

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

**CM No. 1360 of 2025 in/and
Appeal No. 389 of 2025**

Date of Decision: September 01,2025

Adani M2K Projects LLP., 10th Floor, Shikhar, Nr. Adani House, Mithakhali Six Roads, Navrangpura, Ahmedabad, Gujrat-380009

Appellant.

Versus

Dr. Kumar Rajiv s/o Sh. Hanuman Prasad, H. No. M-4, Maharaja Hari Singh Nagar, Residency Road, Jodhpur, Rajasthan-342001

Respondent

Present: Mr. Rana Gurtej Singh, Advocate for the appellant.

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**

O R D E R:

RAJAN GUPTA, CHAIRMAN

In the accompanying appeal, challenge has been made to order dated 15.04.2025, passed by Adjudicating Officer of the Authority¹, whereby warrants of detention against Directors of JD-promoter were ordered to be issued.

2. It is pertinent to mention that in the complaint filed by the respondent-allottee, the Authority, vide its order dated 20.04.2023, directed the appellant-promoter to pay interest at the prescribed rate of 10.70% per annum for every month of delay on the amount paid by the allottee from due date of

¹ Haryana Real Estate Regulatory Authority, Gurugram

possession i.e. 14.03.2018 till the date of offer of possession (16.02.2019) plus two months i.e. 16.04.2019.

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

4. Counsel for the appellant-promoter primarily contended that Rs.35,42,684/- is outstanding against the allottee after adjusting an amount of Rs.18,18,070/- towards delay compensation. The question of making pre-deposit while challenging such an order thus would not arise.

5. As per report from the Registry, the appellant-promoter is required to deposit Rs.18,20,946/-.

6. We have heard learned counsel for the appellant.

7. The appellant-promoter is posing a challenge to the order, whereby the Adjudicating Officer ordered issuance of warrants of detention against its Directors. This order is a consequence of non-compliance of the order passed by the Authority whereby delay possession charges were granted. Same would be payable as long as the order of the Authority is in operation. Executing Court is bound to implement such an order. Impugned order has been passed in furtherance of its efforts to take the proceedings to its logical end. However, the promoter, who has posed challenge to the said order, needs to make requisite pre-deposit which it has not done despite sufficient opportunity.

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

8. 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 maintainable. However, this Bench cannot examine the said question due to lack of pre-deposit.

9. Besides, 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 in the Act for waiver or 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 above, it is evident that there is no scope for hearing the appeal on merits, as the same is not maintainable due to absence of pre-deposit. The application seeking waiver of pre-deposit is dismissed as there is no enabling provision in the Act. Consequently, the appeal is dismissed with no order as to costs.

11. 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. It needs to be kept in mind that the party who is aggrieved by the order may prefer an appeal. In the instant case, only the promoter has preferred the appeal. Thus, the mandatory provision of pre-deposit has to be complied with by the promoter. In case, the allottee is aggrieved, he is also at liberty to file an appeal, however in that case, provision for pre-deposit is not there in the Act.

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

13. 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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