

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

**(1) CM No. 109 of 2024 in/and
Appeal No.72 of 2024**

Date of Decision: February 03,2025

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

Appellant.

Versus

1. Lovnish Khanduja, R/o 1004, Tower-1, Unworld Garden,
Sector 47, Sohan Road, Gurgaon, Haryana.

2. Pooja Khanduja, R/o 1004, Tower-1, Unworld Garden, Sector
47, Sohan Road, Gurgaon, Haryana

Respondents

(2) Appeal No.228 of 2024

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

Appellant

Versus

1. Niti Aggarwal;

2. Anil Kumar both are resident of Flat No.504, Chandra CGHS,
Plot No.GH-64, Sector 55, Gurugram 122011

Respondents

(3) Appeal No.240 of 2024

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

Appellant

Versus

Anuj Aggarwal, resident of House No.5004, DLF, Phase-IV,
Gurugram 122009

Respondent

(4) Appeal No.211 of 2024

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

Appellant

Versus

Sonika Sehgal, resident of B-17, South Extension, Part-I, New Delhi 110049

Respondent

(5) Appeal No.183 of 2024

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

Appellant

Versus

1. Bhanu Marwaha
2. Mona Marwaha both are resident of C1/408, Gulmohar Enclave, Rakesh Marg, Ghaziabad, Uttar Pradesh 201001

Respondents

(6) Appeal No.174 of 2024

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

Appellant

Versus

Satish Gupta, resident of House No.16, O-Block, South City-I, Gurugram 122001

Respondent

(7) Appeal No.169 of 2024

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

Appellant

Versus

Vishal Bhadani resident of G-5, Block-G, Lajpat Nagar-III, New Delhi 110024

Respondent

(8)Appeal No.168 of 2024

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

Appellant

Versus

Kamna Baweja resident of A-23/B, DDA Flats, Munirka, New Delhi
110067

Respondent

(9) Appeal No.170 of 2024

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

Appellant

Versus

Anupam Khurana, resident of N-6/7, DLF Phase 2, Gurugram

Respondent

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)**

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. 72 of 2024.

2. In the accompanying appeal, challenge has been made to order dated 17.09.2021, passed by the Authority¹ whereby promoter has been directed to ensure compliance of Section 37 of the Act² 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 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 allottees.

¹ Haryana Real Estate Regulatory Authority, Gurugram

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

5. Arguments on the application for exemption/waiver was, thus, heard.

6. It was primarily contended by Mr. Salil Sagar, learned senior counsel for the promoter that the company was facing financial constraints; proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 have been initiated against the appellant and its accounts have been declared NPA. On account of it, the appellant was not in a position to make pre-deposit. As per him, in such circumstances, some leniency be shown in making pre-deposit.

7. Counsel for the allottees, 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 709 days.

8. Heard counsel for the parties and given careful thought to the rival contentions.

9. The promoter is posing a challenge to the order whereby it has been directed to ensure compliance of Section 37 of the Act³ and to pay delay compensation. The order was passed on 17.09.2021. The promoter never chose to challenge the said order. The same has been impugned after inordinate delay of 709 days.

³ The Real Estate (Regulation and Development) Act, 2016

10. 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. Besides, liberty was given to the parties to explore the possibility of amicable settlement but nothing fruitful came out. There is no provision in the Act for waiver/exemption of pre-deposit.

11. The financial constraints and SARFAESI proceedings etc. 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 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.”

12. In view of the above, it is evident that there is no scope for hearing the appeals on merits, as the same are not

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maintainable due to lack of pre-deposit. The same are hereby dismissed with no order as to costs.

13. Consequently, the accompanying applications are also dismissed.

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

15. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

February 03, 2025/mk