



RERA Appeal No.137 of 2025 (O&M) and other connected cases -1-

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

377

- | | |
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| 1. | RERA Appeal No.137 of 2025 (O&M) |
| 2. | RERA Appeal No.138 of 2025 (O&M) |
| 3. | RERA Appeal No.139 of 2025 (O&M) |
| 4. | RERA Appeal No.140 of 2025 (O&M) |
| 5. | RERA Appeal No.141 of 2025 (O&M) |
| 6. | RERA Appeal No.136 of 2025 (O&M) |
| 7. | RERA Appeal No.126 of 2025 (O&M) |
| 8. | RERA Appeal No.127 of 2025 (O&M) |

Date of decision: **November 27th, 2025**

S.K. Mittal

.....Appellant

Versus

M/s Neo Developers Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amitabh Tewari and Mr. Ishaan Mundeja, Advocates
 for the appellant.

VIKAS BAHL, J. (ORAL)

CM-11352-C-2025 in RERA Appeal No.137 of 2025

Present application has been filed under Section 5 of the Limitation Act for condonation of delay of 796 days in filing the present appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit, present application is allowed and the delay of 796 days in filing the present appeal is hereby condoned.

Main cases

1. This order will dispose of eight appeals. Challenge in the



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present set of appeals is to the order dated 30.07.2025 passed in all the cases vide which the applications filed by the appellant for recalling the earlier orders vide which the amount of pre-deposit had been quantified, has been dismissed. RERA Appeal No.126 of 2025 has been taken as the main case and the detailed facts are noted from the same.

2. The primary ground raised on behalf of the appellant in the present bunch of appeals is that the amount which had been calculated to be deposited by the present respondent for the purpose of complying with the provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, for there appeals before the Tribunal to be entertained, is based on a misinterpretation of the directions given by the Authority in its order dated 17.11.2021.

3. On 15.09.2025, this Court was pleased to pass the following order:

*Present:- Mr. Amitabh Tewari, Advocate and
Mr. Ishaan Mundeja, Advocate
for the appellant.*

Inter alia, contends that in the present cases, as per order dated 17.11.2021, the Haryana Real Estate Regulatory Authority, Gurugram, had issued directions and direction No.66(i) was to the following effect: -

“i. The respondent is directed to pay assured return as agreed upon till the commencement of first lease of the allotted unit as per clause 4 of the memorandum of understanding dated 05.01.2017.”

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It is submitted that the respondent herein was directed to pay assured return as agreed upon till the commencement of first lease of the allotted unit as per clause 4 of the memorandum of understanding dated 05.01.2017. Further reference has been made to the Memorandum of Understanding (Annexure A-2), moreso, Clause 4 to highlight the fact that monthly assured return of Rs.19,500/- per month would start from 05.01.2017 and would continue until the commencement of the first lease on the said unit. It is further submitted that the commencement of the first lease as per the reading of the terms and conditions of the said Memorandum of Understanding as well as the letters issued between the parties would be the date on which the present allottee received the first rentals and for the said regard, further reference has been made to clause 7(a) of the said MoU. It is stated that the respondent has sought to place reliance on the lease deed dated 10.07.2020 (Annexure A3) to contend that assured return was to although start from 05.01.2017 but was only up to the period of 10.07.2020 when the lease deed was executed. It is argued that the lease deed dated 10.07.2020 was never produced before the authorities although the final decision by the authorities was dated 17.11.2021 and that a closer reading of the lease deed dated 10.07.2020 (Annexure A-3) would show that the same does not pertain to the property of the present appellant. It is submitted that even in case the lease deed dated 10.07.2020 (Annexure A-3) is taken to be relatable to the unit of the present appellant, then also, the lease amount which was stated to be Rs.67/- per sq. ft. per month which was payable to the lessor was never paid to the present appellant from 10.07.2020 even up to the filing of the appeal which is dated 17.12.2022. It is further submitted that in the said circumstances, the deposit made by the respondent by taking the relevant date as 10.07.2020 is not in accordance with the directions issued by the Tribunal and as per the facts

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and circumstances of the present case. It is submitted that the present appellant had moved an application for recalling of the orders which were passed without hearing the present appellant, but however the said application had been dismissed vide order dated 30.07.2025 (Annexure A-23) and the arguments raised by the present appellant in the recalling application had not been considered. It is further submitted that in case the impugned orders are not set aside, then, the present appellant would be estopped from raising the plea raised by the present appellant in the present appeal as well as in the application for recalling. It is argued that the respondent is liable to pay a much higher amount as pre-deposit under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 and at any rate, the said issue is required to be kept open. It is submitted that the main appeals are now pending for 26.11.2025.

Notice in the applications for condonation of delay as well as in the main appeals for 15.10.2025.

Notice re: stay as well.

Liberty is granted to the appellant to serve the respondent through dasti process as well as through the counsel appearing before the Appellate Tribunal.

To be taken up immediately after the urgent list.

A photocopy of this order be placed on the file of other connected cases.

September 15, 2025”

4. Thereafter on 18.11.2025, this Court was pleased to pass the following order:

***“Present: Mr.Amitabh Tewari, Advocate and
Mr.Ishaan Mundeja, Advocate
for the appellant.***



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As per the report of the Registry, fresh dasti notice issued to the sole respondent at Delhi address has been received back served through the company employee. It has further been reported that earlier dasti notice issued to the sole respondent at the Gurgaon address had been received back served through legal concerned Clerk Ravinder.

None has appeared on behalf of the respondent.

Adjourned to 27.11.2025.

To be taken up after the urgent list.

A photocopy of this order be placed on the files of the connected cases.

November 18, 2025”

5. None had appeared on behalf of the respondent on the last date. Even today, none has appeared on behalf of the respondent to oppose the present appeals.

6. Learned counsel for the appellant, in addition to reiterating the arguments which had been raised and noted on 15.09.2025, has made a specific reference to the applications filed on behalf of the present appellant seeking recall of the earlier orders with a further prayer for dismissal of the appeals filed by the respondent on the ground of the same being not maintainable. It is submitted that several issues had been raised by the appellant in the said application for recall, including the issue with respect to the interpretation of the words “commencement of the first lease” as the interpretation of the said term is necessary for considering the amount to be paid under direction No.i given in paragraph 66 by the Authority in its order dated 17.11.2021, so as to calculate the amount of pre-deposit. It is submitted that the said applications for recall had been dismissed vide order



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dated 30.07.2025 without considering the said issues raised by the present appellant. It is further submitted that it was his case that the directions given by the Authority, more so, the direction as mentioned in paragraph 66(i) would show that the respondent herein was required to pay assured return, as agreed upon, till the commencement of the first lease, which would necessarily mean the first rental paid to the present appellant. It is submitted that no reason had been given for rejecting the objections/issues raised by the present appellant and it is thus, prayed that the order dated 30.07.2025 be set aside and the application filed in each of the cases for recall of the earlier orders and for dismissing the appeals filed by the present respondent being not maintainable, be considered afresh.

7. This Court has heard learned counsel for the appellant and has perused the paper books.

8. A perusal of the applications filed on behalf of the present appellant for seeking recall of the earlier orders vide which the amount which was required to be deposited by the respondent herein, as pre-deposit under Section 43(5) of the RERA Act, 2016, had been quantified, would show that several issues had been raised in the said applications by the present appellant. Paragraphs 6, 7 and paragraph 4 of the said application filed in Appeal No.877 of 2022 are reproduced hereinbelow:

6. It is submitted that the Appellant had wrongly interpreted the word 'commencement of the lease' with 'execution of the lease deed'. It is clear from bare perusal of Clause 4 of the MOU dated 05.01.2017, that the assured returns were payable by the



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*Appellant to the respondent till the commencement of the lease and not executing of the lease deed. Copy of the MOU is attached herewith as **Annexure R3**. Clause 4 of the MOU is reproduced herewith:*

"4... The monthly assured return shall be paid to the Allottee(s) until the commencement of the first lease of the said unit. This shall be the paid from the effective date."

However, in the application filed by the Appellant before this Hon'ble Tribunal, the Appellant has wrongly computed the assured return amount only till 10.07.2020 i.e till the date the alleged lease deed is stated to be executed. It is very important to mention herein that not even once in the reply filed by the Appellant to the complaint before the Hon'ble HARERA, Gurugram, did the Appellant mention about the existence of the Lease deed dated 10.07.2020. The complaint was filed by the respondent before the Hon'ble HARERA on 25.11.2020. Hence, if the said lease deed would have been in existence, the respondent would have atleast apprised the Court of the same. Furthermore, no such objection or intimation of the existence of such lease deed was even intimated by the Appellant before the Executing Court at the time of preparation of the Recovery Certificate. It is a settled law that no party can take any new plea before the Appellate Courts. If the intention of the parties would have been to calculate the Assured returns till the time, the first lease deed is executed, it would have been clearly stated. No where in any of the documents executed between the parties, it has been laid down that the assured returns are to be paid till 'Execution of the lease deed'. Rather, the only word used is the 'commencement of the first lease'. Without prejudice to the rights of the respondent, it is very important to mention herein that as per Clause 7(a) of the MOU, it was agreed that the responsibility of the assured returns to be paid would cease on commencement of first lease whereupon the respondent would be entitled to receive lease



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rentals. No such lease rental has been received by the respondent till date. Clause 7(a) of the MOU is reproduced herein:-

"7(a). That the responsibility of assured return to be paid by the Company shall cease on commencement of the first lease of the said unit whereupon the Allottee(s) shall be entitled to receive the lease rental."

7. That it is important to mention herein that a unit is deemed fit for habitation and can be used for the purpose of residing therein/leasing only when an Occupation Certificate is received from the concerned authorities. It is a matter of fact that till the date of order dated 17.11.2021, the Appellant had not received the Occupation Certificate from the authorities and the question of execution of the lease deed without even obtaining the OC does not even arise. The fact of non-receipt of the OC till the date of order dated 17.11.2021 has also been observed by the Hon'ble HARERA, Gurugram in Para 62 of the Order dated 17.11.2021:-

"62...No doubt that the respondent applied for OC of the project on 24.02.2020 but the same has not been received upto now.."

"4. Accordingly, the respondent/applicant had filed an execution bearing number 5652/2022 for the enforcement of the order dated 17.11.2021 and a Recovery certificate for an amount of Rs. 8,38,500/- was issued by Hon'ble Adjudicating Officer, HARERA, Gurugram. From a bare perusal of the said Recovery certificate, it is evident that the concerned authorities have rightly calculated the decretal amount from 01.07.2019 i.e the date from which the said assured returns were not paid till 31.01.2023 i.e the date till which the Recovery certificate was prepared. Copy of the recovery certificate dated 23.02.2023 along with the calculation is attached herewith as Annexure R1. It is submitted that the purpose of issuing such a certificate is to ascertain and validate the decretal amount. It is very important to mention herein that even in the execution proceedings, no objections whatsoever were filed by the

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Appellant regarding the procedure for computation of the decretal amount. Thus, it becomes evident that till 31.01.2023 i.e the date of issuance of the recovery certificate, the date of decretal amount was not Rs. 7,44,250/- as observed in order dated 17.02.2023 of this Hon'ble Tribunal. It is also noteworthy to mention herein that the Executing Court had given its direction to issue the recovery certificate on 20.12.2022 and it was only after the same that the Appellant has filed the present appeal, more so, which is barred by limitation. Copy of the order dated 20.12.2022 of Hon'ble Execution Court is attached herewith as Annexure R2."

9. A perusal of the above grounds would show that one of the issues raised by the present appellant is with respect to the interpretation of the term "commencement of the first lease" as used in para 66(i) by the Authority in its order dated 17.11.2021. It is the case of the appellant that the said term when read along with Clause 4 and Clause 7(a) of the MoU and other documents on record would show that the first lease is to commence on the date when the rent is received and not on the date when the lease has been executed. It is further the case of the appellant that the reliance placed upon the lease deed dated 10.07.2020 by the present respondent was completely misconceived as the said lease deed was never produced before the Authority, although reply was filed by the respondent, subsequent to the execution of the said alleged deed. It is also the plea of the present appellant that a recovery certificate had been prepared mentioning the particular amount and no objection with respect to the same was filed by the respondent herein. It is the case of the appellant that in fact even the occupation certificate till the date of order dated 17.11.2021 was not

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received and thus, the question of execution of the lease deed dated 10.07.2020 is meaningless. A perusal of the order dated 30.07.2025 would show that the said objections/issues which had been raised in the applications filed by the present appellant for recalling the earlier orders have not been decided. The observation of the Appellate Tribunal to the effect that the present appellant has not filed any appeal challenging the said order would not call for summarily rejecting the said application as the points/issues raised in the said application are *prima facie* raised to support the directions given by the Authority in para 66, for assessing the correct amount of pre-deposit. A decision on the said objection/issue raised by the present appellant in the application for recalling is necessary in view of the fact that in case the said objection is decided against any of the parties, then, the same would be an estoppel against either of the parties from raising the said plea during the course of execution. Thus, the order(s) dated 30.07.2025 in all the cases deserves to be set aside and the matters deserve to be remitted for fresh decision.

11. Keeping in view the abovesaid facts and circumstances, the present appeals are partly allowed and the impugned order(s) dated 30.07.2025 passed in all the cases are set aside and the Appellate Tribunal is requested to decide the miscellaneous applications filed on behalf of the appellant for recalling the earlier orders vide which the amount of pre-deposit had been determined under Section 43(5) of the RERA Act, 2016, afresh, after hearing all the parties concerned and also after taking into consideration the objections/issues raised in the application for recall.



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12. It is made clear that this Court has not opined on the merits of the said applications and the Appellate Tribunal would decide the said applications afresh, after taking into consideration the arguments raised on behalf of both sides, independently and in accordance with law.

13. Pending applications, if any, stand disposed of.

November 27th, 2025
Puneet

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned

:

Yes

Whether reportable

:

No