BEFORE THE HIMACHAL PRADESH REAL ESTATE APPELLATE TRIBUNAL

Cm No. 31 of 2026 in/and
Appeal No. 08-HP of 2026

Date of Decision: .07.2026

1. Vikas Madan Son of Late Sh. C.M. Madan, R/o. D-64, 3rd Floor, Vikas Marg, Shakarpur, Delhi. Partner- M/s Pacific Construction and Management D-64, First Floor, Vikas Marg, Shakarpur, Delhi-110092.

2. Pankaj Madan, Son of Late Sh. C.M. Madan, R/o. D-64, 3rd Floor, Vikas Marg, Shakarpur, Delhi. Partner- M/s Pacific Construction and Management D-64, First Floor, Vikas Marg, Shakarpur, Delhi-110092.

Appellants

Versus

1. Real Estate Regulatory Authority, Himachal Pradesh, Registered office at Vikasnagar Shimla, Himachal Pradesh 171009.

2. Sanjay K. Dhingra R/o B-204, Kshitij Towers, G.E., Links, Ram Mandir Road, Goregaon, West Mumbai-400104.

3. Smt. Chetna Dhingra R/o B-204, Kshitij Towers, G.E., Links, Ram Mandir Road, Goregaon, West Mumbai-400104.

4. Sumit Khanna, Managing Direcotr-Unimax Builders & Developers B-6/4, 3rd Floor, Safdarfang Enclave, New Delhi-110029.

5. M/s Ansal Buildwell Ltd. through its Managing Director, 118, Upper First Floor, Prrakashdeep Building, Tolstoy Marg, New Delhi-110001.

6. M/s Kuldevi Pacific Infrastructure (The Himalayan Habitat) through its proprietor-Bharat Vaidya, c/o Happy Orchards VPO Bajaura, Tehsil Bhuntar, District Kullu, Himachal Pradesh-175125.

Respondents

Argued by: Mr. Utsav Madan, authorized representative of the appellants.

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

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order 23.05.2026 passed by Himachal Pradesh Real Estate Regulatory Authority, Shimla (for short, 'the Authority'), whereby arrest warrants of the appellants are ordered to be issued as per the procedure prescribed in the Himachal Pradesh Real Estate (Adjudication of Execution Petition) Regulation No. 3 of 2020.

2. As per report from the Registry, the appellants did not make any pre-deposit with the appeal and moved an application for waiver therefrom.

3. As per report of the Registry, the appellants are required to make pre- deposit of Rs.41,33,677/-.

4. Arguments on the application for waiver have been heard.

5. The authorised representative of the appellants has argued that the appellants have already given list of immoveable properties as security in lieu of pre-deposit and they have no financial means to make pre-deposit.

6. In view of mandatory provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 and the judgment 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 pre-deposit. Relevant paragraphs thereof 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, 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.

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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."

7. It is trite law that financial hardship does not constitute sufficient ground to waive or reduce the pre-deposit.

8. Under these circumstances, we have no option but to dismiss the application for waiver of pre-deposit. Ordered accordingly. Consequently, the appeal is also dismissed.

9. Copy of this order be forwarded to the parties and the Authority

10. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Himachal Pradesh Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

July , 2026/mk