(2021) 06 SEBI CK 0025

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.703 Of 2021, Appeal No.397 Of 2020

Rakeshkumar Lal And Others APPELLANT

Vs

Securities & Exchange Board Of India RESPONDENT

Date of Decision : 10-06-2021

Acts Referred:

Citation : (2021) 06 SEBI CK 0025

Hon'ble Judges : Tarun Agarwala, Presiding Officer;M. T. Joshi, J

Bench : Division Bench

Advocate : Rajesh Lal, Authorized, Pradeep Sancheti, Mihir Mody, Arnav Misra, Mayur Jaising, K. Ashar

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. We have heard Mr. Rajesh Lal, the authorized representative for the appellants and Mr. Pradeep Sancheti, the learned senior counsel alongwith

Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaising, the learned counsel for the respondent.

2. It transpires that the appellants entered into an agreement with M/s. Vatika Ltd. on August 25, 2014 by making a deposit of Rs. 87.63 lacs on

assured return basis. An allotment letter was issued ensuring monthly return of Rs. 151.65 per sq. ft. It was contended that this assured return after

tax deducted at source was being provided by the Company till September 2018 and thereafter the interest payment stopped. The appellants have filed

a complaint before the Company as well as before the NCLT and has also filed a complaint on Securities and Exchange Board of India Complaints

Redress System (hereinafter referred to as â??SCORESâ??) platform which was disposed of by the authority concerned on August 28, 2020 and

subsequently by another order on October 7, 2020.

3. We find from a perusal of the impugned order that since the project was approved by the town planner and was registered under RERA, Securities

and Exchange Board of India (hereinafter referred to as â??SEBIâ??) does not come into the picture and the complaint being in the nature of real

estate was outside the regulatory purview of SEBI and, on this basis, the complaint was disposed of. By the order dated October 7, 2020, it was

indicated that assured return deposit was not in nature of CIS and the amount paid is a deposit under the Companies Act.

4. We find that an affidavit of the Company has been filed before NCLT where they specifically stated that the deposit was in the nature of assured

return scheme. The affidavit also gives details indicating that the scheme which they had floated was in the nature of a CIS. This affidavit was

apparently filed after the impugned order was passed on the SCORES platform. In our view, this affidavit of the company will have a bearing as to

whether the scheme floated by the company comes under the CIS or is covered under the RERA Act.

5. In view of the aforesaid, we set aside the orders dated August 28, 2020 and October 7, 2020 passed on the SCORES platform and direct the

authority to pass a fresh order after considering all the aspects of the matter and after taking appropriate comments from the Company as well as

from the appellants. The appeal is accordingly allowed.

6. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a

certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Private Secretary on

behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally

signed copy sent by fax and/or email.