

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No. 1890 of 2025

In Appeal No. 552 of 2025

Date of Decision: December 16 ,2025

M/s Sunrays Heights Pvt. Ltd., Address: 211, Ansal Bhawan, 16 K.G. Marg, New Delhi 110001 through its Authorized Representative Mr. Rajesh Kumar Thakur aged about 61 years, son of Ramashish Thakur, resident of H. No. 54f, 2nd Floor, Sector 30/33, Indraprastha Colony, Old Faridabad, Amarnagar, Faridabad, Haryana, authorized vide resolution dated 10.01.2025.

Appellant.

Versus

Devender Yadav C/o Dr. Daya Ram Yadav, Gaushala Road, Near Veterinary Hospital, Mahendergarh, Haryana - 123029

Respondent.

CORAM:

**Justice Rajan Gupta
Dinesh Singh Chauhan**

**Chairman
Member (Technical)**

Present: Mr. Tushar Bahmani, Advocate
for the appellant.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 06.05.2025, passed by the Authority¹, whereby the appellant-promoter was directed to deliver possession of the unit along with delay possession charges to the allottee.

¹ Haryana Real Estate Regulatory Authority, Gurugram

2. Admittedly, the appeal was not accompanied with statutory pre-deposit required to be made in terms of proviso to Section 43(5) of the Act².

3. As per the report of the Registry, the appellant-promoter was required to deposit a sum of Rs.10,92,569/-. However appellant-promoter deposited only Rs.3,03,615/- on 19.09.2025, leaving a deficit of Rs.7,88,954/-.

4. The appellant has filed objections to the report of the registry by way of CM No.1890 of 2025, seeking re-calculation of the pre-deposit amount by excluding various periods of construction bans imposed between 2016 to 2025 pursuant to orders of National Green Tribunal (NGT), Environment Pollution (Prevention & Control) Authority (EPCA) and Commission for Air Quality Management (CAQM).

5. The Appellant submits that construction activities were periodically prohibited pursuant to judicial and regulatory directions issued by the Hon'ble Supreme Court, Hon'ble NGT, EPCA and CAQM under the Graded Response Action Plan (GRAP) owing to severe air pollution in the NCR. It is contended that these bans were mandatory, leaving no discretion with the promoter to continue construction. Accordingly, the appellant seeks re-calculation of the pre-deposit amount after excluding the duration of construction bans.

6. We have heard learned counsel for the appellant-promoter.

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

7. The promoter is posing a challenge to the order, whereby various directions have been issued to the promoter. Pre-deposit has been calculated by the Registry accordingly. It needs to be kept in mind that a party who is aggrieved by the order, has to make the pre-deposit. Section 43(5) of the RERA Act is a statutory requirement for the maintainability of the appeal, not a matter of discretion.

8. In the instant case, the promoter has preferred the appeal. Thus, the mandatory provision of pre-deposit has to be complied with.

9. An appeal, which is not accompanied with complete statutory pre-deposit, deserves outright dismissal. The contention of the appellant that period of construction bans ought to be excluded while computing delay compensation cannot be examined at the stage of filing of the appeal. The Tribunal cannot pre-adjudicate on merits, before the deposit mandated by Section 43(5) of the Act *ibid* is made. A challenge to the sustainability of the impugned order can be considered only after compliance of Section 43(5) of the Act.

10. 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.”

11. 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. Civil Misc. application is accordingly dismissed. Consequently, appeal does not survive and meets the same fate.

12. Appellant shall be at liberty to move an application for withdrawal of part pre-deposit submitted with this appeal.

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

14. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

December 16, 2025