

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

**CM No. 638 of 2026 in/and
Appeal No. 1523 of 2025
Date of Decision: May 22, 2026**

Pivotal Infrastructure Pvt. Ltd., Plot No. 12, Sector-4,
Faridabad, Haryana-122001

Appellant

Versus

Bilamjeet Singh, B-/85, Ashok Vihar, Phase-II, Gurugram-
172022

Respondent

CORAM:

**Justice Rajan Gupta
Dr. Virender Parshad**

**Chairman
Member (Judicial)**

Present: Mr. Nitesh Dalal, Advocate for the appellant.

ORDER:

RAJAN GUPTA, CHAIRMAN

In the accompanying appeal, challenge has been made to order dated 12.04.2023, passed by the Authority¹ operative part whereof reads as under:

“26. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of Rs.29,47,358/- to the complainant.

¹ Haryana Real Estate Regulatory Authority, Panchkula

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

*27. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.”*

2. As per report from the Registry, out of the requisite pre-deposit i.e., Rs.29,47,358/- calculated by it, the appellant-promoter deposited Rs.6,19,329/-. The appellant filed CM No. 638 of 2026 seeking waiver of pre-deposit.

3. Vide order dated 27.03.2026, report of OSD (J) was sought. As per report of OSD (J), the appellant-promoter is required to deposit Rs.29,47,358/- and there is deficit of Rs. 23,28,029/-.

4. Counsel for the appellant-promoter contended that the respondent-allottee had paid only a sum of Rs.15,30,000/- towards total basic sale consideration of Rs.1,06,62,387/-; the promoter was legally entitled to forfeit 10% of the total basic sale consideration amounting to Rs.10,66,238/- as earnest money but the Authority erred in computing the earnest money as Rs.2,44,108/-. He submitted that as the appellant-promoter is facing financial crunch, it has filed the application seeking waiver of pre-deposit.

5. We have heard learned counsel for the appellant.

6. The promoter is posing a challenge to the order, whereby it has been directed to refund the paid-up amount along with interest @ 10.70% from the date amounts were paid

till actual realisation of the amount after deducting earnest money to the tune of 10%. Pre-deposit has been calculated by the Registry accordingly. 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. The Registry has, thus, committed no error in calculating pre-deposit.

7. 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.

8. 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.”

9. Thus, we find no substance in the application. The issue raised in the application will ultimately depend on the final

outcome of the appeal. However, interest of the allottee has to be secured in view of judgment in **M/s Newtech Promoters and Developers Pvt. Ltd's case** (supra). For this reason, pre-deposit has to be made as calculated by the Registry. It also needs to be mentioned here that pre-deposit is kept in approved bank in fixed deposit; draws admissible rate of interest and is disbursed as per entitlement of the parties on final decision of the appeal. Thus, no prejudice is likely to be caused to either party.

10. In view of 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 application is, thus, dismissed. Consequently, the appeal is also dismissed. However, the appellant-promoter would be at liberty to seek revival of the appeal in case it makes good the deficit in the pre-deposit within one month from today.

11. The amount of pre-deposit, which is deficit in nature, cannot be retained by the Tribunal. The same, along with interest accrued thereon, be remitted to the Authority for disbursement to the respondent-allottee subject to tax liability, if any, after expiry of one month.

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

13. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

May 22, 2026
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