also consider hearing and disposing of the appeal itself in a time bound manner accordance with the mandate of Section 44(5) of the Act of 2016.

11. The Petitioner is at liberty to place this order before the Tribunal before the next date of hearing.

12. With the aforesaid directions the present Petition is disposed of reserving liberty to the Petitioner to approach this court if the applications referred to in paragraph 8 herein above remain undecided.

13. Pending applications stands disposed of.

14. The registry is directed to communicate this order to the registrar of the Appellate Tribunal for placing it before the bench on or before 22.09.2023.

15. The digitally signed copy of this order, duly uploaded on the official website or the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 5, 2023/rhc/sk

[Click here to check corrigendum, if any](#)