

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: September 08,2025

(1) Appeal No. 153 of 2025

Splendor Buildwell Pvt. Ltd., 5th Floor, Splendor Forum Plot No. 3, Jasola District Centre, New Delhi-110025

Appellant.

Versus

Kamal Narula, H-5/9 DLF Phase I, Gurugram, Haryana-122002

Respondent

(1) Appeal No. 154 of 2025

Splendor Buildwell Pvt. Ltd., 5th Floor, Splendor Forum Plot No. 3, Jasola District Centre, New Delhi-110025

Appellant.

Versus

Vishal Narula, H-5/9 DLF Phase I, Gurugram, Haryana-122002

Respondent

Present: Mr. Aman Arora, Advocate for the appellant.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

ORDER:

RAJAN GUPTA, CHAIRMAN

This order shall dispose of above mentioned two appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 153 of 2025.

2. Present appeal is directed against order dated 12.12.2024 passed by Adjudicating Officer of the Authority¹. Operative part thereof reads as under:

“Both of parties gave their fresh calculations (as per amended order). As per learned counsel for DH, JD is not executing conveyance deed despite order. Learned counsel of JD submitted candidly that her client is not ready to execute conveyance deed unless outstanding dues are paid. Although through order under execution, the authority has asked complainant to pay outstanding dues if any, as per learned counsel for latter (DH), there are no outstanding dues against his client. Even otherwise, authority has not specified the amount of outstanding dues. Being executing forum, it is not for AO to decide outstanding due. JD may recover outstanding dues (if any) as per law.

Admittedly, OC has already been received by the promoter. DH is asked to file draft of conveyance deed till next date so that objections, if any, from JD, be called.

To come up on 19.03.2025 for further proceedings.”

3. It is pertinent to mention here that in the complaint filed by the respondent-allottee, vide order dated 09.08.2023, the Authority had directed the appellant-promoter to pay the arrears of amount of assured returns from October, 2018 till September, 2019 as per clause 5 of the MoU. The appellant-promoter was also held liable to pay monthly assured returns at the agreed rate of the super area till the said unit is leased out to the prospective lessee(s). In execution proceedings, vide impugned order, the application filed by the appellant-promoter

¹ Haryana Real Estate Regulatory Authority, Gurugram

for dismissal of the execution petition has been rejected and the respondent-allottee has been directed to file draft of conveyance deed.

4 Feeling aggrieved, the appellant-promoter has filed the present appeal.

5. As the appeal was not accompanied by pre-deposit, the Registry raised an objection that an amount of Rs.75,90,000/- is payable by way of pre-deposit in light of mandatory provision contained in Section 43(5) of the Act².

6. On 06.08.2025, affidavit of Manish Prakash, authorised representative of the appellant-promoter was filed clarifying inapplicability of the pre-deposit amount calculated by the Registry.

7. Counsel for the appellant-promoter contended that it has already remitted an amount of Rs.92,05,161/- to the respondent-allottee towards assured returns till September, 2018 and it is only liable to pay Rs.37,94,839/-.

8. The appellant-promoter had also sought rectification of order dated 09.08.2023 by moving an application before the Authority. The same was disposed of by clarifying that assured returns were required to be paid from January, 2019 till September, 2019 instead of October, 2018 till September, 2019, being an error apparent on record.

9. The Registry has now calculated as per the rectified order i.e. from January, 2019 to September, 2019.

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

10. 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.

11. 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:

“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. The plea of the appellant that it is not required to make any pre-deposit is devoid of any merit in view of the findings given in foregoing paragraphs. Besides, there is no provision in the Act whereunder mandatory provision of pre-deposit can be exempted or waived off.

13. In view of above, the appeal is dismissed.

14. Since the appeal has been dismissed, no orders need to be passed in the accompanying applications. The same stand disposed of.

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

16. Files be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

September 08,2025
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