

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No. 899 of 2025 in/and

Appeal No.229 of 2025

Date of Decision: September 15,2025

M/s Pareena Builders & Promoters Private Limited, Flat No. 02,
Palm Apartments, Plot No. 13B, Sector 6, Dwarka, New Delhi-
110075

Appellant.

Versus

Lokender Kumar, Flat No. 35, T/F, Pocket-8, Block A-5, Sector
23 B, Dwarka, Barthal, South West, Delhi-110077

Respondent

Present: Mr. Kamaljeet Dahiya, Advocate for the appellant.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

O R D E R:

RAJAN GUPTA, CHAIRMAN

Challenge in the present appeal is to order dated
14.02.2025 passed by the Authority¹. Operative part thereof
reads as under:

*“30. Hence, the authority hereby passes this order
and issues the following directions under Section 37
of the Act to ensure compliance of obligations*

*I. The cancellation is set aside. The respondent is
directed to restore the subject unit to its original
position in favour of the complainant.*

*II. The respondent promoter is directed not to create
third party rights. In case the respondent has already
created third party rights on the unit in question, then
the respondent/promoter shall offer possession of a*

¹ Haryana Real Estate Regulatory Authority, Gurugram

similarly located unit/flat of the same size and specifications at same rate as per the agreement dated 13.02.2020 in the said project to the complainant.

III. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate or occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.

IV. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e. 05.02.2024 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier at prescribed rate i.e., 11.10% p.a. as per proviso to Section 18(1) of the Act read with rule 15 of the rules.

V. The respondent is directed to supply a copy of the updated statement of account after adjusting the delay possession charges within a period of 30 days to the complainant.

VI. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

VII. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e. 11.10% by the respondent/promoter, which is the same rate of

interest which the promoter shall be liable to pay to the allottee, in case of default i.e. the delayed possession charges as per section 2(za) of the Act.

VIII. The respondent shall not charge anything from the complainant which is not provided under Affordable Housing Policy, 2013.

IX. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.”

2. The appeal is accompanied with an application seeking waiver from making mandatory pre-deposit in terms of proviso to Section 43(5) of the Act².

3. Counsel for the appellant-promoter primarily contended that unit of the respondent-allottee was cancelled on 10.10.2022 due to non-payment of dues by him. After cancellation, refund of Rs.15,13,835/-, after deducting Rs.2,09,428/- as per BBA³, was made to the respondent-allottee. As the respondent-allottee did not make any payment after post-refund, no interest liability can be fastened upon the appellant-promoter. Thus, the question of making pre-deposit while challenging impugned order would not arise.

4. As per report from the Registry, the appellant-promoter is required to make pre-deposit of Rs.2,25,469/-. A perusal of the impugned order shows that the Authority has held that post-cancellation of the unit, refund of Rs.15,13,835/- is illegal as per clause 5(iii)(i) of the Affordable Housing Policy, 2013. Besides, setting aside cancellation of the unit, the Authority also directed the appellant-promoter to pay

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

³ Builder Buyer's Agreement

interest from due date of possession i.e. 05.02.2024 till the date of valid offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier. The Registry has calculated the interest taking into account the amount of Rs.17,32,263/- deposited by the allottee from due date of possession till filing of appeal. In case, any refund has been made by the promoter to the allottee, it has already been held to be illegal by the Authority. Promoter cannot claim benefit of refund made of its own volition. While computing the pre-deposit, the Registry cannot be expected to embark on cumbersome exercise of calculation on the basis of stand taken by the appellant in the appeal. The Registry has thus, committed no error in calculating pre-deposit. Had the refund been acceptable to the allottee, he would not have preferred the instant appeal.

5. 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.

6. 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.”

7. 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.

8. The application 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 15, 2025
mk