AFR
Sl. No. 51
BENCH NO.1.

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL

AT

LUCKNOW.

Appeal No.476 OF 2025

Attractive Nirman Private Limited …..Appellant.

Vs.

Mridul Garg and Anr. ….Respondent.

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Hon'ble Mr. Justice Suneet Kumar, Chairman.
Hon'ble Mr. Sanjai Khare, Judicial Member.
Hon'ble Mr. Rameshwar Singh, Administrative Member.

1. Heard Sri Sudeep Kumar, Sr. Advocate, appearing for the appellant/applicant and Sri Mridul Garg, respondent no.1 in person and Ms. Prerna Jalan, Advocate, appearing for respondent no.2.
2. Learned counsel for appellant/applicant has pressed the waiver application, to exempt compliance of Section 43(5) of The Real Estate (Regulation and Development) Act, 2016 (for short, 'Act 2016'). In other words, applicant submits that the appeal be entertained and heard bypassing the mandate of pre-deposit.
3. Learned counsel for the appellant/applicant submits that appellant purchased a land, situated at Khasra No. 511, Naubasta Kala, Lucknow, on 25.12.2018, from respondent no. 2, i.e., Aftek Developers Private Limited, the erstwhile promotor, and thereafter, got themselves duly registered as promotor with RERA, bearing registration no. UPRERAPRJ15533, dated 11.04.2018.
4. Learned counsel for the appellant at the very outset, submits that respondent no.1 (allottee) had booked a unit in 2014, with the respondent no. 2 i.e., erstwhile promotor, in the project launched on the purchased land. It is submitted that respondent no.1 being aggrieved, on 27.03.2018 preferred a complaint against respondent no.2 under Section 31 of Act, 2016, before Regulatory Authority, seeking refund of his deposited amount. The complaint came to be allowed vide, order dated 13.07.2019(decree), wherein, respondent no. 2 was directed to refund

the amount deposited by respondent no.1, along with, interest at MCLR+1 percent.

5. It is submitted that, in execution proceedings of the decree, the executing authority, instead of issuing recovery certificate (RC) against respondent no. 2, erroneously, issued RC against the appellant promotor. It is therefore, urged, by learned counsel for the appellant that since no complaint was instituted against the applicant, nor, any order/decree was passed against the appellant/applicant, therefore, applicant is not bound to comply the mandate of Section 43(5) of the Act, 2016. It is further contended by the learned counsel for the appellant that though appellant purchased the project land from respondent no.2, but had not purchased the project constructed thereon by the earlier promotor (respondent no.2). Further, on query it is admitted by the learned counsel that the principal order (decree) under execution has not been challenged in appeal by the appellant. The consequential RC issued thereunder is under challenge.

6. Learned counsel for the appellant further placed reliance on Section 2(d) of the Act, 2016, to contend that an "allottee," in relation to a real estate project, means a person to whom a plot, apartment, or building, has been allotted, sold, or otherwise transferred by the promoter. It is, therefore, argued that since allotment of the unit in favour of respondent no. 1 was effected by respondent no. 2, the latter assumes the role of "promoter", vis-à-vis, respondent no. 1, and not the appellant/applicant who is the subsequent purchaser of the project land.

7. In light of the aforesaid submissions, it is urged by the learned counsel for the appellant/applicant that since the applicant is not the promoter, qua, respondent no.1, the provision of Section 43(5) of Act, 2016, would not apply to the applicant/appellant to maintain the appeal.

8. Section 43(5) of Act, 2016 is extracted:

> **43. Establishment of Real Estate Appellate Tribunal.**
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> *(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 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.

9. Sub-section (5) of Section 43, mandates that 'any person aggrieved', by any direction or decision or order made by the Authority may prefer an appeal before the Appellate Tribunal. Proviso to Section 43(5) is an exception to the main provision, mandating that where a 'promotor' files an appeal, it 'shall not be entertained', without the promotor 'first having deposited' the 'total amount', to be paid to the allottee imposed on him, before the said appeal is entertained.

10. In other words, the aggrieved promotor can carry any direction, decision or order, in appeal. The promotor may or may not be aggrieved by the decision (decree) of the Authority, but is only aggrieved by any direction/order passed in execution proceedings, as is in the present case. The direction/order may not require the promotor to deposit any money. The promotor, however, challenging such direction/order in appeal would have to deposit the decretal amount being the 'total amount to be paid to the allottee.' The amount to be paid to the allottee flows from the decree and not from any direction/order under challenge in the appeal. In the event of failure by the promotor first having, deposited the total amount due to the allottee, the appeal 'shall not' be entertained, nor, heard. The legislative mandate is clear, unambiguous and unconditional to safeguard the interest of the allottee, in the event promotor is in appeal.

11. We are not persuaded by the submissions of the learned counsel for the applicant, the requirement of pre-deposit under Section 43(5) of the Act, 2016 is mandatory and admits no exception. The appellant having stepped into the shoes of the original promotor upon acquisition of the project, is bound to comply with all obligations, contractual or legal, of the original promotor. It is a settled position of law that upon transfer/ acquisition of a project, the subsequent promotor steps into the shoes of the original promotor and acquires all corresponding rights and liabilities attached to a project. The obligations under the Act, 2016, is attached to the project and not limited to or dependent upon a particular promoter. Therefore, any subsequent transfer/purchaser of the land on which the project was launched by the appellant and thereafter registering itself as promotor with RERA, cannot avoid statutory liabilities, merely on the ground that the original transaction was entered into by a previous promotor company. The execution, admittedly, is being pressed against the appellant, a duly registered promotor.

12. Section 15(1) and (2) of Act, 2016 is extracted:

Obligations of promoter in case of transfer of a real estate project to a third party.

(1) *The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority: Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.*

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) ***On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:***

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

13. A bare perusal of Section 15(1) makes it abundantly clear that the promotor shall not transfer or assign his majority rights and liabilities in respect of a real estate project to any third party without obtaining the prior written consent of at least two-thirds of the allottees, excluding the promoter, and without the prior written approval of the Authority. It is further provided that any such transfer or assignment shall not in any manner affect the allotment or sale of apartments, plots, or buildings, as the case may be, in the real estate project as effected by

the erstwhile promoter. Moreover, Section 15(2) provides that on transfer or assignment, the intending promotor **shall** be required independently to comply with all the pending obligations under the provisions of Act, 2016 or the rules and regulations made thereunder. The intending promoter is also required to fulfill all **pending** obligations under the agreement for sale originally executed by erstwhile promoter with the allottees.

14. In real estate projects, delays, defaults, or transfer of ownership are bound to happen. Section 15(2) embodied in Act, 2016, is designed to ensure continuity and protection of the rights of allottees by subsequent transferee/promotor. Admittedly, as per the submission of the learned counsel for the appellant, in the present case, the mandate of Section 15(1) was flouted before transfer of the project. The prior mandate, i.e., obtaining consent of two-thirds of the allottees and the approval of the Authority, was not complied with. Any such transfer, undertaken in disregard of the prescribed procedure, would not absolve the appellant of its obligations to undermine the rights of an allottees. Such conduct of the appellant/applicant bypassing Section 15(1), tantamounts to unfair fraudulent practice, as it involves lack of transparency, suppression of material information, and a unilateral alteration of the terms on which the allottees had invested in the project. [Refer Section-7(1)(a) and(c)]. Upon transfer of the project, irrespective of prior approval under Section 15(1), the transferee entity, still remains liable for all resultant consequences, including, pending obligations of the erstwhile promotor. The appellant in that event has exposed itself to penal consequences under Chapter VIII of Act, 2016. Further, it is urged that since appellant was not made party to the complaint, hence, recovery cannot be pressed against the appellant. The submissions being pressed by the appellant cannot be gone into at this stage, unless appeal is entertained and heard on merit.

15. Further, apart from Section 15 of Act, 2016, under the scheme of Companies Act, 2013, it is a settled principle of law that when a company or a project is transferred by way of merger, amalgamation, arrangement, or acquisition/transfer, the successor entity steps into the shoes of the erstwhile entity and becomes entitled to its rights while simultaneously remaining bound by its existing obligations and liabilities. Sections 230 to 232 of the Companies Act, 2013, recognize this principle. Under these provisions, upon approval of a scheme of merger, amalgamation, arrangement, or transfer, all rights, liabilities, duties, and obligations of the transferor company vest in the transferee company.

The decree of a court/ forum executable against the transferor company becomes executable against the transferee company.

16. Similarly, where a promotor acquires or takes over a real estate project from an erstwhile promotor, such subsequent promotor cannot selectively claim the benefit of the project while denying the statutory liability arising therefrom. A party cannot be permitted to approbate and reprobate at the same time. Therefore, transferee company/promotor company is generally liable to satisfy the legal liabilities of the transferor company. Pending suits, actions in legal proceedings (execution of decree), by or against the transferor company do not abate or stop, they can be continued and enforced by or against the transferee company. Section 15(2) of Act, 2016, incorporates the same principle of law upon transfer of project. (Refer; Order 22, Rule 10 of Code of Civil Procedure).

17. The **Hon'ble Supreme Court in Civil Appeal No.(s). 6745-6749 of 2021 (M/s Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others),** decided on **11.11.2021** dealt with the issue regarding compliance of the provisions of Section 43(5) of Act, 2016. The court framed the following question: -

"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."

After examining the provisions of Section 43(5) of Act, 2016 the Hon'ble Supreme Court answered the said issue as follows:-

> *".....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."*
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> *"In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself and if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act."*

18. ***In Ratan Buildtech Private Limited Vs. Anil Kumar (RERA Appeal No. 72 of 2025)*, decided on 04.09.2025, (corrected vide order dated 09.09.2025),** Hon'ble High Court while answering the question with regard to the power and nature of deposit made under Section 43(5) on considering binding precedents,

including, that rendered by the Hon'ble Supreme Court in, ***Harinagar Sugar Mills Ltd. Vs. State of Bihar and others; (2003) 11 SCC 40,*** answered the question in para-37. Para-37 is extracted:

> *"37. Thus in view of the judgments referred above and on the plain interpretation of Section 43(5) read with the context in which, the appeal is prescribed under the RERA Act, it is clear that the interest and/or compensation, awarded can be challenged before the Tribunal after making the pre-deposit as required for the entertainment of the appeal. The said amount can be appropriated towards the adjudicated amount decided by the authority or the adjudicating authority as the case may be and there is no entitlement of refund unless the appeal is allowed and the order impugned is quashed by the Tribunal. The issue is answered accordingly."*

19. The liability set out under proviso of Section 43(5) of Act, 2016 is a condition precedent for the 'entertainment' of an appeal filed by a promotor, further, 'the appeal shall not be heard', thereby, pre-deposit is mandatory in nature. Prior to filing an appeal against an allottee before the Appellate Tribunal, the promoter is bound to deposit the 'total amount payable to the allottee', including interest and compensation, if any, or both, as the case may be, before the appeal is 'entertained' and 'heard'. The use of the expression 'shall not be entertained' clearly denotes that the requirement of pre-deposit is mandatory and not directory in nature. The Appellate Tribunal, therefore, lacks jurisdiction to entertain an appeal in the absence of compliance of the statutory mandate of pre deposit. This provision does not carve out any exception in favor of a subsequent promotor. Prayer seeking waiver or relaxation of the statutory pre-deposit, in the absence of an express provision, would run contrary to the scheme of the Act. This Tribunal in the backdrop of the legislative mandate, lacks inherent powers to dispense with requirement of pre-deposit by the promotor. It is not open to the applicant, being a subsequent promoter of the project, upon purchase of land over which the erstwhile promotor executed 70 percent of the construction of the project, as per the respondent no.1/allottee, to bypass the mandate of Section 43(5) of the Act, 2016. Further, admittedly, appellant/applicant came to be registered as promotor of the project by UPRERA. In any case, the submission of the learned counsel for the appellant touch upon merit of the case, which cannot be examined at the stage of pre-deposit.

20. Having regard to the ambit and scope of Section 43(5) of RERA Act 2016, and afore-noted proposition of law, the waiver application is rejected, consequently, the **appeal stands dismissed** for non-compliance of the mandate of proviso to sub-section (5) of Section 43.
21. The executing authority is directed to conclude the execution proceedings expeditiously to its logical conclusion.
22. It is clarified that no other point was pressed by the learned counsel for the appellant/ applicant.
23. Registry to supply copy of the order to UPRERA for compliance.

Dated: 08.04.2026
M.Singh/Sanya/-

(Rameshwar Singh) **(Sanjai Khare)** **(Suneet Kumar)**