

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

**Appeal No.261 of 2024**

**Date of Decision: December 08, 2025**

SS Group Pvt. Ltd. through its Authorized Signatory Mr. Chander Shekhar Sharma having office at Plot No. 77, SS House, Sector 44, Gurugram-122003.

Appellant.

Versus

1. SS Hibiscus Apartment Owners Association through its Authorized Representative having office at The Hibiscus, Village Adampur, Sector 50, Gurugram-122018

Respondent.

2. Hibiscus Maintenance Private Limited through its Authorized Representative having office at Plot No. 77, SS House, Sector 44, Gurugram-122003.

Proforma Respondent.

**CORAM:**

**Justice Rajan Gupta  
Dr. Virender Parshad  
Dinesh Singh Chauhan**

**Chairman  
Member (Judicial)  
Member (Technical)**

**Present:** Mr. Aashish Chopra, Senior Advocate assisted by  
Mr. Yashpal Sharma, Advocate,  
Ms. Radhika Sharma, Advocate,  
for the appellant.

Mr. Himanshu Gupta, Advocate, with  
Ms. Vanshika Tuteja, Advocate,  
for the respondent.

**ORDER:**

**RAJAN GUPTA, CHAIRMAN**

Present appeal is directed against order dated 09.01.2024 passed by the Authority<sup>1</sup> whereby Complaint No. 6030 of 2019 filed by respondent no.1/association of allottees was disposed of with the following directions: -

***“F. Directions of the authority***

*57. 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) of the Act of 2016:*

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<sup>1</sup> Haryana Real Estate Regulatory Authority, Gurugram

- i. *The respondent is directed to handover the amount of IFMS collected by it along with the interest accrued on that amount coupled with all the details regarding the IFMS amount and the interest accrued thereon. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure he is liable to incur to discharge his liability under section 14 of the Act.*
- ii. *The respondent no.1 is directed to handover the necessary documents, plans, including common areas, to the association of the allottees in the real estate project within 3 months from the date of this order.*
- iii. *In pursuance to the LC report, a period of 3 (three) months is given to the respondent/builder to rectify the defect and deficiency in construction and services, failing which the complainant association is at liberty to approach the adjudicating officer for seeking appropriate compensation in the manner as provided under the Act as per section 14(3) of the Act read with section 71 & 72 of the Act, 2016.*
- iv. *For the changes made in plans without prior consent of two-third allottees in contravention of the provisions of Section 14(1) of the Act, the penal action under provisions of Section 61 of the Act be clubbed along with the suo-moto complaint bearing no. CR/1782/2023.*
- v. *The complainant-association is entitled to levy and recover the maintenance charges in respect of the unsold inventories from the respondent no.1.*

*58. Complaint stands disposed of.*

*59. File be consigned to registry.”*

2. Aggrieved from the aforesaid order, appellant-promoter has filed the instant appeal.

3. Before the appeal could be entertained on merits, certain queries regarding pre-deposit were made to the counsel for the appellant-promoter as no pre-deposit was made at the time of filing the appeal.

4. Vide order dated 30.09.2024, a report was sought from the Registry in respect of the amount payable by the appellant as pre-deposit.

5. As per the report from the Assistant Registrar, the appellant-promoter is required to make a pre-deposit of Rs.24,18,56,246/- in terms of proviso to Section 43(5) of the Act<sup>2</sup>. The

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<sup>2</sup> Real Estate (Regulation and Development) Act, 2016

Registry calculated the said amount based on the operative directions qua 'IFMS', together with the accrued interest and other monetary components quantified in the impugned order.

6. Appellant-promoter filed objections to the report of the Registry impugning the quantum so determined. The appellant primarily contended that the Authority has only directed to handover IFMS funds collected, along with interest accrued thereon, which cannot be considered while computing the pre-deposit in terms of the mandatory proviso. Appellant further submitted that under Section 43(5) of the Act, only the penalty or interest and compensation awarded by the Authority are to be considered for the purpose of pre-deposit. It was also contended that the Authority has not computed any specific amount in the operative directions and in absence of the same, appellant-promoter is not required to make any pre-deposit.

7. We have carefully perused the report of the Registry, appellant's objections thereto and heard arguments at length advanced by learned counsel for the parties.

8. For the purpose of computing pre-deposit, the liability fixed by the Authority in operative part of the order needs to be examined. A conjoint reading of paragraphs 15 and 22 of the impugned order shows that the promoter received an amount of Rs.13,31,40,027/- as CAM charges for the period from 14.11.2014 till 18.10.2018, which is being retained by it. The Authority came to the conclusion that in respect of the unsold inventories, the promoter would be owner thereof. Thus, it cannot escape its liability to pay CAM charges in that respect to the welfare association, as the building has to be maintained as a whole. Its liability thus, has to be met by the promoter itself. Thus, CAM charges for the unsold inventories w.e.f. 18.10.2018 to 30.06.2022 i.e. Rs.6,46,36,239/- were payable by the promoter to the association.

9. Undisputably, the amount of Rs.4.41 crores is pending with the promoter as IMFS charges.

10. Needless to observe that all the aforementioned amounts are added for the purpose of computing the pre-deposit. We find no error in the report dated 19.10.2024 submitted by the Assistant Registrar, operative part whereof is reproduced hereunder:

*“As per the direction/observation of the Authority below the pre-deposit on the amount of Rs.24,18,56,246/- (i.e. Rs.4,41,00,000/- + Rs.13,31,20,027/- + Rs.6,46,36,219/-) was required to be made under Section 43(5) of the Act. Therefore the registry has not calculated the pre-deposit as per norms/procedure. However it is also submitted that the position given marked as at ‘X’ on pre-page may also be taken into consideration for calculation of the pre-deposit by the Developer in the said appeal.*

*Under the above narrated circumstances report is submitted for kind perusal, consideration and further order please.”*

11. 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.

12. 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.”*

13. This Tribunal, following the above binding precedent, has consistently taken the view that an appeal not accompanied by the requisite pre-deposit is not maintainable and is liable to be dismissed. Once the statutory condition is not fulfilled, there is no scope to examine the appeal on merits, as entertaining such appeal would be

in direct contravention of Section 43(5) of the Act. The failure on the part of the appellant-promoter to make full pre-deposit renders the present appeal non-maintainable.

14. The objections raised by the appellant-promoter to the report of the Registry are not tenable and are liable to be rejected. Accordingly, the instant appeal is dismissed as not maintainable in absence of compliance of mandatory provision of Section 43(5) of the Act.

15. No order as to costs.

16. Copy of this order be sent to the parties, their counsel and the Authority below.

17. File be consigned to the records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad  
Member (Judicial)

Dinesh Singh Chauhan  
Member (Technical)

December 08, 2025/mk