2026:PHHC:005899

205-u

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RERA Appeal No.229-2025 (O&M)
Decided on:-16.01.2026

Advance India Projects Ltd. ....Appellant

vs.

Naresh Saran ....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kunal Dawar, Senior Advocate with
Ms. Tanika Goyal, Advocate and
Mr. Sandeep Verma, Advocate for the appellant.

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<u>HARKESH MANUJA J. (Oral)</u>

<u>CM-15142-C-2025</u>

Application for exemption from filing certified copies/true typed copies of Annexures as well as the impugned orders dated 26.09.2025 and 20.03.2024, respectively, and for placing on record photocopies thereof is allowed as prayed for, subject to all just exceptions.

<u>Main case</u>

1. By way of present appeal challenge has been laid to an order dated 26.09.2025 passed by the Haryana Real Estate Appellate Tribunal (herein after referred to as "ld. Appellate Tribunal"), vide which, CM-786-2025 in/and Appeal No.865-2024, titled as "***Advance India Projects Ltd. vs. Naresh Saran***" preferred at the instance of appellant herein for considering the amount already paid by the

appellant to the respondent against Assured Return as compliance of the pre-deposit mandated under Section 43(5) of The Regulatory Estate (Regulation and Development) Act, 2016 (for short '2016 Act') has been rejected and consequently, the First Appeal preferred by the appellant laying challenge to the order dated 20.03.2024 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for brevity, "the Authority") has been dismissed for lack of pre-deposit.

2. Briefly, the respondent having booked one unit in the Real Estate project of the appellant known under the name and style of "AIPL Jay Central" Sector 65 Gurugram, Haryana being an allottee filed a complaint under Section 31 of 2016 Act read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The said complaint came to be disposed of by the Authority vide its order dated 20.03.2024 having passed the following directions:-

> *"29. 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):*
>
> (i) *The respondent is directed to handover the physical possession of the subject unit to the complainant within 30 days of this order.*
>
> (ii) *The respondent is directed to make payment of assured return as per agreed terms contained in clause 32 of the buyer's agreement of Rs.74,706/- per month from 03.05.2017 till issue of offer of possession i.e 21.01.2022, after adjusting the amount already paid if any.*
>
> (iii) *The allottee shall make the payment of outstanding dues towards the unit as per builder buyers agreement, if any and the respondent is directed to refund back the amount paid in excess by the complainant alongwith interest at the prescribed rate.*
>
> (iv) *The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.*
>
> (v) *The respondent is directed to execute conveyance deed in favour of the complainant upon payment of requisite stamp duty by him as per norms of the state government as per section 17 of the Act as per their obligation under section 19(11) of the Act within 3 mon*ths *from the date of handing over of possession.*"

3. Being aggrieved, the appellant herein preferred first appeal having invoked Section 44 of the 2016 Act. In terms of statutory mandate under proviso to

Section 43(5) of the 2016 Act, the appellant was required to deposit the total amount to be paid to the allottee-respondent including interest and compensation as directed by the Authority, being pre-requisite for hearing of the First Appeal.

4. In the present facts, the appellant-company rather than making any deposit, moved an application alongwith the appeal with a prayer that the amount already paid to the respondent–allottee towards Assured Return as reflected in Annexure A-11 of the appeal be considered as compliance of the pre-deposit as mandated under Section 43(5) of the RERA Act, 2016. The learned Appellate Tribunal vide its order dated 26.09.2025, dismissed the prayer made in the said application while recording that there was no provision in the 2016 Act whereunder mandatory provision of pre-deposit could be exempted or waived off. Further, as a consequence thereof, the First Appeal preferred by the appellant was also dismissed. The said order has been impugned by way of present appeal.

5. Learned Senior Counsel appearing on behalf of the appellant submits that as per the relief granted by the Authority in terms of paragraph 29 (ii) of its order, assured return @ Rs.74,706/- per month from 03.05.2017 till 21.01.2022, after adjusting the amount already paid was to be released to the respondent. Learned Senior Counsel points out that a sum of Rs.65,06,201/- already stood paid to the respondent–allottee by the appellant and as such, no further payment was required to be made to him on this count. Learned Senior Counsel rather submits that some excess amount paid was required to be refunded by the respondent to the appellant and therefore, the application filed by the appellant before the learned Appellate Authority for adjustment of the already paid amount towards the mandatory pre-deposit was required to be allowed. Learned Senior counsel also submits that as per relief granted in para 29 (iii) of the order passed by the Authority, exact

determination of any amount payable was never made and as such, the impugned order dated 26.09.2025 was to be set aside.

6. Notice of motion.

7. At this stage, Mr. Baljinder Singh, Advocate, accepts notice on behalf of the respondent and submits that he is ready to make his submissions and argue the matter.

8. Learned counsel appearing on behalf of the respondent has disputed the amount already paid by the appellant towards Assured Return. He submits that the complete payment as agreed in terms of Clause 32 of the Buyers Agreement @ Rs.74,706/- per month from 03.05.2017 till date (upto date) towards Assured Return has not been released, as only a sum of Rs.58,767,417/- has been paid to the respondent. In addition, he also points out that as per the relief granted by the Authority, the appellant is also liable to refund the amount paid in excess by the respondent-complainant along with interest at the prescribed rate. Learned counsel thus, submits that the impugned order dated 26.09.2025 passed by the Appellate Tribunal being based on proper appreciation of facts and the statutory provisions, calls for no interference and consequently, the present appeal be dismissed.

9. I have heard learned counsel for the parties and gone through the paper book.

10. A perusal of paragraph 29 of the order dated 20.03.2024 passed by the Authority shows that the appellant-company has to primarily make the payment to respondent under the following two Clauses:-

> *"29(ii) The respondent is directed to make payment of assured return as per agreed terms contained in clause 32 of the buyer's agreement of Rs.74,706/- per month from 03.05.2017 till issue of offer of possession i.e 21.01.2022, after adjusting the amount already paid if any.*
>
> *(iii) The allottee shall make the payment of outstanding dues towards the unit as per builder buyers agreement, if any and the respondent is directed to refund back the*

> *amount paid in excess by the complainant alongwith interest at the prescribed rate.”*

11. The only dispute in the present appeal revolves around the statutory pre-deposit by the appellant as stipulated under proviso to Section 43 (5) of 2016 Act, which reads as under:-

> *“43 (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.”*

12. Record of the case reflects that the respondent alongwith his complaint appended one document in the form of Annexure C-5, as per which, a sum of Rs.58,76,417/- already stands released in his favour towards assured return. With respect to the relief awarded in favour of respondent in terms of para 29 (ii), if the assured return @ Rs.74,706/- per month is calculated from 03.05.2017 till 21.01.2022, the total sum comes to Rs.42,29,323/-, whereas even as per the own document of respondent in the form of Annexure C-5, he has already received a sum of Rs.58,76,417/- from the appellant, even before filing of his complaint which at least needs to be accounted for.

13. Furthermore, it may be noticed herein that with respect to the relief granted in favour of the respondent in terms of paragraph 29 (iii) of the order dated 20.03.2024, no specific amount has been quantified. Since, as per the directions, the refund of excess amount has been ordered against the appellant only after the clearance of outstanding dues by the allottee/respondent, which thus needs to be computed. The said exercise needs to be done in summary manner at this stage, either by the Executing Court or by the learned Appellate Authority through its

Registry by calling upon the parties to provide their respective calculations supported by affidavits.

14. Moreover, it may also be noticed here that the prayer made on behalf of the appellant in its application was in fact to account for the amount already paid to the respondent against Assured Return while computing the amount of pre-deposit as mandated under Section 43(5) of the 2016 Act. Apparently, the prayer was never to waive off or exempt the statutory pre-deposit as noticed in the impugned order. Be that as it may, even as per the own admission made by respondent in his complaint, a sum of Rs.58,76,417/- stood paid to him against Assured Return as stipulated in the Buyers Agreement, therefore, the said amount was at least required to be adjusted while quantifying the mandatory pre-deposit.

15. The learned Appellate Tribunal rightly observed that its Registry while computing the pre-deposit was not expected to embark upon cumbersome exercise of calculation on the basis of stand taken by the appellant in the appeal. However, in the most humble opinion of this Court, once the amount payable to the respondent was not specifically computed in the order passed by the Authority, the same, as per its directions was necessarily to be quantified. A perusal of the impugned order shows that the Registry of the learned Appellate Tribunal required the appellant to make pre-deposit of Rs.42,28,356/-, however, it was nowhere made out as to whether the amount admittedly received by the respondent against Assured Return was ever adjusted or if the amount payable in terms of para 29(iii) of the order passed by the Authority was even quantified by the Registry. Furthermore, even the Appellate Tribunal while passing the impugned order nowhere recorded that as to how much amount was payable by the appellant to the respondent in terms of Clause 29(iii) of the order passed by the Authority. Moreover, even before this Court no specific figure in terms of relief clause from paragraph 29 (iii) has been pointed out by the

respondent. Thus, in such circumstances, the impugned order cannot be sustained, having caused serious prejudice to the substantial rights of the appellant.

16. In such disputed facts and circumstances, the order dated 26.09.2025 passed by the learned Appellate Tribunal, is hereby set aside and the appeal as well as the application filed along therewith are restored to the original number with a request to the learned Appellate Tribunal to provide a tentative quantification of the amount payable, if any, by the appellant in terms of paragraph 29 (iii) of the order dated 20.03.2024 passed by the Authority and thereafter, call upon the appellant, before hearing of the appeal to ensure the compliance of proviso to Section 43(5) of the 2016 Act. Needless to say, that the admitted amount already paid to the respondent towards Assured Return shall also be adjusted while computing the pre-deposit in terms of directions issued in para 29(ii) of the order passed by the Authority. The parties are thus directed to appear before the learned Appellate Tribunal on 05.02.2026. However, it goes without saying that the tentative quantification made by the Appellate Tribunal shall have no bearing on the merits of the appeals preferred by both the sides. Such quantification can be carried out by adopting summary procedure through calling upon the parties to furnish their respective calculations supported by documents and affidavits.

17. Resultantly, the present appeal stands disposed of.

18. Pending applications, if any, also stand disposed of.

16.01.2026 **(HARKESH MANUJA)**
sonika/sanjay **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No