

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No. 266 of 2025 in/and

Appeal No. 755 of 2024

Date of Decision: August 19, 2025

Venetian LDF Projects LLP, 205, 2,d Floor, Times Centre, Golf Course Road, Sector 54, Gurugram, Haryana-122007

Appellant.

Versus

Rajni Singh, A-604, Garden Estate Apartment, Plot 5b, Sector 22, Dwarka, New Delhi-11007

Respondent

Present : Mr. Yashvir Singh Balhara, Advocate for the appellant.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

ORDER:

RAJAN GUPTA, CHAIRMAN

In the accompanying appeal, challenge has been made to order dated 15.02.2024, passed by the Authority¹ operative part whereof reads as under:

“26. 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 cancellation letter dated 14.09.2022 is not valid and is bad in eyes of law and is hereby set aside, and the respondent-promoter is directed to restore the allotted unit of the complainant within 30 days from the date of this order.*

¹ Haryana Real Estate Regulatory Authority, Gurugram

- ii. *The respondent is directed to issue an updated statement of account as per the agreed payment plan. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e. 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e. the delayed possession charges as per section 2(za) of the act.*
- iii. *The respondent-promoter shall not charge anything from the complainant which is not the part of the buyer's agreement.*
- iv. *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/exemption from pre-deposit required to be made along with appeal in view of proviso to Section 43(5) of the Act².

3. Counsel for the promoter primarily contended that the order under challenge is not for money decree and is only relating to restoration of the unit. The question of making pre-deposit while challenging such an order would not arise.

4. On 28.05.2025, report was sought from the Registry whether the promoter is liable to make pre-deposit.

5. As per report from the Registry, the appellant-promoter is required to deposit Rs.20,43,354/-.

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

6. We have heard learned counsel for the appellant.

7. The promoter is posing a challenge to the order, whereby it has been directed to restore the allotted unit to the respondent within 30 days from the date of order. In case of default, the promoter has been directed to pay delayed possession charges @10.85%. The order was passed on 15.02.2024. Same has been impugned after a delay of 222 days. Delayed possession charges would be payable as order of the Authority remained in operation during that period. Pre-deposit has been calculated by the Registry accordingly. 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.

8. The question of condonation of delay etc. falls for consideration only where appeal is accompanied with requisite pre-deposit, however, same has not been made. 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.

9. 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.”

10. In view of the above, it is evident that there is no scope for hearing the appeal on merits, as the same is not maintainable due to lack of pre-deposit. The same is hereby dismissed with no order as to costs.

11. Consequently, the accompanying applications are also dismissed.

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

13. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

August 19, 2025
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