BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No. 1758 of 2025 in/and

Appeal No. 1058 of 2025

Date of Decision: May 11,2026

Shine Buildcon Private Limited through Authorized Representative Sh. Vikas Shah son of Shri Chandra Mohan Singh Shah, H-334, Ground Floor, New Rajinder Nagar, New Delhi

Appellant

Versus

1. Nilesh Aggarwal R/o A-5/B, SFS Flat No. 279, Gate No. 8, Paschim Vihar, Delhi-110063

2. Kuldeep R/o H. No. 41, Kirari Suleman Nagar, Nangloi, Delhi-110086

Respondents

CORAM:

Justice Rajan Gupta **Chairman**
Dinesh Singh Chauhan **Member (Technical)**

Present: Mr. Akshat Mittal, Advocate for the appellant.

ORDER:

RAJAN GUPTA, CHAIRMAN

In the accompanying appeal, challenge has been made to order dated 23.05.2025, passed by the Authority[1], operative part whereof reads as under:

> ***"H. Directions of the Authority:***
>
> *48. 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*

[1] Haryana Real Estate Regulatory Authority, Gurugram

per the function entrusted to the authority under section 34(f):

i. The respondent/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e. 16.06.2019 till valid offer of possession (15.10.2023) plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

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

iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The rate of interest chargeable from the allottee 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(za) of the Act.

v. The respondent is directed to provide details i.e. actual area of the allotted unit in question to the complainants within a period of 1 month from the date of this order.

vi. The respondent is not entitled to charge labourcess as it is the respondent builder who is solely responsible for the disbursement of said amount.

vii. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges as per the agreed terms of BBA. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed

in the agreement or where the AMC has been demanded for more than a year.

viii. The respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act.

ix. The respondent/promoter shall not charge anything from the complainants which is not the part of the buyer's agreement.

49. The complaint and application, if any, stands disposed of.

50. File be consigned to registry."

2. The appeal is accompanied with an application seeking waiver/exemption from the pre-deposit required to be made along with the appeal in view of proviso to Section 43(5) of the Act[2].

3. As per report from the Registry, the appellant-promoter is required to deposit Rs.15,43,657/- towards pre-deposit.

4. The plea taken by the appellant-promoter is that as per the impugned order, the amount of delay possession charges comes to Rs.15,43,657/- and the outstanding dues directed to be paid by the respondent-allottees to the promoter comes to Rs.27,54,209/- thus, the appellant-promoter is not required to make pre-deposit.

5. 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-

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

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, 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."

6. 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 allottees 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.

7. 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-promoter would be at liberty to seek revival of the appeal in case it makes good the deficit in the pre-deposit within one month from today.

8. The amount of pre-deposit made by the appellant-promoter, along with interest accrued thereon, be remitted to the

Authority for disbursement to the respondent-allottees subject to tax liability, if any, after expiry of one month.

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

10. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

May 11,2026
mk