

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: August 14,2026

(1) CM No. 1007 of 2026 in/and

Appeal No. 31 of 2026

Elan Buildcon Private Limited, Corporate Office at: 15th Floor, Two Horizon Center, Golf Course Road, DLF Phase 5, Sector 43, Gurugram, Haryana-122002, though its Authorised Representative Mr. Rohit Sharma S/o Sh. R. N. Sharma

Appellant

Versus

Switi Gupta, R/o B 20, Sri Aurobindo Marg, Sarvodaya Enclave, South Delhi, New Delhi-110017

Respondent

(1) CM No. 1006 of 2026 in/and

Appeal No. 32 of 2026

Elan Buildcon Private Limited, Corporate Office at: 15th Floor, Two Horizon Center, Golf Course Road, DLF Phase 5, Sector 43, Gurugram, Haryana-122002, though its Authorised Representative Mr. Rohit Sharma S/o Sh. R. N. Sharma

Appellant

Versus

Deepak Gupta, R/o B-20, Sarvodaya Enclave, South Delhi, New Delhi-110017

Respondent

CORAM:

**Justice Rajan Gupta
Dinesh Singh Chauhan**

**Chairman
Member (Technical)**

Present: Mr. Rohit Sangam, Advocate for the appellant.

ORDER:

RAJAN GUPTA, CHAIRMAN

This order shall dispose of above-mentioned two appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 31 of 2026

2. In the accompanying appeal, challenge has been made to order dated 08.07.2025, passed by the Authority¹, operative part whereof reads as under:

“G. Directions of the Authority:

51. Hence, the authority hereby passes this order and issue 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 is directed to pay delayed possession charges at the prescribed rate of interest i.e. 11.10% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 30.04.2022 till offer of possession plus two months as per proviso to section 18(1) of the Act read with rule 15 of the rules. The due date of possession and the date of entitlement are detailed in table given in para 21 of this order. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.

ii. The respondent is directed to issue a revised statement of account of the allotted unit of the complainant in terms of the relief allowed under the said order within a period of 30 days from the date of this order. The complainant is directed to pay the outstanding amount within next 30 days after issuing a revised statement of account. After clearing all the outstanding dues, the respondent shall handover the

¹ Haryana Real Estate Regulatory Authority, Gurugram

possession of the allotted unit to the complainant. The complainant is also duty bound to take the possession of the subject unit in terms of 19(10) of the Act, 2016.

iii. The respondent is directed to provide the details of charges on account of public utility services (i.e. electricity connection and pre-paid meter charges, external electrification/DHBN connection charges and HUDA water connection charges) to the complainant and the complainants after verifying the same, the charges/payments in lieu of it shall pay the same. The respondent is further directed not to charge any labourcess and holding charges.

iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e. 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(zb) of the Act.

v. The respondent is directed to get the conveyance deed of the allotted unit executed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

*vi. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's agreement. The respondent is barred from claiming holding charges from the complainant/allottees at any point of time even after being part of apartment buyer's agreement as per law settled by **Hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.***

52. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

53. Files be consigned to registry."

3. The appeal is accompanied with an application seeking directions to the registry for adjusting the outstanding amount due to

be paid by the respondent-allottee while calculating pre-deposit in terms of proviso to Section 43(5) of the Act².

4. As per report from the Registry, the appellant-promoter is required to deposit Rs. 5,53,544/- towards pre-deposit.

5. Vide order dated 19.05.2026, report of OSD (J) was sought. As per his report, the appellant-promoter is required to make Rs.5,53,544/- as pre-deposit.

6. The plea taken by the appellant-promoter is that as per the impugned order, the amount of delay possession charges comes to Rs.5,53,544/- and the outstanding dues directed to be paid by the respondent-allottees to the promoter comes to Rs.55,22,866/- thus, the appellant-promoter is not required to make 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,

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

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.

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. 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 and 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.

9. In view of above, it is evident that there is no scope for hearing the appeals on merits, as the same are not maintainable due to lack of pre-deposit. The applications are, thus, dismissed. Consequently, the appeals are also dismissed. However, the appellant-promoter would be at liberty to seek revival of the appeals in case it makes the pre-deposit within one month from today.

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

11. Files be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

August 14, 2026
mk