

(2022) 04 SHI CK 0067

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.3829, 3833 Of 2021

Sumit Khanna And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-04-2022

Acts Referred:

Real Estate (Regulation And Development) Act, 2016 — Section 43(5)

Citation : (2022) 04 SHI CK 0067

Hon'ble Judges : Mohammad Rafiq, CJ;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Amit Singh Chandel, Balram Sharma, Ashok Sharma, Nand Lal Thakur, Hemant Thakur, Karan Singh Kanwar

Final Decision : Dismissed

Judgement

Mohammad Rafiq, CJ

1. These writ petitions are filed against the orders passed by the Himachal Pradesh Real Estate Regulatory Authority (in short 'RERA') dated 21.09.2020 in CWP No.3833 of 2021 and 17.10.2020 in CWP No.3829 of 2021. This Court while issuing notice of the writ petitions on 30.07.2021 and 24.08.2021, stayed the operation of the aforesaid orders.

2. Both the writ petitions were primarily filed on two grounds, firstly questioning the jurisdiction of RERA for deciding the quantum of compensation and secondly that the alternate remedy of appeal provided in the Real Estate (Regulation and Development) Act, 2016 (in short 'Act') is onerous as it requires pre-deposit of at least 30% of the awarded amount.

3. Learned Advocate General has cited the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.6745-6749 of 2021, titled Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors. and connected matters, decided on 11.11.2021, wherein both the above aspects have been decided against the petitioner.

The writ petitions are, therefore, dismissed as not maintainable, however, with liberty to the petitioner(s) to avail the remedy of appeal under Section 43(5) of the Act by complying with the requirement of pre-deposit within a period of fifteen days from today. Considering that the writ petitions were entertained by this Court and the impugned orders were stayed, we direct that if the appeal is now filed within the aforesaid period, the same shall be entertained and decided on merits. The Tribunal would be entitled to take its own view in the matter in accordance with law. Pending miscellaneous application(s), if any, also stand disposed of.