

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 59 of 2023 (O&M)

Date of Decision: August 07,2026

RPS Infrastructure Limited, 1117-1120, 11th Floor, Tower-B,
DLF Towers, Jasola, District Centre, New Delhi-110025

Appellant

Versus

Savana Welfare Association, SWA Office, Temporary Club, Tower-9,
Stilt Parking Area, Savana, Sector-88, Faridabad

Respondent

CORAM:

Justice Rajan Gupta

Chairman

Dinesh Singh Chauhan

Member (Technical)

Present: Mr. Garvit Gupta, Advocate with
Mr. Anjanpreet Singh, Advocate for the appellant.

Mr. Nitin Kant Setia, Advocate for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN

In the present appeal, challenge has been made to order dated 13.07.2022 passed by the Authority¹. Operative part thereof reads as under:

“8. After hearing both parties, Authority is of the view that the respondent has failed in its duty to deposit IFMS amount of Rs.10 crores collected from the allottees in a separate bank account in non-compliance of various orders of the Authority dated 28.01.2020, 08.10.2020, 05.08.2021 and 11.11.2021. Therefore, final directions are given to the

¹ Haryana Real Estate Regulatory Authority, Panchkula

respondent to return IFMS amount of Rs.10 crores to the Association within three months of uploading of these orders.

9. Further, vide order dated 11.11.2021, both parties were directed to deposit an amount of Rs.20,650/- each to meet out the expenditure of the Local Commissioner. Accordingly, complainant has deposited an amount of Rs.20,650/- on 29.11.2021. Respondent has not yet deposited said amount. Therefore, respondent is directed to deposit an amount of Rs.20,650/- in accordance with orders of the Authority dated 11.11.2021, to meet out the expenditure of the Local Commissioner.

10. Disposed of. *File be consigned to record room and order be uploaded on the website of the Authority.”*

2. At the time the appeal came up for hearing on 19.03.2025, an objection was raised by counsel for the respondent that the appeal was not maintainable due to lack of pre-deposit. Notice was issued subject to hearing on this question.

3. Learned counsel for the appellant has contended that the appellant is not liable to make pre-deposit as the matter relates to IFMS amount. Besides, the respondent is not an ‘allottee’.

4. Mr. Setia, counsel for the respondent, on the other hand, submitted that as monetary aspects are involved, the appellant cannot escape its responsibility to comply with the provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, ‘the Act’). Besides, law is settled on the issue that Residents Welfare Association (RWA) is competent to file appeal as the same is only a group of

allottees. Thus, contention of learned counsel for the appellant deserves outright rejection.

5. We have heard learned counsel for the parties and given careful thought to the facts of the case.

6. On due consideration of the matter, we feel that non-compliance of proviso to Section 43(5) of the Act, would prove fatal as appeal cannot be entertained in the absence of pre-deposit.

7. 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.”

8. 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 same is dismissed.

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

10. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

August 07, 2026
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