THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-478/2026

PRATEEK REALTORS INDIA PRIVATE LIMITED .....**Appellant**

Versus

SURENDRA SINGH SELAL .....**Respondent**

Counsel for Appellant
ISHA ASTHANA
TUSHAR MANJHWAR
INDRESH VIKRAM SINGH

Counsel for Respondent
AMIT YADAV

Hon'ble Mr. Justice Suneet Kumar, Chairman
Hon'ble Mr. Rameshwar Singh, Administrative Member

(I.A. No. 1119/2026: Waiver Application for Exemption of Compliance of Section 43(5) of RERA Act, 2016)

1. Heard Ms. Isha Asthana, learned counsel for the applicant promoter and Shri Amit Yadav, learned counsel for the respondent-allottee.

2. The applicant-appellant by the instant appeal is raising challenge to the order dated 14.10.2025, passed by the Real Estate Regulatory Authority at Gautam Budh Nagar (for short, 'Regulatory Authority') in execution proceedings under Section 38 and 40 read with Section 33 of Real Estate (Regulation and Development) Act, 2016 (for short, 'Act 2016'), arising from Complaint No. NCR145/03/107180/2023 (Surendra Singh Selal Vs. Prateek Realtors India Pvt. Ltd.), whereby, a direction came to be issued to the Secretary, U.P. RERA to compute interest component pursuant to judgment and decree dated 18.06.2024. Pursuant, thereof, recovery certificate dated 31.12.2025 came to be issued to the Collector, Gautam Budh Nagar to recover an amount of Rs.49,57,725.13.

3. The applicant appellant, admittedly, has not complied mandate of Section 43(5) of Act 2016 by making pre-deposit.

4. On specific query, learned counsel for the applicant appellant submits that the waiver application to waive pre-deposit of money be disposed of.

5. Section 43(5) of Act, 2016 is extracted:

> **43. Establishment of Real Estate Appellate Tribunal.**
> (*5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:*
>
> ***Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.***

6. Sub-section (5) of Section 43, mandates that 'any person aggrieved', by any direction or decision or order made by the Authority may prefer an appeal before the Appellate Tribunal. Proviso to Section 43(5) is an exception to the main provision, mandating that where a 'promotor' files an appeal, it 'shall not be entertained', without the promotor 'first having deposited' the 'total amount', to be paid to the allottee including interest imposed on him, before the said appeal is entertained.

7. In other words, the aggrieved promotor can carry any direction, decision or order, in appeal. The promotor may or may not be aggrieved by the decision (decree) of the Authority, but is only aggrieved by any direction/order passed in execution proceedings and such direction/order may not require the promotor to deposit any money. The promotor, however, challenging such direction/order in appeal would have to deposit the decretal amount being the 'total amount to be paid to the allottee.' The amount to be paid to the

allottee flows from the decree and not from any direction/order under challenge in the appeal. In the event of failure by the promotor first having, deposited the total amount due to the allottee, the appeal 'shall not' be entertained, nor, heard. The legislative mandate is clear, unambiguous and unconditional to safeguard the interest of the allottee, in the event promotor is in appeal.

8. The Hon'ble Supreme Court in; **M/s Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others 2021 SCC Online SC 1044;** dealt with the issue regarding compliance of the provisions of Section 43(5) of Act, 2016. The court framed the following question: -

> *"Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law."*

9. After examining the provisions of Section 43(5) of Act, 2016 the Hon'ble Supreme Court answered the said issue as follows:-

> *"……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."*
> *"In our considered view, the obligation cast upon the promoter of predeposit under Section 43(5) of the Act, being a class in itself and if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act."*

10. In **Ratan Buildtech Private Limited Vs. Anil Kumar (RERA Appeal No. 72 of 2025), decided on 04.09.2025**, (corrected vide order dated

09.09.2025), Hon'ble High Court while answering the question with regard to the power and nature of deposit made under Section 43(5) on considering binding precedents, including, that rendered by the Hon'ble Supreme Court in, Harinagar Sugar Mills Ltd. Vs. State of Bihar and others; (2003) 11 SCC 40, answered the question in para-37. Para-37 is extracted:

> *"37. Thus in view of the judgments referred above and on the plain interpretation of Section 43(5) read with the context in which, the appeal is prescribed under the RERA Act, it is clear that the interest and/or compensation, awarded can be challenged before the Tribunal after making the pre-deposit as required for the entertainment of the appeal. The said amount can be appropriated towards the adjudicated amount decided by the authority or the adjudicating authority as the case may be and there is no entitlement of refund unless the appeal is allowed and the order impugned is quashed by the Tribunal. The issue is answered accordingly."*

11. The liability set out under proviso of Section 43(5) of Act, 2016 is a condition precedent for the 'entertainment' of an appeal filed by a promotor. Further, the sentence, 'the appeal shall not be heard', thereby, pre-deposit is mandatory in nature. Prior to filing an appeal against an allottee before the Appellate Tribunal, promoter is bound to deposit the 'total amount payable to the allottee', including interest and compensation, if any, or both, as the case may be, before the appeal is 'entertained' and 'heard'. The expression 'shall not be entertained' clearly mandates that the requirement of pre-deposit which is mandatory and not directory in nature. The Appellate Tribunal, therefore, lacks jurisdiction to entertain an appeal in the absence of compliance of the statutory mandate of pre deposit. Further, there is no provision under Act, 2016 or rules framed thereunder for seeking waiver of pre-deposit.

12. Having regard to the ambit and scope of Section 43(5) of Act 2016, and afore-noted proposition of law, the **waiver application (I.A. No. 1119/2026)** filed along with the aforesaid appeal is **rejected.**

13. Consequently, the aforesaid **appeal stands dismissed** for non-compliance of the mandate of proviso to sub-Section (5) of Section 43 of RERA Act, 2016.

14. The Executing Authority is directed to conclude the execution proceedings expeditiously to its logical conclusion.

15. It is clarified that no other point was pressed by the learned counsel for the appellant/applicant.

16. Registry to supply copy of the order to UP RERA for compliance.

(Rameshwar Singh) (Suneet Kumar)

Dated: 23.10.2026
SYEDTANVEER