

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**(1) CM No. 743 of 2024 in/and  
Appeal No.386 of 2024**

**Date of Decision: January 29, 2025**

M/s IREO Grace Realtech Pvt. Ltd., C4 First Floor, Malviya  
Nagar, New Delhi

Appellant.

Versus

G. V. Chanana, B2/99, Ground Floor, Janakpuri, New Delhi

Respondent

**(2) Appeal No.374 of 2024**

M/s IREO Victory Valley Pvt. Ltd., 5<sup>th</sup> floor, Orchid Centre, Golf  
Course Road, Sector 53, Gurugram, Haryana-122002.

Appellant

Versus

1. Anish Mukker
2. Trupti Mukker both are resident of Villa No.179, Tatvam  
Vilas, Sohna Road, Gurugram 122103

Respondents

**(3) Appeal No.388 of 2024**

M/s IREO Grace Realtech Pvt. Ltd. Registered office at C-4, First  
Floor, Malviya Nagar, New Delhi.

Appellant

Versus

1. Mr. Akshay Kumar Madan;
2. Veena Madan both are resident of #146, Pocket B, SFS Flats,  
Sukhdev Vihar, New Delhi 110025.

Respondents

**(4) Appeal No.390 of 2024**

CM No.743 of 2024 in/and  
Appeal No.386 of 2024

M/s IREO Grace Realtech Pvt. Ltd. Registered office at C-4, First Floor, Malviya Nagar, New Delhi.

Appellant

Versus

Mr. Arvind Mathur #1901, Orchid Building, Hiranandani Meadows, Gladys Alvares Road, Thane (West), Maharashtra 400610

Respondent

**(5) Appeal No.391 of 2024**

M/s IREO Victory Valley Pvt. Ltd., 5<sup>th</sup> floor, Orchid Centre, Golf Course Road, Sector 53, Gurugram, Haryana-122002.

Appellant

Versus

Chandan Khaitan, Flat No.1103, 16<sup>th</sup> floor Tower, The Close North Nirvana Country South City-II, Gurugram, Haryana -122002.

Respondents

**(6) Appeal No.401 of 2024**

M/s IREO Grace Realtech Pvt. Ltd. Registered office at C-4, First Floor, Malviya Nagar, New Delhi.

Appellant

Versus

ECHJAY Industries Pvt. Ltd., 83, Bajaj Bhawan, Nariman Point, Mumbai 400021.

Respondent

**(7) Appeal No.402 of 2024**

M/s IREO Grace Realtech Pvt. Ltd. Registered office at C-4, First Floor, Malviya Nagar, New Delhi.

Appellant

Versus

ECHJAY Industries Pvt. Ltd., 83, Bajaj Bhawan, Nariman Point, Mumbai 400021.

Respondent

**(8) Appeal No.403 of 2024**

M/s IREO Grace Realtech Pvt. Ltd. Registered office at C-4, First Floor, Malviya Nagar, New Delhi.

Appellant

Versus

ECHJAY Industries Pvt. Ltd., 83, Bajaj Bhawan, Nariman Point,  
Mumbai 400021.

Respondent

**(9) Appeal No.405 of 2024**

M/s IREO Grace Realtech Pvt. Ltd. Registered office at C-4, First  
Floor, Malviya Nagar, New Delhi.

Appellant

Versus

Veena Rathi #26-27, Mahesh Colony, Seva Sadan Road, Bhilara,  
Rajasthan 311001

Respondent

**(10) Appeal No.407 of 2024**

M/s IREO Victory Valley Pvt. Ltd., 5<sup>th</sup> floor, Orchid Centre, Golf  
Course Road, Sector 53, Gurugram, Haryana-122002.

Appellant

Versus

1. Babul Kumar Ganguli;
2. Barnali Ganguly, both are resident of Essel Tower, Amber  
Court-3, Flat No.501, MG Road, Gurugram Haryana 122002.

Respondents

**(11) Appeal No.437 of 2024**

M/s IREO Victory Valley Pvt. Ltd., 5<sup>th</sup> floor, Orchid Centre, Golf  
Course Road, Sector 53, Gurugram, Haryana-122002.

Appellant

Versus

1. Trilok Garg;
2. Sadhna Garg, both are resident of #773-74, Sector 14,  
Gurugram, Haryana 122001

Respondents

CM No.743 of 2024 in/and  
Appeal No.386 of 2024

Argued by : Mr. Salil Sagar, Senior Advocate with  
Mr. Kamaljeet Dahiya, Mr. Sankalp Sagar and  
Mr. R. S. Khaira, Advocates for the appellant.

Mr. Arun Sharma, Advocate for the respondent.

**CORAM:**

**Justice Rajan Gupta**  
**Rakesh Manocha**

**Chairman**  
**Member (Technical)**  
(Joined through VC)

**ORDER:**

**RAJAN GUPTA, CHAIRMAN**

This order shall dispose of above-mentioned appeals, as common question of law and facts are involved. However, the facts have been extracted from Appeal No. 386 of 2024.

2. In the accompanying appeal, challenge has been made to order dated 17.08.2022, passed by the Authority<sup>1</sup> whereby promoter has been directed to ensure compliance of Section 37 of the Act<sup>2</sup> and to pay delay compensation.

3. The promoter did not make any pre-deposit with the appeal and moved an application for waiver therefrom on the strength of order passed by Hon'ble High Court in CWP No. 19638 of 2023, operative part whereof reads as under:

*“3. After arguing for some time and after drawing our attention to the table in para No. 25 of the writ petition, it has been pointed out that various amounts would be outstanding against the allottees. However, since there is remedy of appeal available under Section 43 of the Real Estate (Regulation and Development) Act, 2016, counsel submits that the petitioners may be relegated to their remedy before the Appellate Tribunal. It is submitted that though*

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<sup>1</sup> Haryana Real Estate Regulatory Authority, Gurugram

<sup>2</sup> The Real Estate (Development and Regulation) Act, 2016

*there is a requirement of pre-deposit, he has relied upon the observations made by the co-ordinate Bench in CWP No. 6688-2021 **Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and others**, decided on 13.01.2022 that he would file an appropriate application before the Appellate Tribunal for dispensing with the pre-deposit issue projecting the hardships etc. of the petitioners in accordance with law.*

*4. Keeping in view the above, we permit the writ petitions to be dismissed as withdrawn with the aforesaid liberty.”*

4. In view of the above, notice was issued to the allottee. The allottee appeared. Parties showed their inclination to explore the possibility of amicable settlement. The efforts proved futile. The application for exemption/waiver was, thus, heard.

5. It was primarily contended by Mr. Salil Sagar, learned senior counsel for the promoter that the company was facing financial crunch and was not in a position to make pre-deposit. As per him, in such circumstances, some leniency needs to be shown and exemption from pre-deposit be granted.

6. Counsel for the allottee, on the other hand, submitted that pre-deposit is mandatory in light of Section 43(5) of the Act as well as the judgment of Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P., 2022(1) RCR (Civil) 367.** Besides, the appeal has been filed after a huge delay of 573 days.

7. We have heard counsel for the parties and given careful thought to the rival contentions.

8. The promoter is posing a challenge to the order whereby it has been directed to ensure compliance of Section 37 of the Act<sup>3</sup> and to pay delay compensation. The order was passed on 17.08.2022. The promoter never chose to challenge the said order. The same has been impugned after inordinate delay of 573 days.

9. The question of condonation of delay etc. falls for consideration only where the appeal is accompanied with requisite pre-deposit. However, the same has not been made. Despite liberty given to the parties to explore the possibility of amicable settlement, nothing fruitful came out. There is no provision in the Act for waiver/exemption of pre-deposit.

10. The financial constraints being faced by the promoter cannot be a ground for entertaining the appeal which is otherwise not maintainable. Besides, the order which was passed way back in the year 2022 attained finality. The promoter chose not to challenge the same. At this stage, challenge has been posed to it. Pre-deposit in terms of proviso to Section 43(5) of the Act has not been made. In view of law laid down in **Newtech Promoters'** case (supra), it is not possible to entertain an appeal which is not accompanied by pre-deposit. Relevant paragraphs thereof are reproduced hereunder for ready reference:

*“122. It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal against the order of an authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal*

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<sup>3</sup> The Real Estate (Regulation and Development) Act, 2016

*against an order of authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee, which includes interest and compensation imposed on him, or with both, as the case may be, before the appeal is to be instituted.”*

*123. The plea advanced by the learned counsel for the appellants is that substantive right of appeal against an order of authority/adjudicating officer cannot remain dependent on fulfilment of pre-deposit which is otherwise onerous on the builders alone and only the builders/promoters who are in appeal are required to make the pre-deposit to get the appeal entertained by the Appellate Tribunal is discriminatory amongst the stakeholders as defined under the provisions of the Act.*

*xxxxx xxxxx*

*125. The submission in the first blush appears to be attractive but is not sustainable in law for the reason that a perusal of scheme of the Act makes it clear that the limited rights and duties are provided on the shoulders of the allottees under Section 19 of the Act at a given time, several onerous duties and obligations have been imposed on the promoters i.e. registration, duties of promoters, obligations of promoters, adherence to sanctioned plans, insurance of real estate, payment of penalty, interest and compensation, etc. under Chapters III and VIII of the Act 2016. This classification between consumers and promoters is based upon the intelligible differentia between the rights, duties and obligations cast upon the allottees/home buyers and the promoters and is*

*in furtherance of the object and purpose of the Act to protect the interest of the consumers vis-a-viz., the promoters in the real estate sector. The promoters and allottees are distinctly identifiable, separate class of persons having been differently and separately dealt with under the various provisions of the Act.”*

11. In view of the above, it is evident that there is no scope for hearing the appeals on merits, as the same are not maintainable due to lack of pre-deposit. The same are hereby dismissed with no order as to costs.

12. Consequently, the accompanying applications are also dismissed.

13. Copy of the order be communicated to the parties/counsel for the parties and the Authority.

14. File be consigned to records.

Justice Rajan Gupta,  
Chairman,  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)  
(Joined through VC)

January 29, 2025/mk