

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.16837 of 2022(O&M)

Date of Decision: September 09, 2022

M/s Sana Realtors Pvt. Ltd.

...Petitioner

Versus

Haryana Real Estate Appellate Tribunal and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

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Present: - Mr.Manu K. Bhandari, Advocate
for the petitioner.

Mr.Ankur Mittal, Mr.Ajay Bansal,
Ms.Kushaldeep Kaur and Mr.Jugam Arora, Advocates
for the respondent – RERA.

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HARINDER SINGH SIDHU, J.

In this petition the petitioner has prayed for directions to respondent No.1 – Haryana Real Estate Appellate Tribunal (herein for short 'the Appellate Tribunal') to entertain and decide the appeal preferred by it against order dated 13.10.2020 (P.11), passed by respondent No.2 – Haryana Real Estate Regulatory Authority (for short 'RERA Haryana'), without insisting for deposit of 100% of the amount assessed by respondent No.2.

The petitioner is a Company incorporated under the provisions of Companies Act, 1956 having its corporate office at C/o, H-69, Upper Ground Floor, Connaught Place New Delhi. It started the work of construction of Precision Soho Tower in Gurugram. The said tower included the office space as also Studio Apartments. The project was

completed by the petitioner in the year 2015. It submitted an application dated 18.05.2015 to the competent authority for grant of Occupation Certificate. The said certificate was issued on 18.02.2017.

The petitioner filed CWP No.34271 of 2019 in which it had assailed the constitutionality of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 which required a pre-deposit to be made before an appeal could be entertained by the Tribunal. The said petition along with some connected petitions was dismissed vide judgment and order dated 16.10.2020. The petitioner filed SLP against that judgment. Initially vide order dated 05.11.2020 an interim stay was granted. The said SLP was finally disposed of vide order dated 13.05.2022 in terms of the decision of the Supreme Court in **M/s Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. And ors., 2021 SCC OnLine SC 1044**. The petitioner was granted relief in terms of paragraph 142 of that decision to file appeal as per which if the appellant intended to prefer appeal before the Appellate Tribunal against the order of the authority, it would be open to it to challenge within 30 days subject to compliance with the condition of pre-deposit as contemplated under the proviso to Section 43(5) of the Act. The Tribunal would decide the appeal on its own merits in accordance with law.

It is stated that the petitioner issued letters offering possession to all the private respondents on 24.07.2017. The private respondents filed complaints before the Haryana Real Estate Regulatory Authority, Gurugram claiming relief of interest on account of delay in handing over possession of the units to them and for restraining the petitioner from raising any fresh

demand or increasing liability of the complainant. The complaints moved by respondent Nos.13 to 21 were filed in 2020 during the pandemic period.

It is the case of the petitioner that the cases were fixed for 21.04.2020 but due in the wake of outbreak of Covid, the same were adjourned to 07.07.2020. On 07.07.2020, the cases were adjourned to 26.08.2020. On 26.08.2020 the cases were adjourned to 13.10.2020. As this was the period when cases as a matter of routine were being adjourned because of the pandemic the petitioner and the counsel remained under the bonafide belief that the cases would be adjourned on 13.10.2020 as well. The petitioner was shocked to learn that on 13.10.2020 it had been proceeded against *ex-parte* and the complaints were disposed of without hearing the petitioner. The complainants were held entitled to delayed possession charges to be paid by the promoter (petitioner) with interest for every month of delay at the prescribed rates i.e. 9.30% per annum till the handing over of possession. Various demands namely for maintenance charges/ holding charges or demands raised beyond the Builder Buyer agreement by the petitioner were disallowed.

The relevant part of order dated 13.10.2020 is as under:

Proceedings:

Case has been called out several times but no one has appeared on behalf of the respondent. It appears that he is not interested in pursuing the complaint. It is already 12.30 PM. Waited sufficiently. Respondent is proceeded against ex-parte.

Complaint No.3915/2019 is disallowed for want of necessary documents and details to proceed in the matter. Accordingly, the complaint is dismissed.

In complaint No.6640/2019, an application dated 31.1.2020 for withdrawal of the complaint has already been moved by the complainant. The said application is allowed and the complaint stands dismissed as withdrawn.

The complaints in CR/2763/2019 xxxxxxxxxxxxxx. CR/855/2020, pertain to project "Precision Soho Towers", Sector-67, Gurugram. The commercial project has been developed on an area of 2.456 acres. The project is not registered with the authority. There are two occupation certificates granted for this project: one for Tower-A and Tower-C, occupation certificate dated 18.7.2017; other for Tower-B occupation certificate dated 10.10.2019.

*Although both these OCs have been received after coming into force of this Act but keeping in view that the fire NOC in first occupation certificate was granted on 3.3.2017, accordingly this may be prima facie exempted from the registration requirement as per Haryana Real Estate (Regulation and Development) Rules, 2017. The other occupation certificate for Tower-B was granted on 10.10.2019 that is much beyond the date of publication of the Rules *ibid*. Even the fire NOC was obtained on 5.4.2019 which is pre-requisite for making an application for occupation certificate. The application can be said to be completed only on 5.4.2019 and this is covered in the definition of on-going project, accordingly needs to be registered. Copy of this observation be sent to Planning branch for examining the matter and for issuance of show cause notice to the promoter for not getting the project registered as per the provisions of the Real Estate (Regulation and Development) Act 2016 and the rules made thereunder.*

The licence for the project was issued vide No. 72 of 2009 dated 26.11.2009 renewed upto 25.11.2019. The completion certificate for the project has not been issued.

In CR 2763/2019, CR 371/2019, CR 384/2019, CR 1147/2019, CR 1277/2019 and CR 828/2019 reply has been filed and in rest of the matters, no reply has been filed by the respondent even after service being complete.

*As occupation certificate has been obtained in respect of units mentioned in the complaints as detailed above, the promoter is duty bound to give possession within a period of three months to the allottees from the date of obtaining occupation certificate. This is a major failure of the promoter and violation of provisions of Section 17 (1) of the Act *ibid*. Show cause notice be issued to the promoter as to why penal proceedings for violation of Section 17 (1) which is punishable under Section 61 of the Act *ibid* be not initiated.*

In some of the cases, the promoter has demanded payment under the payment demand notice at the time of possession vide letter dated 1.8.2015. This letter is totally illegal as by that time the promoter has not received any occupation certificate then how he is entitled to demand such payment. This shows grave mischief on the part of the

promoter. Again the promoter has offered possession on 24.7.2017 without intimating the details of occupation certificate obtained by him. Although occupation certificate was received in respect of Tower-A and C by them but not in respect of Tower-B. Without mentioning the details of the occupation certificate and offering possession smack irregularities by the promoter. It is surprising that the unit numbers were unilaterally changed.

The promoter has asked for payment in respect of increase in super area for which no details have been provided. When there is no revision of the building plans then how the area of unit is changed.

In all these cases, delayed possession charges have been prayed for by the complainants. The authority after considering facts and circumstances in each of the above complaints as referred above decides as under :-

i) The complainants are entitled to delayed possession charges which shall be paid by the promoter as interest for every month of delay at the prescribed rates i.e. 9.30% per annum till the handing over of possession.

ii) Wherever possession has not been offered, the same be done within 15 days.

iii) Wherever super area has been increased without any justification and demand for increase of super area has been raised, the same is disallowed and wherever it has been paid by the complainant, the promoter is directed that the same be returned/adjusted by the promoter.

iv) Even the allotted super area has been challenged in some of the complaints, this issue will be referred to the forensic auditor and will be taken up in suo motu proceedings. In suo motu proceedings any of the complainant may become a party, if desired. Notice of intimation regarding suo motu proceedings be sent to concerned complainant.

v) It has also been alleged that the promoter has not offered the legal possession in most of the cases and demanding maintenance charges from the allottees. Without giving actual physical possession of the unit, the demand for maintenance charges/holding charges is illegal, accordingly disallowed.

vi) If there is any demand which is beyond the scope of BBA, the same is also disallowed.

vii) In some of the cases, the units were sold on assured return basis, the legality of the same shall be taken up after the forensic audit report which is being ordered by taking up suo motu proceedings by the authority.

viii) The occupation certificates have been obtained in respect of Tower-A, B and C whereas in the allotment letters no mention has been made about the tower of particular unit.

ix) The authority considers it expedient to do so on the basis of information gathered from large number of complaints about the project initiates suo motu proceedings and call upon the promoter to furnish in writing the following documents on 28.10.2020. The promoter has failed to represent before the authority in these complaints except reply in few complaints. The bailable warrants be issued to the promoter to appear before the authority on 28.10.2020 alongwith the documents filed at the time of obtaining occupation certificates and also deed of declaration filed in the office of DTCP Haryana in pursuance of compliance of occupation certificates.

Based on above, details orders in all cases will follow. The complaints stand disposed of. File be consigned to the registry.”

The petitioner challenged order dated 13.10.2020 by filing CWP Nos.17657 of 2020. This Court by order dated 26.10.2020 stayed the operation of order dated 13.10.2020. The petitioner filed separate petitions to assail the order qua different respondents. The petitioner even amended the petition incorporating an alternative prayer that in case the petitioner was to be relegated to the alternative remedy of appeal, the Appellate Tribunal be directed to entertain the appeal of the petitioner without insisting on the pre-deposit as mandated in Section 43(5) of the Act. Vide order dated 25.05.2022, this Court dismissed the writ petitions filed by the petitioner, giving it liberty to approach the Appellate Tribunal.

Pursuant to order dated 25.05.2022, the petitioner preferred appeals before respondent No.1 and made pre-deposit of 30%. An e-mail was received by counsel for the petitioner from the office of respondent No.1 there was a shortfall in the amount deposited by the petitioner and the petitioner was required to deposit hundred per cent of the amount as

assessed by respondent No.2.

Aggrieved, the petitioner has filed the present petition seeking directions to respondent No.1 to entertain the appeal without insisting on deposit of hundred per cent of the amount as assessed by respondent No.1.

Mr. Bhandari, Ld. Counsel for the petitioner contended that the order dated 13.10.2020 (Annexure P-11) which has been assailed in the appeal has been passed by the Authority without giving opportunity of hearing to the petitioner. The reply filed by the petitioner has not been considered. The Authority has not taken into account the fact that the petitioner had offered possession of the units to the private respondents in July 2017. They did not take possession and pay the amount as was demanded of them in the letter offering possession. The order is an omnibus order. It does not consider the facts of each case. Thus, there is total non-application of mind which is manifest on a bare reading of the order itself.

He argued that in an appropriate case it is open to this Court to alter/ modify or waive the requirement of mandatory pre-deposit. He stressed that the present is a fit case where the requirement of pre-deposit should be directed to be waived.

Mr. Mittal, Ld. Counsel for respondent on the other hand contended that the requirement of pre-deposit is a mandatory condition. It has been so held by Hon'ble Supreme Court in **M/s Newtech Promoters & Developers Pvt. Ltd.(supra)**.

Having heard Ld. Counsel we find there is no merit in this petition.

A Division Bench of this Court in CWP No.7738 of 2022 titled **“M/s International Land Developers Private Limited vs. Aditi Chauhan and others” decided on 17.08.2022**, after considering the decisions of Hon'ble Supreme Court and this Court while observing that *“in absolutely appropriate circumstances where this court finds a complete failure of justice, on account of any conduct of the buyer/allottee etc., it may entertain a petition under Article 226 of the Constitution to either hear the petitioner therein on the merits of the order impugned, or may direct a waiver of the pre-deposit if the amount to be paid is found to be highly arbitrary or unjust”* held that lack of jurisdiction or financial hardship were no grounds to direct the waiver of the pre-deposit.

The relevant observations are reproduced below:

“51. It is also necessary to state here that this court (this very bench), (as has also been argued by learned counsel for the respondents), had already dismissed a petition filed by another builder/developer, i.e. Magic Eye Developers (supra), wherein also the plea was that the order impugned therein was passed by the AO without jurisdiction.

That order passed by this court was challenged by way of SLP (C) No. 8241 of 2022, but without any success.

52. As regards the contention of learned senior counsel for the petitioner that the Supreme Court, even in Technimont (supra) held, even while referring to two earlier judgments in P. Laxmi Devi and Har Devi Asnani (both supra), that in a genuine case of hardship a High Court would exercise jurisdiction under Article 226 to waive the condition of pre-deposit before an appeal can be filed, we do not find any

substance in that argument either because firstly, the judgment of Technimont was duly considered by the Supreme Court in Newtech, after which it was held in paragraphs 136 and 137 of Newtech that the obligation cast upon a promoter of making a pre-deposit under Section 43(5) of the Act, is 'a class in itself' and that a promoter in receipt of money being claimed by home buyers/allottees for a refund, must comply with the statutory provision.

Further, as pointed out by Mr. Ankur Mittal, learned counsel appearing for the Authority, even in Technimont, while referring to P. Laxmi Devi, the Apex Court had held that only where the amount awarded by the Authority concerned appears to be arbitrary to the High Court, it would exercise jurisdiction under Article 226 to waive the pre-deposit required to be made.

In the present case, we do not see (for the purpose of these petitions), as to how the amounts ordered to be paid vide the impugned order are arbitrary in any manner, when admittedly the amount paid to the petitioner by the respondent-complainants in these petitions, is only marginally below what has been ordered to be given to the complainants, vide the impugned order.

53. Further, it is also to be observed that whereas in Technimont case, the issue was with regard to a pre-deposit under the Punjab VAT Act, 2005; and in Laxmi Devi case the issue was with regard to payment in terms of Section 47-A of the Indian Stamp Act, 1899, which were amounts to be paid to the State by the assessee persons challenging such orders, here we are dealing with an Act that has been enacted to safeguard the interest of the common citizen against large companies/developers etc.

Consequently, we in any case would find no parity in the two situations.

As regards Har Devi Asnani case (supra) cited by learned counsel for the petitioner, that again was a matter involving the Stamp Act, with the Supreme Court having held that the High Court should have gone into the question of whether or not the amount ordered to be paid under that Act was actually reasonable or exorbitant.

As already said, in the present case we do not find (for the purposes of these petitions) the amount to be exorbitant or arbitrary in any manner though of course that would be a plea that would also be considered by the Appellate Tribunal if the petitioner wishes to file such an appeal, and it is entertained by the Tribunal (after making the pre-deposit necessary).

54. *As regards the judgment of a co-ordinate bench of this court in Ramprastha Promoters and Developers Pvt. Ltd., CWP No.6688 of 2021, (which though not referred to earlier in this judgment, is seen to be provided by learned counsel for the petitioner in the compendium of judgments supplied to this court), that was a case dealing with the RERA Act itself wherein it was observed that in an appropriate case of hardship, this court would exercise jurisdiction under Article 226 to waive the pre-deposit required in terms of the judgment in Technimont and other such cases; but eventually even in Ramprastha itself, finding that it was not a case of extreme hardship, the prayer of the petitioners therein was actually declined, though they were given additional time to make the requisite pre-deposits.*

It needs to be observed here also, as we have already held hereinabove, that even as regards hardship, it was held in Technimont case itself that such hardship would only be with regard to an arbitrary sum awarded by the Authority concerned; and further, with the Supreme Court having held in the context of this very Act, in Newtech, that it is a mandatory

pre-deposit that must be made to safeguard the interest of the home buyer/allottee, we find ourselves unable to accept the argument of learned senior counsel for the petitioner, and hold that if the petitioner is to file any appeal before the Appellate Tribunal, it must be on the condition of a pre-deposit to be made in terms of the proviso to Section 43(5) of the Act, and thereafter of course, the learned Tribunal would see vide the discretion provided to it by the Act, as to whether that appeal should be entertained at all at this stage or not.

55. *Hence, to sum up, though we would not entirely disagree with learned senior counsel for the petitioner that in absolutely appropriate circumstances where this court finds a complete failure of justice, on account of any conduct of the buyer/allottee etc., it may entertain a petition under Article 226 of the Constitution to either hear the petitioner therein on the merits of the order impugned, or may direct a waiver of the pre-deposit if the amount to be paid is found to be highly arbitrary or unjust, yet, in the present case we find no such circumstance as would justify entertainment of these petitions for the detailed reasons given hereinabove, summed up hereinbelow:-*

(i). Whether or not the impugned order is actually wholly without jurisdiction in terms of Sections 12, 14, 18, 19, 71 and 72 of the Act, and in terms of the ratio of the judgment of the Supreme Court in M/s Newtech (supra), is also an issue to be gone into by the Tribunal in terms of the statutory appeal provided for in the Act itself upon a predeposit being made for that purpose in terms of Section 43(5) thereof;

(ii) that the petitioner obviously deliberately did not even avail of that remedy for a period of more than one year after the impugned order was passed and

therefore, it cannot be said to have approached this court in a bona fide manner to claim that it was financially unable to make the pre-deposit, even in the context of the order of the Delhi High Court (P-2), which was passed more than one year after the impugned order;

(iii) the amounts directed to be paid vide the impugned order are not found by this court (for the purposes of these petitions), to be arbitrary in any manner, though whether it was a completely correct calculation made or not by the AO, would be a question again to be determined by the Tribunal, if the appeal(s) of the petitioner is/are entertained by it after payment of the statutory deposit (s) required.

Consequently, these petitions are dismissed.”

The petitioner had filed CWP No.17657 of 2020 and other petitions assailing the order dated 13.10.2020. The petitioner had contended that the order had been passed without giving it opportunity of hearing and that the claim of the private -respondents was absolutely unjustified. These claims were noticed and the petitions were dismissed giving liberty to the petitioner to file appropriate appeals before the learned Real Estate Appellate Tribunal after making a pre-deposit as required in terms of Section 43(5) of the Act of 2016 in each case.

The relevant observations in CWP No.17657 of 2020 titled **“Sana Realtors Private Limited vs. The Haryana Real Estate Regularoty Authority and others”** and other petitions decided on 25.05.2022 are as under:

“Mr. Bhandari, learned counsel for the petitioner company (hereinafter referred to as the 'developer'), submits that the orders impugned in these petitions need to be treated to be void ab initio as they are against the basic principles of natural justice, inasmuch as the petitioner company was never heard in the matter, as would be obvious from the impugned orders themselves, with him further submitting that the complaints filed by the home buyers came up for hearing on different dates during the course of the ongoing pandemic; and consequently were adjourned from time to time without any actual hearing taking place, but on the date of passing of the impugned orders (i.e. 30.10.2020), the matters were taken up and decided in the absence of any representative or counsel for the petitioner company, with no advance intimation given to the effect that the matters would actually be taken up for hearing and would not be adjourned as they were being earlier due to the pandemic.

Whereas that argument is most definitely a tenable argument otherwise and on the principle audi alteram partem alone, we may otherwise have interfered in the matter, but Mr. Mittal learned counsel for the respondent RERA, firstly submits that the issue of waiving a pre-deposit to be made prior to an appeal being heard by the Tribunal, has been conclusively decided by the Supreme Court not just in the case of 'M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others', 2022(1) R.C.R. (Civil) 357, but in the case of the petitioner company itself also, i.e. in 'Sana Realtors Private Limited Vs. Union of India and others', SLP(C) No.13005 of 2020, the SLP has been dismissed in terms of the ratio of the judgment in Newtechs' case (supra); and consequently, with an alternative remedy of challenging the impugned orders on the merits/demerits thereof, available with the petitioner before the

learned Real Estate Appellate Tribunal, this court would not exercise jurisdiction under Article 226 of the Constitution of India, to entertain these petitions. He specifically refers to paragraphs 78, 136 and 137 of the judgment in Newtechs' case (supra), which reads as follows:-

“78. This Court while interpreting Section 18 of the Act, in Imperia Structures Ltd. v. Anil Patni and Another, 2020(10) SCC 783 held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement in para 25 held as under:-

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.”

x x x x

136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi judicial litigations and

it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of precondition, if any, against the order passed by the Authority in question.

137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, 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, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.” (Emphasis applied in the present order only).

Learned counsel appearing for the complainant (in CWP No.4236-2021), submits that the agreement between the home buyer and the developer was entered into in the year 2010, with the date of delivery of possession of the dwelling units being in the year 2013, but with the home buyer suffering even thereafter for nine years now; and consequently, the petitioner cannot take a “technical plea” of not having been heard by the respondent authority.

*Mr. Bhandari however wishes to rebut even that argument on the strength of the judgment of the Supreme Court in **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. And others, 2003 AIR (SC) 2120 and Union of India & Ors. Vs. Tania Construction Pvt. Ltd., 2011(3) R.C.R. (Civil) 821.***

He submits that this court while exercising jurisdiction under Article 226 of the Constitution of India, in such a situation, would interfere in the matter and set aside the impugned orders, while directing the respondent authority to pass fresh orders after duly hearing the petitioner.

It is also to be noticed that learned counsel for the

petitioner has submitted that possession was actually offered in the year 2017, but was not taken by the home buyer, which counsel for the home buyer in CWP No.4236 of 2021 strongly refutes.

That issue obviously is not to be gone into by this court and would be looked at by the Tribunal after taking into consideration the pleadings and arguments raised before it on both sides.

Though Mr. Bhandari wishes to make submissions on the merits of other arguments sought to be raised by the home buyer, we are not at all going into that issue, which would be naturally considered by the learned Tribunal, in all aspects thereof.

Thus, having considered the matter, as already said, though otherwise we would be in agreement with learned counsel for the petitioner on the principles of audi alteram partem as a basic principle of natural justice, yet, looking at the fact that the Real Estate (Regulation and Development) Act, 2016, has been specifically enacted by Parliament to protect the interests of home buyers and the Supreme Court (in paragraph 78 of the judgment) in Newtech' (supra) has held as has been reproduced hereinabove and has further specifically held to the effect that the right of home buyer under the Act is an unqualified right and (in paragraph-137) has held that in no circumstance can the condition of a pre-deposit as envisaged under Section 43(5) of the Act, said to be onerous or in violation of Articles 14 or 19(1)(g) of the Constitution of India, these petitions would not be entertained by this court, specially with Mr. Mittal having specifically pointed to the fact that the Supreme Court (in the case of Newtech), had also specifically dealt with the issue as decided in the case of 'Tecnimont Pvt. Ltd. (Formerly Known As Tecnimont ICB Private Limited) Vs.

State of Punjab and Others', and after having duly considered the matter in the light of the jurisdiction of a High Court to waive the condition of a pre-deposit under Article 226 of the Constitution of India, has still gone onto hold as has been held specifically (in paragraph-137) of Newtechs' case (supra). Consequently, these petitions are dismissed.

However, naturally, the petitioner would be at liberty to file appropriate appeals before the learned Real Estate Appellate Tribunal after making a pre-deposit as required in terms of Section 43(5) of the Act of 2016, in each case."

Mr. Bhandari has contended that in the aforesaid writ petitions no specific prayer for waiver of the pre-deposit had been made. The prayer for waiver of pre-deposit be independently considered in this petition in the light of the grounds pleaded.

It is not possible to accept that contention. After duly considering the arguments of the petitioner that the order had been passed without giving it opportunity of hearing and that the claim of the private -respondents was absolutely unjustified it had been observed that even if the order had been passed without providing proper opportunity of hearing in view of the Real Estate (Regulation and Development) Act, 2016, which had been specifically enacted to protect the interests of home buyers and the Supreme Court (in paragraph 78 of the judgment) in Newtech's (supra) the petitions could not be entertained and the only remedy was to file appeals after making a pre-deposit as required in terms of Section 43(5) of the Act of 2016, in each case.

The petitioner has not assailed that judgement. It is bound by it.

However, even if the argument of Mr. Bhandari were to be accepted that there being no prayer in that petition with regard to the waiver of pre-deposit and that the same be considered independently in this petition, the grounds pleaded in the present petition do not warrant such a direction.

The Authority has held that the complainants are entitled to get delayed possession charges to be paid by the promoter (petitioner) with interest for every month of delay at the prescribed rates i.e. 9.30% per annum till the handing over of possession. Various demands namely for maintenance charges/ holding charges or demands raised beyond the Builder Buyer agreement by the petitioner were disallowed.

It cannot be said that the amount directed to be paid is highly arbitrary, irrational or unjust and on the face of it revealing a total non application of mind which was the only ground accepted to justify a waiver of pre-deposit in the aforesaid two judgments of this Court.

Accordingly, this petition is dismissed.

(HARINDER SINGH SIDHU)
JUDGE

September 09, 2022

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(LALIT BATRA)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No