

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No. 497 of 2024 in/and

Appeal No. 74 of 2024

Date of Decision: July 30 ,2025

Experion Developers Pvt. Ltd., F-9, 1st Floor, Manish Plaza-I, Plot No. 7,
MLU, Sector-10, Dwarka, New Delhi

Appellant.

Versus

Shweta Gupta, 26, Amaltas Marg, DLF Phase 1, Sikanderpur Ghosi
(68), DLF QE, Gurugram-122002

Respondent

Present: Mr. Sylvester, Advocate for the appellant.
 Ms. Preeti Manderna, Advocate for the respondent

CORAM:

Justice Rajan Gupta	Chairman
Rakesh Manocha	Member (Technical)
	(Joined through VC)

O R D E R:

RAJAN GUPTA, CHAIRMAN

This is an application for declaring that the requirement of pre-deposit as per proviso to Section 43(5) of the Act¹ is not applicable in the present appeal.

2. The plea taken by the appellant is that the respondent-allottee has to pay back Rs.2,49,17,553/- along with interest to it, thus no amount is payable in terms of proviso to Section 43(5) of the Act.
3. 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

¹ The Real Estate (Regulation and Development) Act, 2016.

as 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.**

4. We have heard learned counsel for the parties and given careful thought to the facts of the case.

5. We are not convinced with the stand taken by the appellant. The Registry has reported that as per calculation, the amount of pre-deposit comes to Rs.70,47,762/-.

6. An appeal, which is not accompanied with pre-deposit deserves outright dismissal. Challenge on the ground that the allottee has to pay to the promoter-appellant can only be considered if the appeal is found to be maintainable.

7. 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.

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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."

8. Thus, we find no substance in the application. Besides, there is no provision in the Act for waiver of the amount of pre-deposit. The application is hereby dismissed. The issue raised in the application

will ultimately depend on the final outcome of the appeal. However, interest of the allottee has to be secured in view of judgment in **M/s Newtech Promoters and Developers Pvt. Ltd's case** (supra). For this reason, pre-deposit has to be made as calculated by the Registry. It also needs to be mentioned here that pre-deposit is kept in approved bank in fixed deposit and draws admissible rate of interest and is disbursed as per entitlement of the parties on final decision of the appeal. Thus, no prejudice is likely to be caused to either party.

9. Consequently, the appeal is also dismissed.

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

11. File be consigned to records.7

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

July 30 , 2025
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