BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: October 27,2026

(1) CM Nos. 1305 of 2026 in/and
Appeal No. 364 of 2026

M/s Imperia Structures Limited, A-25, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044

Appellant

Versus

1. Som Prakash Shrivastava
2. Shubha Shrivastava
3. Akshay Kumar Shrivastava

All R/o Flat No. 2002, IRIS Nahar Amrit Shakti, Chandivali, Mumbai-400072

Respondents

(2) CM Nos. 1294 of 2026 in/and
Appeal No. 365 of 2026

M/s Imperia Structures Limited, A-25, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044

Appellant

Versus

1. Som Prakash Shrivastava
2. Shubha Shrivastava
3. Akshay Kumar Shrivastava

All R/o Flat No. 2002, IRIS Nahar Amrit Shakti, Chandivali, Mumbai-400072

Respondents

CORAM:

Justice Rajan Gupta **Chairman**
Dr. Virender Parshad **Member (Judicial)**

Present: Mr. Sahej Mahajan, Advocate for the appellant.

O R D E R:

RAJAN GUPTA, CHAIRMAN

This order shall dispose of above-mentioned appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 364 of 2026.

2. Present appeal is directed against order dated 04.07.2025 passed by the Authority[1]. Operative part thereof reads as under:

> ***"G. Directions of the Authority***
>
> *40. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):*
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> *i. The cancellation letter dated 18.10.2024 issued by the respondent is hereby set aside. The respondent is directed to re-instate the allotted unit of the complainants as per the terms and conditions of the Builder Buyer Agreement (BBA) dated 15.04.2015. In the event that the originally allotted unit is no longer available, the respondent shall offer an alternate unit of the same size, in a similar location, and at the same price as per the original BBA within a period of 60 days from the date of this order.*
>
> *ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest @ 11.10% p.a. for every month of delay from the due*

[1] Haryana Real Estate Regulatory Authority, Gurugram

date of possession i.e. 15.10.2018 till the date of valid offer of possession or actual handing over of the unit, whichever is earlier, as per section 18(1) of the Act of 2016 read with under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

iii. The arrears of such interest accrued from 15.10.2018 till the date of order by the authority shall be paid by the respondent/promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.

iv. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges and other reliefs as per above within a period of 30 days from the date of this order.

v. Upon receipt of the revised statement of account, the complainants are directed to remit the outstanding dues, after adjustment of the delay possession charges, within a period of 30(thirty) days from the date of such receipt.

vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e. 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e. the delayed possession charges as per section 2(za) of the Act.

vii. The respondent is also directed not to charge anything which is not part of the builder buyer's agreement.

viii. Increase in area:- That there was an increase in a super area which was intimated to the

complainants at the time of offer of possession for fit outs and not before. Further, no justification and intimation were made to the complainants in respect of increase in area. So, the respondent cannot charge any amount from the complainants merely on account of increase in the super area without providing proper justification and specific details regarding the increase in the super area/carpet area.

ix. Escalation charges are not justified and shall not be charged from the complainants.

41. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

42. Complaint as well as applications, if any, stands disposed off accordingly.

43. File be consigned to registry."

3. The appeal is accompanied by an application seeking waiver/exemption of pre-deposit as per Section 43(5) of the Act[2].

4. Counsel for the appellant-promoter primarily contended that the promoter is facing financial crunch. It had already obtained funding under SWAMIH Investment Fund-I Scheme so that the project can be completed in time. In view of this, it is unable to make pre-deposit.

5. As per report from the Registry, the appellant-promoter is required to deposit Rs.32,80,115/-.

6. We have heard learned counsel for the appellant.

7. The appellant is posing a challenge to the order, whereby it has been directed to pay delay possession charges to

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

the allottees from due date of possession i.e. 15.10.2018 till the date of valid offer of possession or actual handing over of the unit, whichever is earlier. 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 of the Authority, may file appeal against such order. In case, the appeal is filed by the promoter, it has to make pre-deposit.

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. Similar view has been expressed by Hon'ble Supreme Court in SLP (Civil) No. 24606 of 2026-***M/s Parthivi Construction Pvt. Ltd. and others v. Shri Bhuneshwar Prasad Verma and another,*** decided on 22.09.2026.

10. 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.

11. Consequently, the accompanying applications are also dismissed.

12. Copy of this order be sent to the parties/their counsel and the Authority.

13. Files be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

October 27,2026
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