



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

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**CWP-14732-2025 (O&M)
Date of Decision: 08.04.2026**

M/s Advance India Projects Limited**....Petitioner**

Versus

State of Haryana and others**....Respondents**

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Anand Chibbar, Senior Advocate with
Mr. Sandeep Verma, Advocate and
Ms. Ateevraj Sandhu, Advocate
for the petitioner.

Mr. Deepak Bhardwaj, Additional Advocate General, Haryana.

SUVIR SEHGAL, J. (ORAL)

CM-16980-CWP-2025

1. Notice of offer of constructive possession dated 18.05.2024, Annexure P12, is taken on record.

2. Application is allowed.

Main Case

3. Petitioner has approached this court *inter alia* for issuance of a writ of certiorari for setting aside order dated 26.03.2025, Annexure P-11 passed by Haryana Real Estate Regulatory Authority, Gurugram, (hereinafter referred to as 'HRERA').

4. Facts, in brief, leading to the filing of the petition are that petitioner is a private limited company registered under the Companies Act. It



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floated a real estate project under the name of “AIPL Joy Gallery” at Sector 66, Badshahpur, Gurugram. Respondents No.3 and 4, (hereinafter referred to as the complainants), applied and a provisional retail shop unit was allotted to them vide letter dated 17.11.2023, Annexure P3. Claiming that they have not been paid the monthly assured return, complainants approached HRERA by filing a complaint, Annexure P7, which was contested by the petitioner, by filing its response Annexure P8. Complainants amended the complaint and vide impugned order, HRERA directed the petitioner to refund the paid up amount of Rs.1,02,01,348/- after deducting 10% of the sale consideration along with interest at the rate of 11.10% on the balance amount from the date of surrender.

5. Mr. Anand Chibbar, Learned Senior Counsel for the petitioner has argued that despite repeated communication, agreement to sell was never signed by the complainants. He urges that the offer of possession of the unit has been given to the complainants vide Annexure P-12 and that HRERA has erred in directing the refund of the amount in violation of the provisions of the Real Estate (Regulation and Development) Act, 2016, (for short, ‘2016 Act’). Placing reliance upon ***IREO Grace Realtech Private Limited vs. Abhishek Khanna and others, (2021) 3 SCC 241***, he asserts that complainants were obligated to take possession of the unit since the construction was complete and possession had been offered to them. When confronted with the availability of an alternate remedy of filing an appeal under section 44 of the 2016 Act, Learned Senior Counsel has relied upon ***Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council and another, (2025) 4 SCC 1; M/s Godrej Sara Lee Limited vs. Excise and***



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Taxation Officer-cum-Assessing Authority and others, 2023 SCC Online SC 95 as well as Uttar Pradesh Power Transmission Corporation Limited and another vs. CG Power and Industrial Solutions Limited and another, (2021) 6 SCC 15 to urge that writ petition can be entertained.

6. On an advance copy, complainants are represented by Himmat Singh, Advocate, who has opposed the writ petition on the ground of maintainability in view of an alternate statutory remedy. He has relied upon (i) ***Trishul Towers Private Limited vs. Haryana Real Estate Regulatory Authority and others***, (CWP-19813-2025 decided on 29.07.2025); (ii) ***Leelavathi N. and others vs. The State of Karnataka and others***, 2025 SCC Online SC 2253; (iii) ***Tecnimont Private Limited (Formerly known as Tecnimont ICB Private Limited) vs. State of Punjab and others***, (2021) 12 SCC 477; (iv) ***Newtech Promoters and Developers Private Limited vs. State of Uttar Pradesh and others***, (2021) 18 SCC 1; (v) ***Sana Realtors Private Limited vs. Haryana Real Estate Regulatory Authority and others***, 2023 (2) RCR (Civil) 510.

7. We have heard counsel for the parties and considered their respective submissions, besides examining the record of the case.

8. Before advertng to the merits of the impugned order, the primary question to be determined is as to whether this Court has the jurisdiction under Article 226 of the Constitution of India and whether a writ petition is maintainable against an order passed by HRERA under section 31 of the 2016 Act, particularly when a remedy of appeal has been provided under section 44 of the 2016 Act.

9. Section 44 of the 2016 Act lays down as under:-



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“44. Application for settlement of disputes and appeals to Appellate Tribunal.—

- (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.*
- (2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:
Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.*
- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.*
- (4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.*
- (5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:
Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.*
- (6) The Appellate Tribunal may, for the purpose of examining*



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the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.”

10. A plain reading of the aforesaid provision shows that an Appellate Tribunal has been established by the legislature to hear appeals from decisions, directions or orders of RERA as well as from orders of the adjudicating officer under the 2016 Act. Appellate Tribunal is a forum dedicated to hearing first appeals. Any person dissatisfied with the decision, direction or order of the adjudicating body can file an appeal before the Appellate Tribunal within the period specified in the 2016 Act. Appellate Tribunal has been vested with the same powers as are vested with the Civil Court under the Code of Civil Procedure, 1908 (for short, ‘CPC’), though, it is not bound with the procedure laid down under the CPC. It is guided by the principles of natural justice and has the power to examine the validity of the orders passed by the adjudicatory body.

11. Examining the provisions of the statute, Supreme Court in ***M/s Newtech Promoters and Developers Private Limited’s case (supra)***, has held that if there is some manifest material irregularity being committed by the authority or a promoter's defence has not been properly appreciated at the first stage, a promoter can prefer an appeal for reappraisal of evidence on record subject to the condition that substantive compliance with the requirement of pre-deposit is made. The rights of the parties *inter se* can easily be saved for adjudication at the appellate stage. Noticing the condition of pre-deposit contemplated under section 43 (5) of the 2016 Act, Supreme Court observed



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as under:-

“134. To be noticed, the intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated.

135. 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 pre-condition, if any, against the order passed by the Authority in question.

136. 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.”

12. Merely because filing of the appeal by petitioner would entail a pre-deposit of some amount cannot be a ground for the petitioner to bypass the alternate remedy, which is statutory as well as efficacious. A similar view has



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been taken by two different Division Benches of this Court in ***Sana Realtors Private Limited's case (supra)***, as well as in ***Trishul Towers Private Limited's case (supra)***. In ***Trishul Towers Private Limited's case (supra)***, this Court has observed that if an alternate remedy is available, this Court would be circumspect in invoking its extraordinary writ jurisdiction in view of the settled legal position. The condition of pre-deposit contemplated under section 43 (5) of the 2016 Act can, therefore, neither be said to be harsh or onerous.

13. Judgments relied upon by counsel for petitioner would not advance his case. The reference order in ***Tamil Nadu Cements Corporation Limited's case (supra)***, regarding maintainability of a writ petition in view of the alternate remedy under section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, would not help the petitioner. In ***M/s Godrej Sara Lee Limited's case (supra)***, Supreme Court found that the order passed by the Assessing Authority under the Haryana Value Added Tax Act, 2003, was without jurisdiction and, therefore, held that the writ petition could be entertained. In ***Uttar Pradesh Power Transmission Corporation Limited's case (supra)***, Supreme Court held that the power to entertain a writ petition can be exercised in an appropriate case even if there is an arbitration clause between the parties. These judgments are based on their own facts and are clearly distinguishable. A perusal of the statutory provisions as well as the above reproduced judgments, makes it amply clear that the 2016 Act, provides for filing an appeal both on facts and law before a specially constituted Appellate Tribunal. In such a situation, invocation of Article 226 of the



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Constitution of India by a person aggrieved against the order passed by HRERA, is not tenable.

14. Without examining or considering the legality of the impugned order, Annexure P-11, writ petition is dismissed as not maintainable, reserving right of the petitioner to avail the statutory remedy of appeal under the 2016 Act.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

(SUVIR SEHGAL)
JUDGE

(VIKAS SURI)
JUDGE

April 08, 2026
Varinder

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No