

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-621/2023

EMAAR MGF LAND LIMITED

.....Appellant

**Versus**

VINAY KUMAR AGARWAL AND ANR. VINAY KUMAR AGARWAL  
AND ANR.

.....Respondent

**Counsel for Appellant**  
ANURAG SINGH

**Counsel for Respondent**

Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman

Hon'ble Mr. K.K. Jain, Technical Member

This appeal has been registered as defective appeal on the ground that the applicant has not made compliance of the provisions of Section 43(5) of the Act, 2016.

The learned counsel for the applicant submitted that an application for waiver from deposit of the amount under Section 43(5) of the Act has been made. The learned counsel for the applicant while addressing the waiver application submitted that as per the provisions of Section 43(5) of the Act, 2016, the promoter is required to deposit the total amount to be paid to the allottee including interest and compensation upon it, if any, but in the instant case in pursuance to the impugned order dated 09.06.2023 no financial liability has been imposed upon the applicant which is required to be paid to the allottee and therefore no amount is to be paid to the respondent/allottee, and therefore the instant case be converted into regular appeal.

We have examined the submissions of learned counsel for the applicant and perused the composite order passed in 13 complaints of the allottees dated 09.06.2023 whereby the promoter/applicant was directed to restore the units of the allottees which have been cancelled, within 45 days.

In our considered view that in pursuance to the impugned order dated 09.06.2023 no financial liability is imposed on the applicant, as such the applicant is not liable to pay any amount. Accordingly, we allow the waiver application. The Registry is directed to convert the instant defective appeal into regular appeal.

Issue notice to the respondent returnable on 06.11.2023.

The appellant is also at liberty to serve the respondent through "Dasti".

The Registry is directed to generate a notice for 06.11.2023 and send the same through e-mail to the appellant within 48 hours. The appellant after downloading the notice will send it through speed-post to the respondent annexing copy of memo of appeal and its annexures within three days. The appellant will also send the copy of memo of appeal and its annexures, annexing notice issued by the Tribunal through e-mail to the

respondent within three days. The appellant will file an affidavit of service annexing copy of postal receipt and transaction report of e-mail sent to the respondent as well as copy of the track record of the postal department regarding service of notice upon the respondent.

On receipt of notice, it is open for the respondent to send objections to the grounds of appeal to the appellant through e-mail within 10 days. Reply, if any, will be sent by the appellant to the respondent, within a week thereafter.

The parties/legal representatives are directed to upload their respective objection/reply on the e-portal of the Tribunal in the respective folders immediately after expiry of the aforesaid period.

List this appeal for orders/hearing on **06.11.2023**.

(K.K. Jain)

(D.K. Arora)

**Dated: 22.09.2023**  
PRADEEPKUMAR