

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,  
SAS NAGAR (MOHALI)

M.A. No. 17 of 2018  
&  
Appeal No. 29 of 2018

M/s RKM Housing Ltd. through its MD Kanwaljit Singh S/o  
Balbir. Singh.

Versus

1. Rajan Gupta son of Shri. Baldev Raj Gupta.
2. Aparna W/o Shri Rajan Gupta.

....Respondents

Present: Sh. JPS Sidhu, Advocate for the applicant.

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**CORAM:** JUSTICE RAJIVE BHALLA,(RETD), CHAIRMAN  
S.K. SHARMA, IPS (RETD.), MEMBER

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**JUDGMENT:** (*Rajive Bhalla (J) (Retd)*): (oral)

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The application for condonation of delay came up for consideration on 12.11.2018. Counsel for the applicant prayed for time to seek instructions whether a clearly demarcated/identified plot is available for allotment/possession of the respondent.

Counsel for the applicant has not been able to produce any credible material that may satisfy this Tribunal or the respondent Rajan Gupta of the existence of such a plot.

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We have heard counsel for the applicant on the question of delay and compliance with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act).

The proviso to sub Section 5 of Section 43 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act), postulates 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 the total amount to be paid to the allottee including interest and compensation" etc. Section 43 (5) reads as follows: -

- (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 appeal is heard.*



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A perusal of the aforesaid proviso and other provisions of the Act, leave <sup>is</sup> no ambiguity that a precondition to the entertaining of an appeal is the deposit of amounts awarded by the Authority or the Adjudicating Officer, in terms of proviso to Section 43 (5) of the Act. The Act does not empower the Tribunal to reduce the amount so awarded or condone the default in depositing the amount so awarded. The Appellate Tribunal being a creation of the Real Estate (Regulation and Development), Act, 2016 (hereinafter referred to as the Act), is bound by the proviso to Section 43 (5) of the Act to dismiss an appeal filed by a promoter without deposit of amounts awarded by the Adjudicating Authority as provided by the proviso to Section 43(5) of the Act.

Admittedly the applicant has not deposited any amount awarded by the Authority, whether towards refund or interest, leaving this Tribunal with no other option but to hold that the appeal cannot be entertained and to dismiss the appeal accordingly.

Before parting with the order, it would be necessary to record that we once again asked counsel for the applicant, to the promoter/applicant if he is ready to deposit the awarded amounts but counsel for the applicant stated that the promoter/applicant is not ready to deposit any amount awarded by the Authority.

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The application for condonation of delay need not ~~to~~ be decided as the appeal cannot be entertained for refusal of the promoter/applicant to abide by ~~the~~ Section 43(5) of the Act but we have still considered the explanation for delay of 145 days namely, that Sukhandeep Singh Architect, an employee of the company did not inform the applicant regarding pendency of the complaint before the Chairperson RERA Punjab and find that it does not inspire confidence.

The appeal is, therefore dismissed as not maintainable for failure to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development), Act, 2016.



JUSTICE RAJIVE BHALLA (RETD.)

CHAIRMAN



S.K. SHARMA, IPS (RETD.)

MEMBER

November 19, 2018  
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