



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-7734-2024

Reserved on : 06.05.2024

Pronounced on: 01.07.2024

Vrinda Krishna Realtech Private Limited

....Petitioner

V/s

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mrs. Sonia Madan, Advocate for the petitioner.

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab.

VIKRAM AGGARWAL, J.

1. The petitioner prays for the issuance of a writ of mandamus commanding respondent No.4 to entertain the appeal to be filed by the petitioner under Section 43 of the Real Estate Regulatory Authority Act, 2016 (for short “the RERA Act”), without insisting upon pre-deposit of 30% of the penalty amount.

2. The petitioner is a promoter and was developing a residential colony in Village Mamoon, Tehsil and District Pathankot pursuant to a licence having been granted to it on 28.10.2013 (Annexure P-5). A criminal complaint was filed by the Real Estate Regulatory Authority, Punjab (for short the “RERA”) against the director of the petitioner company. As per the averments in the writ petition, a recovery notice dated 16.05.2023 (Annexure P-9) was received by the petitioner company for recovery of Rs.50 lakhs purported to have been imposed upon the petitioner vide order



3. The case set up by the petitioner company is that the said order dated 15.07.2019 was an *ex parte* order and even the proceedings were *ex parte* and the petitioner was not served at any point of time.

4. A response dated 30.05.2023 (Annexure P-15) was submitted to the recovery notice, which was, however, summarily rejected on 20.07.2023 (Annexure P-16).

5. The petitioner had moved an application for surrender of the licence since the project land was never put to sale and no third party rights were created by the petitioner. The said application was accepted vide order dated 29.12.2023 (Annexure P-17). The petitioner filed CWP-2338-2024 before this Court, challenging the recovery notice dated 16.05.2023, which was, however, withdrawn on 05.02.2024 (Annexure P-18) in order to prefer an appeal as envisaged under Section 43(5) of the RERA Act. However, upon obtaining legal advice, it came to the notice of the petitioner that a pre-deposit of 30% of the penalty imposed was required to be made at the time of filing of the appeal, which was out of reach of the petitioner and has, therefore, led the petitioner to file the instant writ petition to waive off/reduce the amount of pre-deposit for preferring the appeal.

6. Mrs. Sonia Madan, learned counsel representing the petitioner strenuously urged that since the petitioner company had not carried on with the project, had not created any third party rights and even the request for cancellation of the licence had been accepted, the imposition of penalty of Rs.50 lakhs, being totally illegal and arbitrary and having been imposed in *ex parte* proceedings, the same is gravely harming the rights of the petitioner company and, therefore, under the circumstances, it would be in the interest of justice that the condition requiring pre-deposit of 30% at the time of preferring an appeal is waived of. Learned counsel made efforts to convince



the Court that under the peculiar facts and circumstances of the case where pre-deposit would cost undue hardship, this Court has ample powers to waive off or reduce the amount of pre-deposit. In support of her case, learned counsel placed reliance upon ***Gautam U. Nambisan vs. Interim Real Estate Regulatory Authority*** (RERA Appeal No.22 of 2018 (CH-I), decided on 26.10.2018), ***Lotus Realtech Pvt. Ltd. vs. State of Haryana*** (CWP-15205-2020, decided on 23.09.2020), ***Ramprastha Promoters and Developers Pvt. Ltd. vs. Union of India*** (CWP-6688-2021, decided on 13.01.2022, ***M/s Shrivision Towers Pvt. Ltd. vs. Karnataka Real Estate Regulatory Authority*** (Appeal (K-REAT) No.266-2020, decided on 19.08.2021 and ***Nirmal Singh vs. State of Punjab*** (CWP-17133-2020, decided on 16.02.2021).

7. We have considered the submissions made by learned counsel for the petitioner but find no reason to interfere.

8. Before advertng to the merits of the case, it would be essential to notice that the validity of Section 43(5) of the RERA Act, has been upheld by the Supreme Court of India in the case of ***M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others***, 2022(1) RCR (Civil) 357.

9. While dealing with question No.4 i.e. “whether condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law”, the Apex Court held:-

“137. In our considered view, the obligation cast upon the promoter of predeposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the



instance of the promoter after due compliance of predeposit as envisaged under **Section 43(5)** of the Act, in no circumstance can be said to be onerous as prayed for or in violation of **Articles 14** or **19(1)(g)** of the Constitution of India.”

10. It is also not in dispute that it has been held by the Supreme Court of India itself in the case of *M/s Technimont Pvt. Ltd. (formerly known as Technimont ICB Private Limited) vs. State of Punjab*, AIR 2019 SC 4489 that where there is a provision of pre-deposit at the time of filing of an appeal and the statute does not confer any discretion upon the appellate authority to waive off or reduce the amount of pre-deposit, the High Court, while exercising powers under Article 226 of the Constitution of India can interfere in exceptional cases of genuine hardship.

11. In the case of **Lotus Realtech Pvt. Ltd.** (supra), which has been relied upon by the petitioner, a coordinate Bench of this Court, while noticing the judgment of the Supreme Court of India in the case of **M/s Technimont Pvt. Ltd.** (supra), examined the impugned order in the said case to determine as to whether it was an exceptional case involving genuine hardship, thereby permitting the petitioner therein to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India by passing the provisions of appeal which required pre-deposit, rejected the contention of the petitioner therein and relegated the petitioner to pursue the remedy of appeal by making the necessary pre-deposit. This judgment would, therefore, be of no assistance to the petitioner. A similar view was taken by a coordinate Bench of this Court in the case of **Ramprastha Promoters and Developers Pvt. Ltd. vs. Union of India Ramprastha Promoters and Developers Pvt. Ltd.** and other connected cases (supra). In the case of **Nirmal Singh** (supra), a coordinate Bench of this Court also took a similar



view in accordance with the settled law but keeping in view the facts and circumstances of that case, permitted filing of the appeal on deposit of 15% of the penalty amount instead of 30% i.e. Rs.18,75,000/- of the penalty amount of Rs.1.25 crore.

12. Let us now examine as to whether the petitioner has been able to make out a case for waiving of/reducing the amount of pre-deposit of 30% of penalty amount of Rs.50 lakhs. For the said purpose, we shall come straightway to the order dated 15.07.2019, vide which the penalty of Rs.50 lakhs was imposed. A perusal of the said order would show that a complaint was submitted by the RERA, Punjab against the petitioner alleging that despite grant of licence, completion certificate had not been issued on account of violation of Section 3 of the RERA Act. Accordingly, a show cause notice dated 07.02.2018 was issued, to which no reply was submitted. Accordingly, another notice dated 14.03.2018 was issued, which was duly delivered to the petitioner on 20.03.2018, but again no reply was submitted. The petitioner was then, vide communication dated 22.06.2018 called upon to appear in person or through any authorized representative on 09.07.2018. The notice was delivered to the petitioner on 27.06.2018 but still there was no reply on behalf of the petitioner. Finally, a notice was issued to the petitioner by way of publication in the newspaper "The Tribune" on 02.09.2018, but still no one put in appearance as a result of which the petitioner was proceeded against *ex parte* on 29.10.2018 and eventually vide order dated 15.07.2019, a penalty of Rs.50 lakhs was imposed. It was held by the RERA:-

"4. I have considered the matter carefully and am of the view that the violation of Section 3 of the Act is established on the record. It is also established on the record that despite adequate opportunities given to the respondent,



he has failed to provide any explanation for not applying for registration of the project within the stipulated time. As such imposition of penalty under Section 59 of the Act is completely warranted. In the Instant case the cost of the development works as well as the charges for securing various approvals comes to Rs.2.30 crores as noted in the previous para. The project is spread over In an area of 7.17 acres. As per report received from the office of the Deputy Commissioner, Pathankot, the Collector' rate for residential purposes in village Mamoon for the year 2013-14 was Rs.60,000/- per marla, making the cost of land to be Rs.4.60 crores, and the total project cost: to Rs.6.90 crores. Though the maximum penalty under the law can be 10% of the cost of the project, yet taking a sympathetic view of the matter a penalty of Rs.50.00 lakhs is imposed upon the respondent. This penalty should be deposited in the Government Treasury under Head -0216- Housing-80-General-800 other receipts within 2 months from the date of issue of this order and a copy of the receipt submitted to this Authority for record.”

13. The order clearly shows that the petitioner was served but it chose not to appear. The reasons for the same are obvious. The petitioner in fact, like any other defaulter, did not feel the pinch till the time recovery notice was issued which led the petitioner to file CWP-2338-2024, which came up for hearing before this Bench on 05.02.2024. After arguing for some time, learned counsel representing the petitioner fairly withdrew the same to enable the petitioner to avail the remedy of appeal as envisaged under Section 43(5) of the RERA Act. The order dated 05.02.2024:-

“Having argued the matter at some length, learned counsel for the petitioners submits that he be permitted to withdraw the petition so as to enable the petitioners to avail the remedy of appeal under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, if so advised.

Dismissed as withdrawn.”

14. Despite the writ petition having been withdrawn by the petitioner, the instant petition has again been preferred by the petitioner. However, the same is totally devoid of merits because of the conduct of the petitioner, as the petitioner chose not to appear before the RERA in the year 2018, leading to the imposition of penalty of Rs.50 lakhs as far back as on 15.07.2019, pursuant to which the recovery proceedings were initiated now.

15. The argument of the petitioner that the project did not take off at all and no sale was made, nor any third party rights were created, can very well be taken before the RERA in appeal and considering the law on the subject and the facts as have been noticed by this Court, we find no reason to relax the condition of pre-deposit much less waiving it off.

16. In view of the above, we do not find any merit in the writ petition and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 06.05.2024
Pronounced on : 01.07.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No