BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: August 17,2026

CM Nos. 790 and 25 of 2026 in/and
Appeal No. 18 of 2026

Landmark Apartments Pvt. Ltd., Corporate Office, Plot No. 65, Sector 44, Gurugram-122003

Appellant

Versus

Satish Kumar Sharma, R/o 698, Dalipgarh, Ambala Cantt., Ambala, Haryana-133005

Respondent

CORAM:

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

Present: Mr. Shubhnit Hans, Advocate with
Mr. Anjanpreet Singh, Advocate for the appellant.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 23.02.2024, passed by the Authority[1], Operative part thereof reads as under:

> *"**G. Directions of the authority***
>
> *36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:*

[1] Haryana Real Estate Regulatory Authority, Gurugram

a. The respondent is directed to hand over the possession of the subject unit after issuing valid offer of possession and pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e. 01.05.2019 till valid offer of possession plus two months or handing over of possession whichever is earlier.

b. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e. 10.85% by the respondent/promoter which is the same rate of interest which the promoters 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. Accordingly, the respondent is directed to refund/adjust the excess amount charged on account of delay payment from the complainant if any.

c. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days from the date of issuance of valid offer of possession and the respondent shall handover the possession within the next 60 days to the complainants/allottees.

d. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in appeal no. 3864-3889/2020.

37. Complaint stands disposed of in view of the above findings.

38. File be consigned to registry."

2. The appeal is accompanied with applications seeking waiver/exemption of pre-deposit as per Section 43(5) of the Act[2] and condonation of delay of 612 days in filing thereof.

3. As per report from the Registry, the appellant-promoter is required to deposit Rs.14,31,247/-.

4. Counsel for the appellant-promoter primarily contended that an amount of Rs.23,52,273/- remains outstanding against the respondent-allottee which is higher than the pre-deposit amount of Rs.14,31,273/, as computed by the Registry, and thus the outstanding principal itself exceeds the pre-deposit amount. In view of this, the promoter is not liable to make any pre-deposit.

5. We have heard learned counsel for the appellant and given careful thought to the facts of the case.

6. The appellant is posing a challenge to the order, whereby it has been directed to hand over possession of the unit and pay interest at the prescribed rate of 10.85% for every month of delay from due date of possession i.e. 01.05.2019 till valid offer of possession plus two months or handing over of possession whichever is earlier. Same has been impugned after a delay of 612 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

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

preferred the appeal. Thus, the mandatory provision of pre-deposit has to be complied with.

7. Apart from above, admittedly, there is delay of 612 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.

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."*
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> *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. However, the appellant-promoter would be at liberty to seek revival of the appeal in case it makes the pre-deposit within one month from today. The

application is, thus, dismissed. Consequently, the application for condonation of delay and appeal are also dismissed.

10. The amount of pre-deposit made by the appellant-promoter, along with interest accrued thereon, be remitted to the Authority for disbursement to the parties, according to their entitlement, subject to tax liability, if any, after expiry of one month.

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)

August 17,2026
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