

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**CM No. 345 of 2025 in/and  
Appeal No.586 of 2024**

**Date of Decision: September 01,2025**

Vatika Limited, Unit A-002 INXT City Centre, Ground Floor,  
Block A, Sector 83, Vatika India Next, Gurugram-122012

Appellant.

Versus

1. Aashish Sardana, Flat No. 7E, BB Block, Janakapuri, West  
Delhi-110058

2. Mrs. Anita Sardana, Flat No. 7E, BB Block, Janakapuri, West  
Delhi-110058

Respondents

Present: Mr. Yashvir Singh Balhara, Advocate for the appellant.  
Respondent-Aashish Sardana in person.

**CORAM:**

**Justice Rajan Gupta  
Rakesh Manocha**

**Chairman  
Member (Technical)**

**O R D E R:**

**RAJAN GUPTA, CHAIRMAN**

In the present appeal, challenge has been made to order dated 23.04.2024 passed by Adjudicating Officer of the Authority<sup>1</sup>, whereby recovery certificate has been ordered to be issued to the Collector, Gurugram to recover the decretal amount as arrears of land revenue.

2. It is pertinent to mention that in the complaint filed by the respondent-allottee, the Authority, vide its order dated 02.12.2022, directed the appellant-promoter to return Rs.60,92,288/- with interest @ 10.70% p.a. from the date of each payment till actual date of refund of the amount.

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

3. The appeal is accompanied with an application seeking exemption from making mandatory pre-deposit in terms of proviso to Section 43(5) of the Act<sup>2</sup>.

4. Counsel for the appellant-promoter primarily contended that the appellant-promoter has already made payment of decretal amount of Rs.1,01,93,073/- and Rs.5,11,227/- as per orders dated 29.07.2024 and 14.08.2024, respectively passed by the Adjudicating Officer. Thus, the question of making pre-deposit while challenging impugned order would not arise.

5. As per report from the Registry, the appellant-promoter is required to make pre-deposit Rs.1,13,77,613/-. A perusal of order dated 29.07.2024 and 14.08.2024 shows that the promoter has already remitted an amount of Rs.1,07,04,300/-to the allottees. This figure thus, needs to be deducted. However, even after taking into consideration this amount, there is still deficit of Rs.6,73,313/-.

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

7. In view of law laid down in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP, 2022(1) RCR (Civil) 367**, it is not possible to entertain an appeal which is not accompanied by requisite pre-deposit. There is no provision for waiver or exemption of pre-deposit. Relevant paragraphs of the judgment are reproduced hereunder for ready reference:

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

*“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.”*

8. In view of the fact that there is deficit of amount of Rs.6,73,313/-, the averment made in the application that there is no defect in complying with proviso to Section 43(5) of the Act is untenable. Same is hereby dismissed. Consequently, the appeal would not survive and would meet the same fate. Ordered accordingly. However, the appellant-promoter would be at liberty to seek revival of the appeal in case it makes the deficit pre-deposit within one month from today.

9. Copy of this order be sent to the parties/their counsel and the Authority.

10. File be consigned to records.

Justice Rajan Gupta,  
Chairman,  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)

September 01, 2025  
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