BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No. 4041 and 4042 of 2025
in/and
Appeal No. 1282 of 2025

Date of Decision: May 15, 2026

1. Chief Administrator, Housing Board Haryana, Plot No. C-15, Awas Bhawan, Sector 6, Panchkula, Haryana

2. Estate Manager, Housing Board Haryana, Plot No. C-15, Awas Bhawan, Sector-6, Panchkula, Haryana

Through its Secretary Housing Board Haryana

Appellants

Birender Singh Yadav, aged about 58 years son of Shri Mahender Singh, resident of House No. 39P, Sector 31, Gurgaon, District Gurgaon, Haryana

Respondent

CORAM:

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

Present : Mr. Arvind Seth, Advocate for the appellants.

O R D E R:

RAJAN GUPTA, CHAIRMAN

In the present appeal, challenge has been made to order dated 11.10.2022, passed by the Authority[1] operative part whereof reads as under:

> *"5. In view of the statement of learned counsel for respondent, Authority observes that complainant in this case is entitled to refund of the amount paid to respondent along with interest calculated in terms of Rule 15 of HRERA Rules 2017 i.e. at the rate of SBI MCLR+2%. The amount of interest payable to the*

[1] Haryana Real Estate Regulatory Authority, Panchkula

complainant has been calculated at the rate of 10.00% and same works out to Rs.;3,77,397/-. Therefore, respondent is directed to pay an amount of Rs.8,52,397/- as refund of deposited money along with interest to the complainant.

6. Disposed of in above terms. File be consigned to record room after uploading the order on website of Authority."

2. The appeal is accompanied with applications seeking clarification for depositing the awarded amount and condonation of delay of 1060 days in filing thereof.

3. Counsel for the appellants primarily contended that they have challenged the impugned order on the ground that as the respondent-allottee himself asked for refund of the amount on the ground that he was suffering financial losses, the flat allotted to him was cancelled. The question of making pre-deposit, as calculated by the Registry, while challenging such an order would not arise.

4. As per report from the Registry, there is still deficit of Rs.3,80,000/-.

5. We have heard learned counsel for the appellants.

6. The appellants are posing a challenge to the order, whereby they have been directed to refund the amount along with interest to the allottee, amounting to Rs.8,52,397/-. The order was passed on 11.10.2022. Same has been impugned after a delay of 1060 days. The order of the Authority remained in operation during that period. Pre-deposit has been calculated by the Registry accordingly. It needs to be kept in

mind that the party, who is aggrieved by the order, may file appeal against such order. In case, the appeal is filed by the promoter, it has to make pre-deposit. In the instant case, the promoter has preferred the appeal. Thus, the mandatory provision of pre-deposit has to be complied with.

7. Apart from above, admittedly, there is delay of 1060 days in filing the appeal. No plausible explanation is forthcoming for condoning such a huge delay. The reasons given in the affidavit accompanying the application do not make a sufficient cause for condonation thereof. The plea for condonation of delay is thus, devoid of merit. The application is accordingly dismissed. Consequently, the appeal cannot be entertained.

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 the 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, 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."

9. In view of the 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 same is hereby dismissed with no order as to costs.

10. Consequently, the accompanying applications are 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)

May 15, 2026
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