

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No.1917 of 2026 in/and

Appeal No. 279 of 2026

Date of Decision: October 09,2026

M/s Sumel Heights Pvt. Ltd., Unit No. 507, 5th Floor, SAS Tower, Tower-B, Sector 38, Gurugram, Haryana

Appellant

Versus

Rajesh Kohli, aged about 66 years, resident of 1376 P, Tower 10A, Gurugram-122001, Haryana

Respondent

CORAM:

Justice Rajan Gupta

Chairman

Dinesh Singh Chauhan

Member (Technical)

Present: Mr. Viren Sibal, Advocate for the appellant.

O R D E R:

RAJAN GUPTA, CHAIRMAN

In the accompanying appeal, challenge has been made to order dated 04.07.2025 passed by the Authority¹.

Operative part thereof reads as under:

“H. Directions of the Authority:

24. 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 promoters as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

i. The respondent is directed to pay delayed possession charges against the amount paid by the complainants at the prescribed rate of interest i.e. 11.10% p.a. for every month of delay from the due

¹ Haryana Real Estate Regulatory Authority, Gurugram

date of possession (i.e. 28.08.2012) till offer of possession plus 2 months after obtaining OC or actual handover of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid.

ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, ibid.

25. Complaint stands disposed of.

26. File be consigned to the registry.”

2. The appeal is accompanied with an application (CM No. 1917 of 2026) seeking exemption from pre-deposit.

3. As per report from the Registry, the appellant is required to make pre-deposit of Rs. 36,20,240/-.

4. Vide order dated 18.08.2026, report of OSD (J) was sought. As per his report, the appellant is required to deposit Rs.36,20,240/-.

5. Counsel for the appellant-promoter contended that Registry ought to have calculated the interest from the date when the allottee made the payment to the promoter.

6. The promoter is posing a challenge to the order, whereby it has been directed to pay delay possession charges against the amount paid by the complainants at the prescribed rate of interest i.e. 11.10% p.a. for every month of delay from the due date of possession i.e. 28.08.2012 till offer of possession plus two months after obtaining Occupation Certificate or actual hand over of possession, whichever is earlier. 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.

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

12. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

October 09,2026/mk