

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No. 1064 of 2025 in/and

Appeal No.584 of 2025

Date of Decision: February 12,2026

M/s Experion Developers Private Limited, 8th Floor, Wing B,
Milestone Experion Centre, Sector 15, Part-2, Gurugram,
Haryana-122001

Appellant.

Versus

Rajendra Kumar, H. No. 204, 9th Min, 3rd Stage, Beml Layout,
Rajeshwari Nagar, Bangalore, Karnataka-560098

Respondent

CORAM:

**Justice Rajan Gupta
Dr. Virender Parshad**

**Chairman
Member (Judicial)**

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

ORDER:

RAJAN GUPTA, CHAIRMAN

In the present appeal, challenge has been made to order dated 25.04.2025, passed by the Authority¹. Operative part thereof reads as under:

“H. Directions of the Authority

20. 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/promoter is directed to refund the paid-up amount of Rs.94,07,158/- after deducting 10% of the sale consideration of Rs.2,29,38,307/- being earnest money along with an interest @11.10%

¹ Haryana Real Estate Regulatory Authority, Gurugram

p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 27.04.2017 till its realization.

ii. 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.

21. Complaint stands disposed of.

22. File be consigned to registry.”

2. The appeal is accompanied with an application seeking waiver of 10% of sale consideration from the principal amount to be refunded and waiver of excess interest calculated by the Registry without deduction of said 10% from making mandatory pre-deposit in terms of proviso to Section 43(5) of the Act².

3. Counsel for the appellant-promoter contended that the Registry incorrectly calculated the refundable amount and interest by excluding 10% deduction of sale consideration of Rs.2,29,38,307/- as directed by the Authority in the impugned order. As per him, the Registry should have calculated the amount of interest after deduction of 10% amount of sale consideration from the refundable amount.

4. As per report from the Registry, the appellant-promoter is required to make pre-deposit Rs.1,79,98,161/-. However, there is still deficit of Rs.46,01,622/-.

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

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.

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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. In view of the fact that there is deficit of amount of Rs.46,01,622/-, the averment made in the application that there is no defect in complying with proviso to Section 43(5) of the Act is untenable. Same 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.

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

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9. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

February 12, 2026
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