**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

**Appeal No. 939 of 2026**

**Date of Decision: September 10,2026**

Smt. Jagath Chandra W/o Mahesh Chandra, R/o 32 Palace Orchad Apartment 6A cross 9th main Rm Extension Sahashiv Nagara, North Bangalore, Karnataka-560080

Appellant.

Versus

1. Som Prakash Agarwala S/o Sh. Kedar Nath Agarwala, R/o H. No. C-1-64, Rajasthali Apartments, Pitampura, Delhi-110034

Respondent No. 1-Decree Holder

2. Ansal Properties & Infrastructure Ltd., through its Authorised Representative Registered Office at: 115, Ansal Bhawan 16 K G Marg, New Delhi, India-11000

Respondent No. 2-Performa Party

**CORAM:**

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

Present: Mr. Kunal Dawar, Senior Advocate assisted by
Mr. Mayank Aggarwal, Advocate,
Mr. Lalit Sharma, Advocate,
Mr. Gagan Kohli, Advocate and
Mr. Saurav Bajaj, Advocate for the appellant.

**O R D E R:**

**RAJAN GUPTA, CHAIRMAN**

Present appeal is directed against order dated 17.08.2026, passed by the Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula, whereby the appellant warrants of arrest have been ordered to be issued against her to undergo three months' civil imprisonment from the date of arrest till the sentence is completed until and unless the

judgment debtor-company and its working directors satisfy the order under execution in accordance with law.

2. It is pertinent to mention here that in the complaint filed by respondent No. 1-allottee (hereinafter referred to as 'the allottee'), vide order dated 25.08.2022, the Authority had directed respondent No. 2- promoter (hereinafter referred to as 'the promoter') to pay an amount of Rs.11,13,936/- to the allottee within 90 days. In execution proceedings, the impugned order has been passed by the Adjudicating Officer, which is under challenge in the instant appeal.

3. As the appeal was not accompanied by the pre-deposit, the Registry raised an objection that an amount of Rs.11,13,936/- is payable by way of pre-deposit in light of mandatory provision contained in Section 43(5) of the Act[1].

4. Counsel for the appellant-promoter contended that the appellant remained independent Director of the promoter-company from 10.11.2018 to 09.11.2023. He further contended that the appellant is more than 80 years of age and is suffering from cancer of urinary bladder. He submitted that as the appellant ceased to be Director of the promoter-company, she is not liable to pay any pre-deposit.

5. As regards the lack of pre-deposit, the report submitted by the Registry pursuant to order dated 07.09.2026 is reproduced below:

> *"In the present appeal, following order was passed on 07.09.2025:-*

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

*"Appeal is not accompanied by the requisite pre-deposit. Even the calculation has not been attached.*

*OSD (J) to examine whether the appeal is maintainable in the present form.*

*List on 09.09.2026."*

*In this regard, it is submitted that appellant has filed the present appeal against the order dated 17.08.2026 passed by Adjudicating Officer Panchkula whereby it has been ordered that warrant of arrest be served upon appellant through leaned CHM Bangalore and the case has been adjourned to 21.09.2026 for awaiting the report regarding execution of warrant of arrest ihn respect of appellant-Director.*

*In this regard, it is further submitted that respondent had filed original complaint No. 793 of 2022 before Adjudicating Officer for directing the appellant-Ansal Properties and Infrastructure Ltd to pay compensatory interest @ 20% per annum compounded monthly on the entire amount so deposited by respondent/complainant qua the flat w.e.f the dates of deposit and further for paying a sum of Rs. 50,00,000/- on account of mental harassment, agony, grievance and frustration caused to respondent-complainant by deficiency of service. Learned Adjudicating Officer disposed of the complaint issuing direction to appellant to pay an amount of Rs. 11,13,936/- within 90 days to complainant-respondent.*

*It is further submitted that present impugned order has been filed in Execution No.2972 of 2022 in above said complaint No. 793 of 2022 for execution of the order dated 25.08.2022 passed by Adjudicating Order in complaint No. 793 of 2022*

*and present appellant is director of the said company.*

*As per the order passed in complaint, the Registry has calculated the amount of pre-deposit as per practice. Learned counsel has not deposited the amount, Registry raised an objection regarding pre-deposit and learned counsel has asked the Registry to put up the file before the Hon'ble Bench.*

*In my view, the appellant has not made compliance of proviso to Section 43(5) of the Act."*

6. An appeal, which is not accompanied with pre-deposit, deserves outright dismissal. Challenge on the ground that the order is unsustainable, can only be considered if the appeal is found to be maintainable.

7. 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-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, 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."*

8. The plea of the appellant that she is not required to make any pre-deposit, is devoid of any merit in view of the

findings given in foregoing paragraphs. Besides, there is no provision in the Act, whereunder, mandatory provision of pre-deposit can be exempted or waived off.

9. In view of above, the appeal is dismissed.

10. Copy of this order be sent to the parties/their counsel and the Adjudicating Officer.

11. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

September 10,2026
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