

**BEFORE THE WEST BENGAL REAL ESTATE APPELLATE TRIBUNAL
KOLKATA - 700 075**

APPEAL NO. WBREAT/APPEAL No. – 01/2024 (defective)

Present: 1. Shri Gour Sundar Banerjee
[Additional District Judge (Retd.)]
Hon'ble Judicial Member
2. Shri Subrat Mukherjee
Hon'ble Administrative Member

M/s MAA BATAI CONSTRUCTION

472/2, Sarat Chatterjee Road,
Po. & PS. Shibpur,
Howrah – 711 103.

..... Appellant

Vs.

SMT BHARATI DAS & ASIS DAS

Uttarayan Apartment, 2nd Floor, Panchbati,
Natagarh Main Road, Po. Natagarh, PS: Ghola, Sodepur,
Kolkata – 700 113.

..... Respondent

Order No. 1 dated 06/02/2024

A Memorandum of Appeal along with documents and office note is placed before us. Perused the office note and record from which it reveals that the memorandum of Appeal was filed against the impugned Order No. 3 dated 12/06/2023 pass by Ld. WBRERA in respect of complaint No. WBRERA / COM – 000040 and COM – 000662. It further reveals from the office-note that there is 238 days delay regarding limitation period and paid Appeal fee of Rs. 1,000/- (Rupees One thousand) only through on-line. No document filed regarding compliance of pre-deposit U/s 43(5) of RERA Act 2016. **So let the Appeal be registered as defective Appeal No. 01/2024.**

From the copy of impugned Order it reveals that Ld. WBRERA Authority directed the Appellant to refund the principal amount of Rs. 11,00,000/- (Rupees eleven lac) only along with interest at the SBI prime lending rate + 2% till the date of realization.

It has already been stated that no document is filed by the Appellant regarding deposit of this amount.

Let us see what section 43(5) of the Act 2016 states.

Section 43(5) of the Act 2016 states that any person aggrieved by any direction or decision 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 at least 30 per cent of the penalty or such highest 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.**

Now let us see the rulings of Hon'ble Court in this regard.

Hon'ble Allahabad High Court in second Appeal No. 364 of 2018, Radicon Infrastructure and Housing Private Ltd. Vs. Karan Dhyani, framed the following issues regarding complete compliance of the provisions of section 43(5) of the Act, it is observed..... .

With regard to the penalty the Appellate Tribunal has to determine whether 30 percent of penalty imposed or such a higher percentage as it may determine is to be deposited, but **“when it gives to the deposit of the total amount to be paid to the allottee** including interest and compensation under the orders of the Regulatory Authority or adjudicating officer, **no such discretion passed on ‘determine’ appears to have been vested in the Appellate Tribunal by the legislature the object appears to be to protect the interest of the consumer once at the adjudication had been made by the Regulatory Authority”.**

Hon'ble Madras High Court while examining the validity the provisions of section 43(5) of the Act 2016 in W.P. No. 29933 of 2019 and WMP No. 29844 of 2019 (T. Chitty Babu Vs. Union of India) observed in Para 27 that an Appeal can be instituted by a Ministerial Act of its presentation and physical filing in the office of the Appellate Authority **but it cannot be entertained unless the pre deposit has been made and no order can be passed by Appellate Tribunal by either issuing a notice or such a incompetent Appeal or otherwise and it can only be entertained and then heard,** provided the aggrieved party, in the present case petitioner **deposit the amount as per the provision of section 43(5) of the 2016 Act** unless there is an order of the High Court of the Apex Court otherwise.

In civil Appeal numbers 6745-6749 of 2021 arising out of SLP (civil No. (s)3711-3715 of 2021) in the case of Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and others, etc. **Hon'ble Apex Court**, while examining the question – **“whether the condition of the pre deposit under provision to section 43(5) of the Act for entertaining substantive of Appeal is sustainable in Law?”**, **Hon'ble Apex Court** has been pleased to observe in Para 137, **“That in our view, the obligation cast upon the promoter of pre deposit under section 43(5) of the Act”.**

So in view of this discussion and judgments of the Hon'ble Court, it can safely be said that **pre-deposit under section 43(5) of Act, 2016 is mandatory before institution of any appeal under this Act.**

So in this case the Petitioner (M/s MAA BATAI CONSTRUCTION) is to comply the mandatory provision of section 43(5) of Act 2016 by depositing the entire Principal money by Demand Draft or online payment of Rs 11,00,000/- + interest till the date of filing Appeal on 06/02/2024 in favour of West Bengal Real Estate Appellate Tribunal, Kolkata within 22.02.2024, so that this case may be entertained or admitted

and heard. It may be mentioned that in case of on line payment, valid deposit / compliance will be accepted only after credit of amount in A/c of WBREAT.

It may be mentioned that Ld. Advocate for the petitioner will have to submit the certificate regarding calculation of the interest (to be deposited as stated above) at the time of depositing on line or by Demand Draft.

Be it mentioned that in the event of compliance by depositing the above stated amount by Demand Draft or online, the Secretary in-charge of West Bengal Appellate Tribunal shall ensure deposit of such Demand Draft in the Account of this Appellate Tribunal with direction upon the Branch Manager of the concerned Bank (where the account of this office is lying) to encash the amount of said Demand Draft immediately and to deposit the same (deposited by Appellant by DD or online Payment) in any short term interest bearing scheme and the said amount shall lie in that scheme until further order received from this end. Bank Manager is also to be directed to mention the condition of “Premature withdrawal as per order of Court” on the FD certificate.

It may further be mentioned that non-compliance of direction of this Tribunal on the part of M/s MAA BATAI CONSTRUCTION, this case will automatically be dismissed for non-compliance of the order of this Tribunal. To 28/02/2024 for compliance / further Order.

Let a copy of this order be sent by e-mail to the petitioner M/s MAA BATAI CONSTRUCTION, O.P./ respondent, Secretary in-charge of this Tribunal and WBRERA Authority. Inform all concerned as usual.

Written & Dictated.

Sd/-
GOUR SUNDAR BANERJEE
Judicial Member
West Bengal Real Estate Appellate Tribunal

Sd/-
SUBRAT MUKHERJEE
Technical/Administrative Member
West Bengal Real Estate Appellate Tribunal