

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

**CM No. 787 of 2025 in/and
Appeal No.868 of 2024**

Date of Decision: September 26,2025

Advance India Projects Limited, AIPL Business Club, 5th Floor,
Golf Course Extension Road, Sector 62, Gurugram-122102

Appellant.

Versus

Naresh Saran, A-11, Geetanjali Enclave, New Delhi-110017

Respondent

Present: Ms. Svetlana, Advocate for
Mr. Sandeep Verma, Advocate
for the appellant.

CORAM:

**Justice Rajan Gupta
Dr. Virender Parshad**

**Chairman
Member (Judicial)**

ORDER:

RAJAN GUPTA, CHAIRMAN

Challenge in the present appeal is to order dated 20.03.2024 passed by the Authority¹. Operative part thereof reads as under:

“27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed to pay the arrears of assured return as per agreed terms contained in clause 32 of the buyer’s agreement i.e., Rs.81,211/- w.e.f.17.05.2017 till the date of issuance of offer of possession i.e. 21.01.2022, after adjusting the amount already paid, if any.

¹ Haryana Real Estate Regulatory Authority, Gurugram

ii. The respondent shall refund back the amount taken in excess from the complainant on account of various illegal demands under different heads as elucidated in para 23 above and the allottee shall make the payment of outstanding dues towards the unit as per builder buyer's agreement if any, along with interest at the prescribed rate of 10.85%.

iii. The respondent is directed to handover the physical possession of the subject unit to the complainant within 30 days of this order.

iv. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.

v. The respondent is directed to execute conveyance deed in favour of the complainant upon payment of requisite stamp duty by him as per norms of the state government as per section 17 of the Act as per their obligation under section 19(11) of the Act within 3 months from the date of handing over of possession.”

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 as per impugned order and in terms of Clause 32 of the Builder Buyer's Agreement, the total assured return payable to the respondent-allottee from 17.05.2017 till 21.01.2022 comes to Rs.45,60,914/-, whereas the appellant has already paid an excess amount of Rs.70,36,313/- towards assured return to the respondent-allottee. Thus, the question of making pre-deposit while challenging impugned order would not arise.

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

4. As per report from the Registry, the appellant-promoter is required to make pre-deposit of Rs. 45,58,644/-. A perusal of the impugned order shows that the Authority has directed the appellant-promoter to pay the arrears of assured return @ Rs.81,211/- from 17.05.2017 till 21.01.2022. Besides, the appellant-promoter has been directed to hand over the physical possession of the subject unit to the respondent-allottee within 30 days of the order. 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. It needs to be kept in mind that the party who is aggrieved by the order has to make the pre-deposit. In the instant case, only the promoter has preferred the appeal. Thus, the mandatory provision of pre-deposit has to be complied with. In case, the allottee is aggrieved, he is also at liberty to file an appeal, however in his case, provision for pre-deposit is not there in the Act. The Registry has thus, committed no error in calculating pre-deposit.

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.

9. Copy of this order be sent to the appellant/its counsel and the Authority.

10. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

September 26,2025
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