

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No. 345 of 2024 in/and

Appeal No. 178 of 2024

Date of Decision: January 29,2025

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

Appellant.

Versus

Rajiv Gupta, C-34, East of Kailash, New Delhi

Respondent

Present : Mr. Salil Sagar, Senior Advocate with
Mr. Kamaljeet Dahiya and Mr. Sankalp Sagar
Advocates for the appellant.

Mr. Brajesh Kumar, Advocate for the respondent.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)
(Joined through VC)

ORDER:

RAJAN GUPTA, CHAIRMAN

In the accompanying appeal, challenge has been made to order dated 22.10.2021, passed by the Adjudicating Officer¹, operative part whereof reads as under:

“14. The complainant is therefore well within his right to ask for refund of amount paid by him along with interest and compensation. The complaint in hands is thus allowed. It is claimed by complainant that it was respondent No. 1 who developed project in question. Respondent No. 2 to 5 are merely landowners. Payments is stated to have been received by

¹ Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram

respondent No. 1. The latter i.e. respondent No. 1 is directed to refund the amount of Rs.2,06,41,925.24 received from complainant to latter within 90 days from this order, along with interest @ 9.3% per annum from the date of payments till realisation of amount. The respondent is directed to pay Rs.1,00,000/- (one lac) as costs of litigation etc. to the complainant.

15. File be consigned to the Registry.”

2. The appeal is accompanied with an application seeking waiver/exemption from pre-deposit required to be made along with appeal in view of proviso to Section 43(5) of the Act².

3. Notice of the said application was issued on 31.05.2024. The allottee appeared. Parties were given liberty to explore the possibility of amicable settlement, however, the same proved futile. Consequently, arguments were heard in CM No.345 of 2024.

4. Mr. Salil Sagar, learned senior counsel for the promoter primarily contended that the order under challenge was passed by the Adjudicating Officer in whom power was not vested to decide substantive question. Same was, thus, *non-est*. The question of making pre-deposit while challenging such an order would not arise.

5. Counsel for the respondent, on the other hand, submitted that pre-deposit is mandatory in light of Section 43(5) of the Act as well as judgment of Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State**

² The Real Estate (Regulation and Development) Act, 2016

of U.P., 2022(1) RCR (Civil) 367. Besides, the appeal has been filed after a huge delay of 839 days.

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

7. The promoter is posing a challenge to the order, whereby it has been directed to refund amount of Rs.2,06,41,925.24 to the allottee within 90 days. The order was passed on 22.10.2021. The promoter never chose to challenge the said order. Same has been impugned after long delay of 839 days.

8. The question of condonation of delay etc. falls for consideration only where appeal is accompanied with requisite pre-deposit, however, same has not been made. Despite liberty granted to the parties to explore the possibility of amicable settlement, nothing fruitful came out. An appeal, which is not accompanied with pre-deposit deserves outright dismissal. Challenge on the ground that an order is *non-est*, can only be considered if the appeal is found to be maintainable. Reliance placed on order passed by in Appeal No. 693 of 2022—*M/s T.S.Realtech Pvt. Ltd. v. Yogesh Mohan* is mis-conceived as in said case, appeal was accompanied by requisite pre-deposit.

9. Besides, in view of law laid down in **M/s Newtech Promoters and Developers Pvt. Ltd.'s** case (supra), it is not possible to entertain an appeal which is not accompanied by requisite pre-deposit. There is no provision for waiver of exemption of pre-deposit. Relevant paragraphs of the judgment 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 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.

xxxx xxxx

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.”

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

11. Consequently, the accompanying applications are also dismissed.

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

13. 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