



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

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RERA-APPL-9-2024 (O&M)**Date of decision : 21.02.2025****Pioneer Urban Land and Infrastructure Limited Appellant****versus****Anju Jidnal and another Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Rajat Khanna, Advocate
Mr. Vijay Pratap Singh, Advocate and
Mr. Vishal Saini, Advocate
for the appellant.

Mr. Amit Jhanjit, Senior Advocate with
Ms. Eliza Gupta, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. This is an appeal directed against order dated 15.01.2024 passed by Haryana Real Estate Appellate Tribunal, whereby application filed by the appellant seeking revival of appeal preferred before the Appellate Tribunal stands rejected for deficiency in pre-deposit as per Section 43(5) of the RERA Act, 2016.
2. The allottee filed complaint before the RERA Authority complaining of delay in offer of possession of a flat. The same was allowed by the Authority vide order dated 21.10.2020. The operative part of the order reads as under:-

“13. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate Le. @ 9.30% per annum for every month of



delay on the amount paid by the complainants from due date of possession ie. 14.03.2016 till the handing over of physical possession of the allotted unit;

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order;
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement;
- v. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.”

3. Appellant preferred appeal before the Appellate Authority.

Alongwith application, the appellant filed application seeking waiver of pre-deposit as required under Section 43(5) of the RERA Act, 2016. Application was dismissed vide order dated 22.07.2021. While dismissing the application, Appellate Tribunal granted time to the appellant to comply with the provisions as contemplated under proviso appended to Section 43(5) of the Act by depositing whole amount payable to the respondent-allottees which has become due as adjudged by the authority in the impugned order on the date of filing of the appeal. The appellant deposited amount of Rs.51,91,041.49/- and moved an application before the Appellate Tribunal. It was averred that amount of Rs.16,48,467/- towards interest and outstanding amount of Rs. 59,65,647/- has been adjusted while calculating amount due on the date of filing of appeal.

4. Tribunal vide order dated 28.09.2021 directed the appellant-company to file calculation sheet exhibiting as to how the amount was calculated. On 18.02.2022, Tribunal noticed that still there



was deficiency of an amount of Rs.9,31,183/-. One last opportunity was granted to the appellant to reconcile the calculation. Vide order dated 25.03.2022, the appellant was directed to deposit the said amount. Still on 28.04.2022, Appellate Tribunal found that the appellant is further required to deposit an amount of Rs.60,94,868/-. The appellant having failed to deposit the said amount, the appeal was dismissed for non-compliance of mandatory provision of Section 43(5) of the Act vide order dated 24.05.2022. Against the said order, the appellant approached this Court vide RERA Appeal No.39 of 2022. The same was decided vide order dated 01.08.2022 which reads as under:-

- “1. The learned counsel representing the appellant, after arguing for some time, prays for permission to withdraw the appeal with liberty to file an application before the Haryana Real Estate Appellate Tribunal in order to point out the calculation error, if any, in calculating the amount required to be deposited, in accordance with the proviso to sub-Section 5 of Section 43 of the Real Estate (Regulation and Development) Act, 2016.
2. Ordered accordingly.”

5. The appellant filed application bearing No.140 of 2022 before the Tribunal. The same was taken up on 15.11.2022. Having been confronted with the dismissal of the appeal itself, counsel for the appellant made statement before the Tribunal that he wishes to withdraw the application and wants to move fresh application for revival of the appeal. Prayer was allowed. Fresh application was filed under Section 53(4)(e) of 2016 Act seeking revival of appeal. In the said application, the applicant sought permission to deposit the deficient sum calculated



by the Appellate Tribunal i.e. Rs.60,94,868/-.

6. As per Mr. Atma Ram, the same was deposited. It is the said application that has now been dismissed vide impugned order by the Appellate Tribunal. Dismissing the application, Tribunal held that since the earlier appeal filed was dismissed and the application has been filed for revival thereof, the said appeal needs to be treated as fresh appeal for the purpose of pre-deposit under Section 43(5) of the Act. The Appellate Tribunal further held that as per the mandate of the Act, the entire amount payable to the allottees upto 11.01.2023 i.e. the date of application for revival, was required to be deposited. There being deficiency in the pre-deposit, the application deserves to be dismissed.

7. Mr. Atma Ram, counsel for the appellant while assailing the impugned order submits that in terms of Section 43(5), the pre-deposit payable is upto the date of filing of the appeal. At no point of time, the Appellate Tribunal calculated the amount. At different times, the deficiency was pointed out which was being made good. However, there was dispute with respect to adjustment of the outstanding amount of the allottee. The other adjustment was of Rs.16,48,467/- which already stood paid to the allottee for delay in offering the possession. It has been contended that in view of the fact that the applicant sought revival of the appeal, the appeal on revival shall relate back to the date of its filing i.e. 02.02.2021. Thus, the appellant cannot be held liable to pay interest for the period post 02.02.2021.

8. *Per contra*, Mr. Jhanji submits that the malafide on the part of developer-appellant is writ large on the record. Despite making repeated statement before the Appellate Tribunal to make deficiency



good, the appellant failed to deposit the amount. He further submits that there is no provision for revival of the appeal, the application was moved under Section 53(4)(e) which amounts to reviewing the order. Thus, the Tribunal has rightly held the appellant-developer liable to pay interest till the date earlier order being reviewed. He further refers to Order dated 28.04.2022 to submit that it is wrong to aver that the Appellate Tribunal never calculated the amount. The order explicitly records that as per the calculation made by the Office of the Tribunal, there is still deficiency of Rs.60,94,868/-.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. The bare provision that needs to be perused for the adjudication of the instant appeal reads as under:-

“43. Establishment of Real Estate Appellate Tribunal.

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the-- (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate



Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(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 atleast 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.”

11. Bare perusal of proviso appended to Section 43(5) would reveal that the mandate is to deposit 30% 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 before the appeal filed by the promoter is heard. The appellant being promoter is required to make pre-deposit of the interest amount only till the date the appeal is entertained. Appellant is not required to pay interest amount pendente lite i.e. during the pendency of the appeal. The appellant sought revival of the appeal after seeking liberty from this Court. Thus, the Tribunal was required to see and adjudicate whether the appellant was entitled to get the appeal revived or not on merits. In case the appeal deserves to be revived, the same would have related back to the date of filing of the appeal i.e. 02.02.2021. That being the situation, the Tribunal erred in holding that



even the appeal is revived, the same shall be treated as a fresh appeal for the purpose of Section 43(5) of 2016 Act.

12. In view thereof, this Court finds that the pre condition imposed by the Appellate Tribunal seeking pre-deposit of amount upto the date of revival cannot be sustained. The same is set aside. Consequently, the impugned order deserves to be quashed. Appellate Authority is directed to decide the application afresh in accordance with law, without asking the appellant to make pre-deposit till the date of revival. As already held hereinabove, in case the appeal is revived, the same shall relate back to the date of filing thereof i.e. **02.02.2021**.

13. Disposed off, accordingly.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

21.02.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No