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Reserved on : 22.06.2026

Pronounced on :20.08.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

RERA APPEALS NO. 21 OF 2021

BETWEEN:

M/S SHRIVISION TOWERS PVT. LTD.,
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING ITS PRESENT OFFICE AT
NO.31, 2ND MAIN,
T.CHOWDAIAH ROAD,
SADASHIVANAGAR,
BENGALURU - 560 080.
REPRESENTED BY ITS
AUTHORISED SIGNATORY
SRI NAVEEN KUMAR J

...APPELLANT

(BY SRI. JOSEPH ANTHONY., ADVOCATE)

AND:

1. SRI. PANKAJ KUMAR KOTHARI,
S/O PRAFULCHANDRA P. KOTHARI,
AGED ABOUT 53 YEARS,
NO.502, SHALIBHADRA APARTMENT,
PANCHESWAR TOWER ROAD,
JAMNAGAR GUJARAT - 360 001.

2. THE ADJUDICATING OFFICER,
THE KARNATAKA REAL ESTATE
REGULATORY AUTHORITY (RERA),
2ND FLOOR, SILVER JUBILEE BLOCK,
3RD CROSS, MISSION ROAD,
BENGALURU - 560 027.

…RESPONDENTS

(BY SMT. JAYNA KOTHARI, SR. ADVOCATE FOR
SRI. NAVEEN CHANDRA. V., ADVOCATE FOR R1,
SRI. K. RAJASHEKHAR, ADVOCATE FOR R2)

THIS RERA APPEAL IS FILED UNDER SECTION 58 OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016, ISSUE AN ORDER OR DIRECTION TO SET ASIDE THE IMPUGNED JUDGEMENT DATED AUGUST 19, 2021 PASSED IN APPEAL (K-REAT) NO.266/2020 (ANNEXURE A); OR IN THE ALTERNATIVE, REMAND THE MATTER TO THE FILE OF K-REAT, THEREBY DIRECTING THE K-REAT TO PERMIT THE APPELLANT HEREIN TO ADVANCE ARGUMENTS AND PROSECUTE THE SAID APPEAL WITHOUT THE REQUIREMENT TO MAKE THE DEPOSIT OF SEVENTY PERCENT (70%) OF THE AMOUNT AS AWARDED BY RESPONDENT NO.2 TO RESPONDENT NOS.1; AND ETC.,

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE RAJESH RAI K
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This larger Bench is constituted by the order of Hon'ble The Chief Justice dated 08.06.2026, to answer the question formulated and referred by the Division Bench of this Court, which reads as under:

> *"Whether the Co-ordinate Bench, in the case of **SHRIRAM PROPERTIES** (supra), is right in holding that even in a case where compensation has been granted, 30% of the amount or such higher amount as determined by the Tribunal can be deposited for the Appellate Tribunal to consider the Appeal on its merits by relying upon the judgment in the case of **NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD**. (supra) and in the light of Section 43(5) of the Act?"*

2. It is apt to state the brief facts of the case and the issue which has made the Division Bench of this Court to refer this matter to larger Bench to answer the question raised.

3. This RERA. Appeal has been filed by the appellant, challenging the order dated 19.08.2021, passed

by the Karnataka Real Estate Appellate Tribunal, Bengaluru[1].

4. The Tribunal vide impugned order, dismissed the appeal filed by the appellant on the premise that the appellant has not deposited the total amount as determined by the Adjudicating Officer in favor of respondent No.1 as contemplated under proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016[2].

5. For easy reference, the parties are referred to as Developer, Land Owners and Allottee.

5.1 The Allottee booked an apartment in the Project under the name and style "Shriram Green Field Phase-I' at Bommenahalli Village, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru.

5.2 An Agreement to Sell and Construction Agreement both dated 24.03.2015 came to be entered into

[1] 'the Tribunal', for short

[2] 'the Act of 2016', for short

between the Allottee, Land Owners and the Developer. As per the terms of the Agreement, the apartment was to be delivered to the Allottee in the month of December 2017 with six months grace period. The Agreement further records that the Developer would be liable to pay Rs.4/- per Sq.ft per month on the super built-up area of the apartment in question before delivering the possession of the said apartment to the Allottee, in case of any delay.

5.3 It appears that the Allottee filed a complaint before the Adjudicating Officer against the Developer seeking delay compensation.

5.4 The Developer appeared and filed his objections justifying the delay in construction and completion of the project within the time prescribed.

5.5 The Adjudicating Officer after hearing both the parties, allowed the complaint filed by the Allottee, directing the Developer to pay the delay compensation over and above 2% at the rate of

interest fixed by S.B.I on the amount paid by him towards purchase of flat till the possession is delivered commencing from July 2018. The Adjudicating Officer further directed the Developer to pay a sum of Rs.5,000/- as cost of the complaint.

5.6 The Developer assailed the order passed by the Adjudicating Officer before the Tribunal in an appeal under Section 44 of the Act of 2016, primarily on the ground that, the Adjudicating Officer has failed to adequately appreciate the peculiar facts and circumstances involved in the case, thereby rendering an unreasoned and unsubstantiated order.

5.7 It was the further claim of the Developer that the Adjudicating Officer has failed to consider force *majeure* conditions and Section 72 of the Act of 2016, while awarding compensation to the Allottee.

5.8 At the time of institution of the appeal, the Developer had deposited 30% of the amount awarded by the Adjudicating Officer, which according to the

Developer is in furtherance of Section 43(5) of the Act of 2016. Upon such deposit, the Tribunal on 27.07.2021, admitted the appeal and posted the matter for arguments.

5.9 It is the claim of the Developer that the Tribunal during the hearing, allowed the Developer to advance arguments on merits upon deposit of remainder of 70% of the amount awarded by the Adjudicating Officer in favor of the Allottee.

5.10 The Developer raised contentions with regard to the deposit that, he could not instantly and forthwith make the pre-deposit of the said amount for the reason of financial constraints. The Tribunal had rejected the said contention/ plea to waive the pre-deposit amount awarded by the Adjudicating Officer and dismissed the appeal for failure to deposit the entire amount ordered by the Adjudicating Officer, payable to Allottee as contemplated under proviso to Section 43(5) of the Act of 2016, by means of order dated 19.08.2021. It is this order passed by the

Tribunal is called in question in the appeal by the Developer before the Division Bench.

5.11 Sri.Joseph Anthony, learned counsel appearing for the Developer relying on the Judgment of another Division Bench of this Court in ***M/s.SHRIRAM PROPERTIES LIMITED VS. SRI VARUN BAGARIA***[3]***,*** submitted that, a perusal of Section 43(5) indicates there are two kinds of deposit, which a Promoter under the Act must make if an appeal is preferred by such Promoter should be entertained by the Tribunal: (i)30% of the 'penalty' that is imposed on the Promoter for the violation of provisions of the Act; or (ii) the total amount that the Promoter is liable to pay to the Allottee as per the order of the Adjudicating Authority.

5.12 According to learned counsel for the Developer, the 30% of the award amount deposited by the Developer shall suffice the requirement of Section 43(5) of the Act of 2016.

[3] RERA APPEAL NO.22/2021 CW. RERA APPEAL NO.25/2021

5.13 Learned counsel further submitted that the provisions of Section 43(5) have to be read in conjunction with Section 18 of the Act of 2016, which contemplates in case the Allottee wishes to withdraw from the Project, without prejudice to any other remedy available, the Promoter to return the amount received by him in respect of that apartment/plot/building, as the case may be, with interest at such rate as may be prescribed in this behalf. According to learned counsel appearing for the Developer, the complaint filed by the Allottee is not for refund of the amount, but for compensation for the delay, which is not a pre-determined amount as in the case of refund. He further submitted that like in the case of penalty, even on grant of compensation, the pre-deposit necessarily has to be 30% of the amount awarded and nothing more. He also submitted that the provisions of Section 43(5), if read literally, the same do not depict that, in a case

where compensation has been granted, complete amount need to be deposited.

5.14 To buttress his argument, learned counsel placed reliance on the Judgment of the Supreme Court in ***B.PREMANAND VS. MOHAN KOIKAL[4],*** and stressed on the principle that, it is settled law that, literal meaning need to be given to the words as a cardinal rule and any departure shall lead to difficulties. Learned counsel further relied on the Judgment in the case of ***SHIV SHAKTI CO-OPERATIVE HOUSING SOCIETY VS. SWARAJ DEVELOPERS[5],*** to contend that, it is well settled principle of law that, Court cannot read anything into a statutory provision which is plain and unambiguous. Learned counsel, on similar proposition, relied on ***KARNATAKA STATE FINANCIAL CORPORATION VS.***

[4] (2011) 4 SCC 266

[5] (2003) 6 SCC 659

***N.NARASIMHAIAH*[6].** With this learned counsel for the Developer urged the Division Bench to set-aside the order passed by the Tribunal and remand the matter to enable the Developer to address his arguments and the Tribunal to decide the appeal of the Developer on merits.

5.15 In contrast, Smt.Jayna Kothari, learned Senior counsel appearing for the Allottee, justified the impugned order passed by the Tribunal to state that, it is only when a penalty order is imposed by the Adjudicating Officer, discretion vests with the Tribunal to enable the Promoter to make a pre-deposit of at least 30% or any such other amount as directed by the Tribunal. According to learned Senior counsel, since the order of the Adjudicating Officer is not a case of award of penalty, but compensation in the nature of interest, on a reading of Section 43(5), the Developer is required to deposit the complete amount as has been awarded.

[6] (2008) 5 SCC 176

5.16 Learned Senior counsel further submitted that the issue is no more *res integra* in view of the Judgment of the Supreme Court in the case of ***NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., VS. STATE OF UTTAR PRADESH AND OTHERS***[7]***,*** wherein it was held that, it is in the eventuality the appeal is against imposition of penalty, the Promoter has to deposit at least 30% of the penalty amount or such higher amount as may be directed by the Appellate Tribunal.

5.17 According to learned Senior counsel, the Supreme Court in the case of ***NEWTECH*** supra also held that, 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 Promoter, if any, or with both, as the case may be, before the said appeal is heard.

[7] (2021) 18 SCC 1

Learned Senior counsel stated that the Judgment of the Supreme Court is very clear that, in a case other than penalty, pre-deposit has to be complete amount as awarded by the Adjudicating Officer. She also relied upon the Judgment of the Bombay High Court in the case of ***CCI PROJECTS PVT. LTD., VS. UNION OF INDIA AND OTHERS***[8]***,*** wherein according to her, the Bombay High Court which was considering the appeal arising from the Maharashtra Real Estate Appellate Tribunal, directed the petitioner therein to deposit 100% of the amount granted in favor of the Allottees for delay in handing over the possession of the respective flats by granting interest at the rate of 9% per annum, from the date of contract till the date of possession and also pay interest at the same rate from the dates of the subsequent payments of consideration till handing over of possession.

[8] W.P.NO.2008/2022 and connected matters decided on 06.05.2022

5.18 According to learned Senior counsel, the cases decided by the Bombay High Court, whereby the interest has been granted though possession was given to the Allottees therein, was in the nature of compensation, still the Bombay High Court after referring to the case of ***NEWTECH*** supra, more specifically Paragraphs No.123 to 129, has held that, the issue is covered by the Judgment of the Supreme Court in the case of ***NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD.*** (supra).

5.19 Learned Senior counsel further submitted that, the reliance placed by learned counsel for the Developer on the Judgment of another Division Bench of this Court in the case of ***SHRIRAM PROPERTIES*** (supra) is concerned, the same is contrary/ at variance with the Judgment of the Supreme Court inasmuch as the Division Bench though dealing with a case of compensation, had held the pre-deposit of 30% awarded amount shall suffice is clearly impermissible. According to her, the Division Bench

has overlooked the difference between a case where penalty has been awarded as against a case wherein, interest/ compensation is granted. The Division Bench has incorporated in the principle of pre-deposit, a case of interest/ compensation which is not in conformity with the Judgment of the Supreme Court in the case of ***NEWTECH*** (supra). She accordingly submitted that, the Tribunal was right in dismissing the appeal filed by the Developer and sought to dismiss the present appeal.

5.20 The Division Bench, having considered the rival submissions, upon perusal of the records, was of the opinion that, the short issue involved in the *lis* was, whether the Tribunal is justified in dismissing the appeal on failure on the part of the Developer to deposit the complete amount of compensation granted.

5.21 The Division Bench after referring to both the Judgments in ***SHRIRAM PROPERTIES*** (supra) by another Division Bench of this Court and also the

Judgment in ***NEWTECH PROMOTERS AND DEVELOPERS PRIVATE LIMITED*** (supra) by the Supreme Court, on pre-deposit concept, in case of penalty and compensation/interest as contemplated in the proviso to Section 43(5) of the Act of 2016, after perusing Paragraph No.12 in ***SRIRAM PROPERTIES*** (supra) and Paragraph No.122 (*wrongly stated as Paragraph No.121*) in ***NEWTECH PROMOTERS*** (supra) by the Supreme Court, observed that, '*it is clear that the Supreme Court has directed where an appeal is against an order of the Authority or Adjudicating Officer against imposition of penalty, the promoter has to deposit at least 30% of the penalty or such higher amount as may be directed by the Appellate Tribunal*'.

5.22 The Division Bench further observed that the case in hand is not that of penalty and opined that the Judgment of another Division Bench is at variance with the conclusion drawn by the Supreme Court in the aforesaid Paragraph in ***NEWTECH*** (supra). In

that view of the matter, the Division Bench on the finding of another Division Bench that 30% need to be deposited even where the compensation has been awarded, based on the Judgment in the case of ***NEWTECH*** (supra) by the Supreme Court, needs to be listed before a larger Bench for decision, whether the conclusion arrived at by the Division Bench in ***SHRIRAM PROPERTIES*** (supra) requires reconsideration, more especially in view of Paragraph No.122 of the Judgment of the Supreme Court in ***NEWTECH*** (supra).

5.23 It is further noticed from the order passed by the Division Bench that, the Division Bench at Paragraph No.22 of its order observed that, though the counsel for the respondent has relied upon some other judgments in support of her contention, but the same are of other High Courts, whereas Division Bench of this Court in ***SHRIRAM PROPERTIES*** (supra) has taken a view as afore. In view of law laid down by the Supreme Court in ***CENTRAL BOARD***

OF DAWOODI BOHRA AND ANOTHER VS. STATE OF MAHARASHTRA AND ANOTHER[9]***,*** wherein the Supreme Court has held as under:

> *"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-*
>
> (1) *The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.*
>
> (2) *A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting*

[9] WRIT PETITION (CIVIL) NO.740/1986 decided on 17.12.2004

of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) *The above rules are subject to two exceptions :*

(i) *The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and*

(ii) *In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in* ***RAGHUBIR SINGH & ORS. AND HANSOLI DEVI & ORS. (SUPRA)****."*

(emphasis supplied by the Division Bench)

5.24 In that view of the matter, the Division Bench directed the Registry to place this matter before Hon'ble The Chief Justice for constituting larger Bench for referring the matter to answer the question, which we have already extracted above.

6. Before dwelling upon to answer the question referred to us, it is apt to state here that, though the contentions on merits of the appeal stated above are referred, is only to explain the reason for the reference, we make it clear that, this larger Bench is constituted not to venture upon the merits of the case, but with a limited scope to answer, whether the view taken by another Division Bench of this Court in ***SHRIRAM PROPERTIES*** (supra), is right in holding that even in a case where compensation has been granted, 30% of the penalty or such higher amount as may be directed by the Tribunal can be deposited for Appellate Tribunal to consider the appeal on merits by relying on the Judgment of the Supreme Court in the case of ***NEWTECH*** (supra) and in the light of Section 43(5) of the Act of 2016.

7. Heard, Sri.Joseph Anthony, learned counsel appearing for the appellant/Developer and Smt.Jayna Kothari, learned Senior counsel assisted by Sri.Naveen Chandra.V, learned counsel for respondent No.1/ Allottee and Sri.K.Rajashekhar, learned counsel appearing for respondent No.2.

8. Both the counsel again reiterated their submissions on the merits, however in view of our stand stated supra, we have considered the submissions only with reference to answering the question referred on the finding of the Division Bench in ***SHRIRAM PROPERTIES*** (supra), relying on the Judgment of ***NEWTECH*** (supra) by the Supreme Court and in the light of Section 43(5) of the Act of 2016.

9. Sri.Joseph Anthony, learned counsel appearing for the Developer submits that the Division Bench in ***SHRIRAM PROPERTIES*** (supra), after relying on the Judgment of the Supreme Court in ***NEWTECH*** (supra), properly laid a law that, 30% of the penalty be deposited even where compensation has been awarded. He submits

that there is no distinction between the penalty and compensation. A discretion is vested with the Tribunal to direct the appellant to deposit not less than 30% in both the cases.

10. In contrast, Smt.Jayna Kothari, learned Senior counsel submits that the observation of the Division Bench in ***SHRIRAM PROPERTIES*** (supra) is directly in contravention to the finding of the Supreme Court in ***NEWTECH*** (supra), inasmuch as the same is contrary to the language employed in proviso to Section 43(5) of the Act of 2016.

11. Having considered the rival submissions, we have perused the entire appeal papers and the provisions of Act of 2016, and Judgment of ***SHRIRAM PROPERTIES*** (supra) by the Division Bench of this Court, as well as ***NEWTECH*** (supra) by the Supreme Court.

12. Before dwelling on the question referred to us which laid foundation for constitution of this Bench, it is apt to extract Section 43 of the Act of 2016 and certain

principles and settled position of law on interpretation of the provision by the Supreme Court.

13. Section 43 of the Act of 2016 refers to Establishment of Real Estate Appellate Tribunal.

14. Sub-section (1) states about establishment of Real Estate Appellate Tribunal.

15. Sub-section (2) refers to establishment of one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

16. Sub-section (3) refers to Members consisting of the Appellate Tribunal.

17. Sub-section (4) refers to establishment of single Appellate Tribunal for two or more States or Union territories, if the Government deems it fit to establish.

18. Since in the reference, we are concerned only with sub-section (5) and proviso to that, we extract only

Section 43(5) along with its proviso and explanation, which is very crucial, which states as under:

> "(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.
>
> "*Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty percent of the penalty or such higher percentage as may be determined by the Appellate Tribunal or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.*"
>
> **Explanation:-** For the purpose of this sub-section "**person**" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

19. The proviso clearly states that in case an appeal is filed by the Promoter, he is liable to deposit a statutory deposit amount ordered by the Adjudicating Officer or authority. However, an exception is carved by providing a discretion to the Appellate Tribunal to direct the promoter to deposit not less than 30% of the amount ordered by the

Adjudicating Officer, in case of penalty and in any other order the entire amount required to be deposited before an appeal is to be instituted.

20. The Supreme Court in ***NEWTECH*** (supra), especially at Paragraph Nos.121 to 129, while answering question No.4 raised in the said appeal, the Supreme Court has held as under:

> *"**Question no. 4**: **Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?***
>
> 121. Before we examine the challenge to the proviso to Section 43(5) of the Act of making pre-deposit for entertaining an appeal before the Tribunal, it may be apposite to take note of Section 43(5) of the Act, 2016. Section 43(5) reads as follows:
>
> > **"43. Establishment of Real Estate Appellate Tribunal -**
> >
> > .....
> >
> > (5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:
> >
> > Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the

> Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.
>
> *Explanation* – For the purpose of this subsection "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

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, 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.

124. Learned counsel further submits that if the entire sum as has been computed either by the Authority or adjudicating officer, is to be deposited including 30 per cent of the penalty in the first place, the remedy of appeal provided by one hand is being taken away by the other since the promoter is financially under distress and incapable to deposit the full computed amount by the authority/ adjudicating officer. The right of appreciation of his defence at appellate stage which is made available to him under the statute became nugatory because of the onerous mandatory requirement of pre-deposit in entertaining the appeal only on the promoter who intends to prefer under Section 43(5) of the Act which according to him is in the given facts and circumstances of this case is

unconstitutional and violative of Article 14 of the Constitution of India.

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 visaviz., 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.

126. Therefore, the question of discrimination in the first place does not arise which has been alleged as they fall under distinct and different categories/classes.

127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allotee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him.

128. At the same time, it will avoid unscrupulous and uncalled for litigation at the appellate stage and restrict the promoter if feels that there is some manifest material irregularity being committed or his defence has not been properly appreciated at the first stage, would prefer an appeal for reappraisal of the evidence on record provided substantive compliance of the condition of predeposit is made over, the rights of the parties inter se could easily be saved for adjudication at the appellate stage.

129. There are multiple statutes which provide a condition of pre deposit of a stipulated statutory amount to be deposited before an appeal is entertained by an appellate forum/tribunal for re appraisal of facts and law at the appellate stage and it has been examined by this Court as well. Proviso to Section 18 of SARFAESI Act, 2002 of the Act which provides pre-deposit is as follows:

> **"18. Appeal to Appellate Tribunal**
> .....
> Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty five per cent. of debt referred to in the second proviso."

21. The Supreme Court time and again interpreted the binding nature of the Judgment by the Supreme Court under Article 141 of the Constitution of India. The Supreme Court in a recent Judgment dated 07.11.2025 in the case of ***ROHAN VIJAY NAHAR AND OTHERS VS. THE STATE OF MAHARASHTRA AND OTHERS***[10], in paragraphs No.1, 3, 35 and 36 has held as under:

> *"1. The judiciary draws its strength from discipline and not dominion. The Constitution of India creates courts of record that are independent in their spheres and yet binds them together through a coherent hierarchy. The High Courts in India possess a wide jurisdiction, but the Supreme Court of India remains the final interpreter of law. Article 141 of the Constitution of India1 declares that the law laid down by this Court binds every court in the country. Further, Article 144 of the Constitution obliges all authorities, civil and judicial, to act in aid of this Court. These are not ceremonial recitals. They are the structural guarantees that convert dispersed adjudication into a single system that speaks with one voice and commands public confidence.*
>
> *xxxx*
>
> *3. Judicial discipline is the ethic that turns hierarchy into harmony. It requires courtesy, restraint, and obedience to binding precedent even*

[10] (2025) SCC ONLINE SC 2366

where a judge is personally unpersuaded. The lawful course is to apply the precedent and, if needed, record reasons for inviting a larger Bench to Hereinafter referred to as, "the Constitution" reconsider it. The unlawful and unjust course is to distinguish in name while disregarding in substance or to recast issues in order to sidestep a rule that binds. "Stare decisis et non quieta movere" which means to stand by decisions and not to disturb settled matters, is not a slogan but a safeguard of equality before the law. Judges do not sit to settle scores. The gavel is an instrument of reason and not a weapon of reprisal. A vindictive stance is incompatible with the oath to uphold the Constitution and the law.

xxxx

35. Judicial discipline required faithful application of the law declared by this Court under Article 141 of the Constitution. Coordinate Benches of the High Court have consistently followed Godrej and Boyce (Supra) in closely comparable situations. The impugned judgment nonetheless revives positions that Godrej and Boyce (Supra) has rejected. We also note that the Bench was presided over by the same Judge who had earlier taken a contrary view that was set aside by this Court. We do not attribute motive. However, when a judgment minimizes a binding ratio, ignores missing statutory steps, and seeks to distinguish on immaterial facts, it creates an appearance of a reluctance to accept precedent. Such an approach conveys a measure of

pettiness that is inconsistent with the detachment that judicial reasoning demands. In our view, this is an unfortunate departure from the discipline of stare decisis.

36. We accordingly hold that the present appeals are indistinguishable in principle from Godrej and Boyce (Supra). The record discloses the same jurisdictional defect of non-service of a notice under Section 35(3) of the IFA, the same absence of a final notification under Section 35(1) of the IFA, and the same want of contemporaneous steps under Sections 4, 5, 6 and 7 of the MPFA Act. In such circumstances the High Court could not, consistently with Article 141 of the Constitution, avoid the binding ratio by treating immaterial differences as determinative. In our opinion, fidelity to binding precedent and to the statutory scheme admits of no other conclusion than that the impugned order must be set aside."

22. It is settled position of law that, the Courts are required to give literal meaning to the words used in a provision of law as a cardinal rule and any departure otherwise in the absence of any ambiguity, lead to difficulties and amounts to rewriting of the provision, which jurisdiction is not enjoined with the Courts and it is the jurisdiction of legislature to enact the provision in consonance with the Rule of Law.

23. It is also settled position of law that, Court neither can read anything into a statutory provision which is plain and unambiguous nor skip to read anything which is the indispensable part of the provision which gives literal meaning and intention of the legislature to the said provision. In other words, the Courts can neither add or subtract nor read and interpret the plain and unambiguous provision which is opposite to the intention of the Legislature and object of the Act.

24. A plain reading of Proviso to Section 43(5) manifestly indicates that in case a promoter files an appeal with the Appellate Tribunal against the order passed by the Adjudicating Officer, in case the order is with respect to penalty, he has to deposit not less than 30% of the penalty amount or such higher percentage enjoining a discretion to the Appellate Tribunal to impose higher percentage than 30%.

25. In case of any other order wherein interest and compensation imposed by the Appellate Tribunal, the Promoter in an appeal has to pre-deposit a total amount to

be paid to the allottee including interest and compensation imposed on him, if any or with both, as the case may be, before the appeal is heard.

26. The Supreme Court at Paragraph No.122 of ***NEWTECH*** (supra) has clearly held that, as per Section 43(5) of the Act of 2016, if the appellant were to be a Promoter against the order passed by the Authority or Adjudicating Officer, has to deposit at least 30% of the Penalty amount or such higher amount as may be directed by the Appellate Tribunal. However, 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, if any, or with both, as the case may be, before the appeal is to be instituted.

27. The Division Bench of this Court in ***SHRIRAM PROPERTIES*** (supra), at paragraph No.12 has held/observed as under:

> *"12. It is clear from a plain reading of the judgment in the case of* ***Newtech Promoters and Developers Pvt. Ltd.,*** *that an Appeal can be preferred against the order of Adjudicating Officer awarding delay compensation and the Appellate Tribunal is required to consider the Appeal on its merits if the Appellant deposits 30% or such other percentage of the award amount as may be ordered by the Appellate Tribunal."*

28. The Division in ***SHRIRAM PROPERTIES*** (supra) was considering the case, where the Developer was directed by the Adjudicating Officer in the complaint instituted by the Allottees, to pay delay compensation from July 2017 till the date of possession after obtaining Occupancy Certificate including all amenities, together with simple interest @ 10.75% per annum, as also litigation cost of Rs.5,000/-.

29. The Promoter in appeal before the Appellate Tribunal deposited 30% of the total amount ordered by the Adjudicating Officer, payable to the Allottee. However failed to deposit balance 70% as directed by the Tribunal before he would be heard in the appeal. Consequently, the appeal was dismissed for non-depositing of the amount

ordered. Assailing the order passed by the Appellate Tribunal, the Promoter was before the Division Bench in ***SHRIRAM PROPERTIES*** (supra).

30. The Division Bench, in ***SHIRAM PROPERTIES*** (supra) though referred paragraph No.122 (wrongly stated as paragraph No.123) of ***NEWTECH*** (supra) by the supreme Court, in Paragraph No.10, however, in Paragraph No.12 has held that *'an appeal can be preferred against the order of Adjudicating Officer awarding delay compensation and the Appellate Tribunal is required to consider the Appeal on its merits if the Appellant deposits 30% or such other percentage of the award amount as may be ordered by the Appellate Tribunal.'*

31. The Supreme Court in ***NEWTECH*** (supra), at Paragraph No.122, manifestly in clear words had stated while reading the literal meaning of proviso to Section 43(5) of the Act of 2016 that, any appeal arising out of order of penalty, passed by the Adjudicating Officer, in case by a Promoter, he has to deposit statutory deposit at least 30% of the penalty amount or such higher amount,

as may be directed by the Appellate Tribunal. However, where an appeal is against any order which involves return of amount to the Allottee, the Promoter is under an obligation to deposit with the Appellate Tribunal a total amount to be paid to the Allottee as ordered by the Adjudicating Officer, 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.

32. The reading of the Judgment of ***NEWTECH*** (supra) by the Supreme Court, is loud and clear with reference to pre-deposit in case of order of penalty and in any other order other than penalty. If the order is of penalty, then the deposit must be at least 30% of the penalty amount or at the any other higher amount as directed by the Appellate Tribunal. However in any other order, other than the penalty, entire amount ordered against the Promoter by the Adjudicating Officer, payable to the Allottee or the Complainant including the interest and compensation imposed on him, if any, or with both, as

the case may be, required to be deposited before the appeal is to be instituted.

33. The finding of the Division Bench in ***SHRIRAM PROPERTIES*** (supra) by the Division Bench is just opposite and at variance with the conclusion drawn by the Supreme Court in ***NEWTECH*** (supra). The plain reading of the conclusion of the Supreme Court in ***NEWTECH*** (supra) is in consonance with the literal meaning of proviso to sub-section (5) of Section 43 of the Act of 2016.

34. The Division Bench in ***SHRIRAM PROPERTIES*** (supra), misread and misdirected itself in reading the Judgment of the Supreme Court in ***NEWTECH*** (supra). In the case of ***SHRIRAM PROPERTIES*** (supra), the order was one of delay compensation, and the Division Bench held that, a deposit of at least 30% or any higher amount as directed by the Appellate Tribunal is suffice to the Appellate Tribunal to proceed with the case and decide the matter on merits. This finding is against the spirit of the law contemplated in proviso to Section 43(5) of the Act of

2016, so also against the proposition laid down by the Supreme Court.

35. Our view gain support with the doctrine of *Stare Decisis,* which comes from a Latin phrase '*Stare Decisis Et Non Quieta Movere',* meaning *'to stand by decisions and not to disturb the already settled matters*'.

36. It is a common law principle in legal system obligating the Courts to rely on the previous judicial decisions or precedents, when resolving similar cases in order to uphold judicial efficiency to reduce the need to re-litigate the settled legal principles, saving time and resources. Any departure from a settled position of law interpreted by the highest Court (Supreme Court) having a binding force as precedent under Article 141 of the Constitution of India, would lead to unsettle the settled matters and create unrest in the Society and also having the effect of undermining the judicial propriety.

37. The judicial discipline demands that a quietus given to a proposition of law by the higher Court having a

precedential value under Article 141 of the Constitution of India, requires courtesy, restraint and obedience to the binding precedent to safeguard the principle of equality before law.

38. The Supreme Court in ***ROHAN VIJAY NAHAR*** (supra) has held that, a departure from the view taken by the higher Court not only discerns a party before the Court, but it erodes practicability and multiplies litigation and weakens the faith in the Rule of law. The maxim "*Interest Reipulicae Ut Sit Finis Litium*" means that, it is in the public interest that litigation should come to an end, as the Society has an interest in achieving finality and finality from the highest Court is the glue that holds a nationwide system of justice together. Further, the Supreme Court at paragraph No.35 of its order, held that, *'Judicial discipline required faithful application of the law declared by this Court under Article 141 of the Constitution of India'*.

39. Though the Division Bench at paragraph No.20 of its order refers this matter to the larger Bench, has held that, deposit of at least 30% or such other higher amount

is only in the case where there is an order of penalty and not otherwise, however in view of the Judgment of the Supreme Court in the case of ***CENTRAL BOARD OF DAWOODI BOHRA COMMUNITY AND ANOTHER*** (supra) and in view of the Judgments referred by learned Senior counsel Smt.Jayna Kothari, in support of her contention, are of other High Courts whereas the another Division Bench of this Court in ***SHRIRAM PROPERTIES*** (supra) has held after relying the Judgment of Supreme Court in ***NEWTECH*** (supra) that, deposit of at least 30% is suffice to require the Appellate Tribunal to hear the matter, referred to matter to the larger Bench with the specific question in view of ***CENTRAL BOARD OF DAWOODI BOHRA COMMUNITY*** (supra), wherein it was held that, *'it will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which*

pronounced the decision laying down the law the correctness of which is doubted'.

40. We answer the question referred in the Negative holding that the finding of the Division Bench in ***M/s.SHRIRAM PROPERTIES LIMITED VS. SRI VARUN BAGARIA*** that, even in a case where compensation has been granted, 30% of the amount or such higher amount as determined by the Tribunal can be deposited for the Appellate Tribunal to consider the Appeal on its merits, is not proper proposition of law and against the law laid down by the Supreme Court in ***NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD., VS. STATE OF UTTAR PRADESH AND OTHERS*** and not in consonance with Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, in respect of order other than penalty. In that view of the matter, the Judgment of the Division Bench in ***M/s.SHRIRAM PROPERTIES LIMITED VS. SRI VARUN BAGARIA*** is no more a good law.

41. The reference is answered accordingly.

42. As we have already made it clear that, we are assigned with the task only to answer the question on finding of the Division Bench in ***SHRIRAM PROPERTIES*** (supra) and not to decide the case on merits. Whether the impugned order amounts to penalty or otherwise is left to be decided by the Division Bench on the facts of the case and merits.

43. In view of our answer afore, the Registry is directed to place the matter before the concerned roster Division Bench for decision in accordance with the law on the order impugned in the appeal on merits.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(RAJESH RAI K)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE

TKN