

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.509 of 2025 (O&M)

Date of Decision: April 10, 2026

Army Welfare Housing Organisation, South Hutment, Kashmir
Office, Rajaji Marg, New Delhi-110011

Appellant.

Versus

Ex. Hav. Arun Kumar Dagar, H. No. 300, Near Bheem General
Store, VPO-Malikpur, Najafgarh, New Delhi-110011

Respondent

CORAM:

**Justice Rajan Gupta
Dinesh Singh Chauhan**

**Chairman
Member (Technical)**

Present: Mr. Karan Kaushal, Advocate for the appellant.

ORDER:

RAJAN GUPTA, CHAIRMAN

In the present appeal, challenge has been made to order dated 04.03.2025, passed by Authority¹, whereby the appellant has been directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant-respondent from due date of possession i.e. 31.12.2019 till 04.03.2022, i.e. expiry of 2 months from the date of offer of possession (04.01.2022) within 90 days from the date of its order.

2. As per report from the Registry, the appellant-promoter was required to make pre-deposit Rs.13,37,783/-, out

¹ Haryana Real Estate Regulatory Authority, Gurugram

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of which it deposited Rs.12,87,480/-. Thus, there is deficit of Rs.50,303/- in pre-deposit.

3. Learned counsel for the appellant contends that as per order of the Authority, the total interest payable by the appellant comes to Rs.12,87,480/-. In support of the averment, affidavit was filed by Naib Subedar Balbir Singh, Project Manager of the appellant, giving details of the amount to be paid to the respondent. Thus, the appellant has complied with proviso to Section 43(5) of the Act².

4. An appeal, which is not accompanied with complete 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.

5. 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

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

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, if any, 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

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persons having been differently and separately dealt with under the various provisions of the Act.”

6. In view of the fact that there is deficit of amount of Rs.50,303/-, the averment made in the affidavit of Naib Subedar Balbir Singh, Project Manager of the appellant that there is no defect in complying with proviso to Section 43(5) of the Act is untenable.

7. In view of the above, as the appeal is not accompanied with requisite pre-deposit, the same cannot be entertained. Accordingly, same is dismissed. However, the appellant 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. Alternatively, the appellant shall be at liberty to move an application for withdrawal of the amount already deposited in lieu of the ‘actual pre-deposit’.

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

9. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

April 10, 2026
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