

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No.791 of 2026 in/and

Appeal No. 469 of 2025

Date of Decision: August 07,2026

1. M/s M3M India Pvt. Ltd. through its AR Shiney Saha, Office at 41st Floor, Tower-1M3M International Financial Center, Sector 66, Gurugram-122101, Haryana, India

2. M/s Manglam Multiplex Pvt. Ltd. through its AR Bhavya Vijay Tangri, having office at Cabin-1, LGF, F-22, Sushant Shopping Arade, Sushant Lok, Phase-1, Gurugram-122102, Haryana

Appellants

Versus

1. Sharad Malhotra

2. Parveen Malhotra

Both Resident of U-22, 1st Floor, DLF Phase III, Gurugram

Respondents

CORAM:

Justice Rajan Gupta

Chairman

Dinesh Singh Chauhan

Member (Technical)

Present: Mr. Aman Arora and Mr. Archit Rana,
Advocates for the appellants.

O R D E R:

RAJAN GUPTA, CHAIRMAN

In the accompanying appeal, challenge has been made to orders dated 05.2025 and 30.10.2024, passed by the Authority¹. Operative part of order dated 30.10.2024 reads as under:

¹ Haryana Real Estate Regulatory Authority, Gurugram

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“H. Directions of the Authority:

15. 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 deposited amount of Rs.33,52,347/- after deducting 10% of the sale consideration i.e. Rs.1,12,62,373/- being earnest money along with an interest @ 11.10% on the refundable amount, from the date of cancellation i.e. 10.12.2021 till the date of realization of payment.

ii. Out of total amount so assessed, the respondents shall deduct the amount already paid to the complainants from the above refundable amount.

iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

16. Complaint stands disposed of.

17. File be consigned to the registry.”

2. The application filed by the appellants seeking rectification of the aforesaid order was dismissed by the Authority vide order dated 05.03.2025.

3. As per report from the Registry, the appellants were required to make pre-deposit of Rs.46,450,146/-. The appellants filed CM No. 791 of 2026 seeking clarification regarding pre-deposit.

4. Vide order dated 17.03.2026, report of OSD (J) was sought. Operative part of the report submitted by OSD(J) is reproduced hereunder for ready reference:

“Therefore, if the amount of Rs.24,87,622/- already paid by the appellant to the allottees is adjusted from the amount of pre-deposit i.e. Rs.44,07,374/- minus Rs.24,87,622/-, there is still deficit amount of Rs.19,19,752/-.”

5. Counsel for the appellant-promoters contended that amount of Rs.11,26,237/- (10% of the basic sale consideration) has been deducted from the amount paid by the respondent-allottees. Further, the appellants have refunded an amount of Rs.24,87,622/- to the respondent-allottees. Thus, the appellants have made good the pre-deposit.

6. The promoter is posing a challenge to the order, whereby it has been directed to refund the deposited amount of Rs.33,52,347/- after deducting 10% of the basic sale consideration being earnest money along with interest @11.10% on the refundable amount from the date of cancellation i.e. 10.12.2021 till the date of realization. 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.

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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.”

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-promoters would be at liberty to seek revival of the

appeal in case they make 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

Dinesh Singh Chauhan
Member (Technical)

August 07, 2026
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