
(2019) 09 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Rera Appeal No.12 Of 2019(O&M)

Janta Land Promoters Pvt. Ltd. Through Its Authorised Representative APPELLANT

Vs

Abhimanyu Singh Vinayak And Another RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Real Estate (Regulation And Development) Act, 2016 — Section 18, 43(5)
Punjab State Real Estate (Regulation And Development) Rules, 2017 — Rule 37

Citation : (2020) 1 RCR(Civil) 160

Hon'ble Judges : Dr. Ravi Ranjan, J

Bench : Single Bench

Advocate : Abhinav Gupta, Mansur Ali, Imran A. Ali

Final Decision : Dismissed

Judgement

Dr. Ravi Ranjan, J

Mr.Mansur Ali, Advocate appears and files Power of Attorney on behalf of respondent No.1 in Court today. Let it be taken in record.

The Order dated 01.07.2019 passed by the Real State Appellate Tribunal, Punjab is under challenge in this appeal.

The issue, as to whether before proceeding to take a decision in the appeal filed by the promoter-appellant, the promoter has to deposit the pre-requisite amount as envisaged under the proviso to Sub-Section 5 of Section 43 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') or not, is under challenge in this appeal.

The promoters took a stand that, as per Section 18 of the Act read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017, the jurisdiction to decide the concerned LIS was of the Adjudicating Officer but the RERA Authority has decided it without any jurisdiction. It is urged that since the authority did not have any jurisdiction, if the order passed by it is being

challenged in the appeal and a point of jurisdiction has been raised, the pre-requisite amount would not be required to be deposited.

In that background of the matter, I have heard learned counsel for the appellant as well as counsel for respondent No.1 and perused the records of this case.

Learned counsel for the appellant has placed reliance upon decisions of a Division Bench of this Court especially one rendered in Punjab State Power Corporation Ltd. Vs. State of Punjab and others, 2016(2) RCR (Civil) 559, as also some other decisions of a Division Bench of this Court for example one rendered in Maruti Suzuki India Vs. Union of India and others passed in CWP No. 12922 of 2014, decided on 27.03.2016. It is urged that same legal position has been reiterated in the case titled as M/s. Mahesh Kumar Singla and others Vs. Union of India & others, passed in CWP No.23368 of 2015, decided on 27.03.2017.

On the strength of the aforesaid judicial pronouncements, it is urged that even if there is such provision under the statute directing the promoter to deposit pre-requisite amount before his appeal is to be considered by the Tribunal and even if there is no express provision for exempting the same, the Courts have held that the Tribunal has inherent power to do so. However, upon perusal of the impugned decision, it does not appear that the Tribunal has dismissed the plea of the appellant for waiver or exemption of the pre-requisite amount on the ground that it does not have power to do so rather, the submission has been rejected on the ground that it was not required to be done in the facts and circumstances of the case.

In my considered view, the Legislature in its wisdom has enacted the Act for the purpose of regulation and promotion of Real Estate Sector and to ensure sale of plot, apartment or buildings in an efficient and transparent manner and also to protect the interest of consumers in the Real Estate Sector and to establish an adjudicating mechanism for speedy disputed redressal. It has come up with stringent provision laying down under the proviso to Section 43 Sub-Section 5 that in case appeal is filed by the promoter against the consumer or the allottee, it shall not be entertained without it first having deposited with the Appellate Tribunal the pre-requisite amount which in in order to safeguard the interest of the consumer, so that they are not unnecessarily drawn into unnecessary litigation by the promoter or the developer.

Thus, in my considered view, since such special provision has been included under the Act for the aforesaid reason, and further, even if the Appellate Authority proceeds to decide the appeal on the ground of maintainability of the proceeding before the RERA Authority, that will also amount to hearing and taking a decision in the appeal, the promoter would be liable to deposit the pre-requisite amount as per proviso to the Section 43 (5) of the Act.

In the result, this appeal, being devoid of any merit, is accordingly, dismissed.