

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB  
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

**APPEAL NO.79 of 2023**

M/s Radiant Buildcon Pvt. Ltd. through Director Sh. Rohit Srivastava, S/o  
Sh. Dinesh Kumar Srivastava R/o 1/39, Ruchi Khand 1, Sharda Nagar,  
Lucknow (UP)

...Appellant

Versus

Real Estate Regulatory Authority Punjab, 1<sup>st</sup> Floor, Plot No.3 Block B, Madhya  
Marg, Sector 18A, Chandigarh.

....Respondent

Memo No. R.E.A.T./2026/31

To,

REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup> FLOOR,  
BLOCK B, PLOT NO.3, MADHYA MARG, SECTOR-18,  
CHANDIGARH-160018.

Whereas appeal titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeal is being forwarded to you for uploading the same on website.

Given under my hand and the seal of the Hon'ble Tribunal this 15<sup>th</sup>  
day of January, 2026.

  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



BEFORE THE REAL ESTATE APPELLATE TRIBUNAL PUNJAB  
AT CHANDIGARH

APPEAL No. 79 of 2023

In the Matter of :

M/s Radiant Buildcon Pvt. Ltd. through Directors

- 1) Subhash Chandra Saraff
- 2) Abhishek Saraff
- 3) Rohit Srivastava and
- 4) Banwari Lal Arora

....Appellant

Versus

The Real Estate Regulatory Authority, Punjab

.....Respondent

**MEMO OF PARTIES**

M/s Radiant Buildcon Pvt. Ltd. through Director

Sh. Rohit Srivastava, S/o Sh. Dinesh Kumar Srivastava  
R/o 1/39, Ruchi Khand 1, Sharda Nagar, Lucknow (UP)

...Appellant

Versus

Real Estate Regulatory Authority Punjab

1st Floor, Plot No.3, Block B, Madhya Marg, Sector 18A, Chandigarh

...Respondent



Place: Chandigarh

Date: 12/12/23

Through Counsel

Mohit  
Kia  
Mohit Dhiman & Pooja & Manisha Maggu  
(PH/5981/2021) & (PH/2251/2019) & (PH/3341/2022)  
(Advocates)

Counsel for the Appellant

Regarding Pre deposit amount i have not challenged  
If a ... order dt. 11.09.2023 rather order

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPLICATION NO.48 OF 2024  
AND APPEAL NO.79 OF 2023  
M/S RADIANT BUILDCON PVT. LTD.

VERSUS

REAL ESTATE REGULATORY AUTHORITY, PUNJAB

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**Present:-** Mr. Navraj Singh Guron, Advocate for the Appellant  
Mr. Prashant Rana, Advocate for RERA, Punjab

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The present Appeal No.79 of 2023 was filed by the appellant on 12.12.2023. Objection regarding lack of pre-deposit required under Section 43(5) of the Act was made by the Registry in response to which the counsel for the appellant replied that he has not challenged the main Order dated 11.09.2023 but has challenged the Order dated 28.11.2023. In his reply he has written as under:-

*"Regarding pre deposit amount I have not challenged the main order dated 11.09.2023 rather order dated 28.11.2023. Rejecting my application for setting ex-parte award has been challenged in this Appeal. Project is one."*

To hear the appeal, notice was issued to the respondent, who complied by appearance on 24.03.2025. On 24.03.2025, case was adjourned till 26.05.2025. On 26.05.2025, objection was raised by this Court regarding the non-compliance of mandatory provisions under Section 43(5) and in case compliance is not done the appeal would be prima facie rejected. The appellant was given time till 18.08.2025 to comply with the mandatory requirement of pre-deposit. On 18.08.2025, the counsel for the appellant sought adjournment on the basis that he needed time to comply with the mandatory requirement of Section 43(5). Case was adjourned on request till 15.09.2025. On 15.09.2025, the counsel for the appellant again



requested for one more opportunity on the basis that he had filed a writ petition with the Hon'ble Punjab and Haryana High Court and was hopeful of getting a decision in his favour. On the basis of the counsel's statement that in his writ the ground was that he be heard without pre-deposit, the appellant was further allowed time till 16.10.2025 to either get the decision in its favour from the Hon'ble Punjab and Haryana High Court or make compliance with the mandatory provisions of Section 43(5). Case was then adjourned till 16.10.2025. On this date the counsel again requested for a short adjournment to comply with the directions as per the last order, case was adjourned till 27.10.2025. On 27.10.2025 the counsel admitted that the Hon'ble Punjab and Haryana High Court has dismissed his writ petition for waiver of pre-deposit mandatorily required under Section 43(5) of the Act. The Hon'ble High Court in CWP No.30850 of 2025 vide order dated 17.10.2025 has held as under:-

*"It is evident from bare reading of the provision that a pre-deposit of 30% of the penalty amount is essential condition for hearing the appeal under Section 43(5) of the Act of 2016.*

5. *In the afore-noted facts and circumstances, especially when a penalty of Rs.10 Crores has been imposed upon the petitioner for not adhering to the provisions of Section 3 of the Act of 2016, we do not find any good ground to entertain the instant writ petition. Consequently, the petition being devoid of any merits stands dismissed."*



The appellant was allowed another month's time on 27.10.2025 to comply with the mandatory provisions of Section 43(5) and arrange necessary funds in view of the decision of the Hon'ble Punjab and

Haryana High Court, the case was fixed for 27.11.2025. On 27.11.2025 the appellant was again given some more time for making mandatory compliance required under Section 43(5). The case was adjourned for last and final time for 08.01.2026 with a clear direction that any non-compliance would lead to dismissal of the appeal. In spite of this, the appellant failed to comply with the requirement of pre-deposit as required under Section 43(5) of the Real Estate(Regulation and Development), Act, 2016 (for short 'Act'). For ease of reference the aforesaid provision is reproduced as hereunder:-

*"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."*



Thus, the language of the section makes it absolutely clear that appeal before the Real Estate Appellate Tribunal **shall not to be entertained without the promoter first having deposited the requisite amount as provided in Section 43(5) of the Act** before the appeal is heard.

The same has also been confirmed by the various Courts in judicial pronouncements. The aforesaid provision of Section 43(5)

of the Act came up for consideration before the Hon'ble Punjab and Haryana High Court in CWP No.38144 of 2018 (*Experion Developers Pvt. Ltd. Versus State of Haryana and Others* (2021) 1 RCR (Civil) 1) wherein it was held as under:-

"13. Incidental to this issue is the challenge to the orders of the Appellate Tribunal rejecting the plea of the Petitioners for waiver of pre-deposit or for grant of further time, beyond what was already granted by the Appellate Tribunal, to make the pre-deposit. It was urged that there exists a distinction between 'entertaining' an appeal in terms of the proviso to Section 43 (5) of the Act and passing orders by the Appellate Tribunal after 'receipt of an appeal' under Section 44 (1) of the Act. The specific contention is that Section 44 (3) of the Act obliges the Appellate Tribunal to pass orders in the appeal after it is filed, notwithstanding the failure of the promoter, where the promoter is the Appellant, to make the mandatory pre-deposit before the Appellate Tribunal, as required by the proviso to Section 43 (5) of the Act.

14. The Court is unable to agree with the above submission. Sections 43 and 44 of the Act are to be read harmoniously. On such reading, the Court finds there to be no inconsistency in the wording of Section 43 (5) and Section 44 of the Act. Both envisage the filing of appeals by any person and this would include the promoter. However, when it comes to an appeal filed by the promoter, the requirement under the proviso to Section 43 (5) of the Act, will have to be mandatorily fulfilled, even for the purposes of the Appellate Tribunal having to pass orders in terms of Section 44 of the Act. The proviso to Section 43 (5) of the Act clearly states that the pre-deposit is required to be made "before the said appeal is heard." In other words, the Appellate Tribunal is not obliged to proceed to 'entertain' or hear an appeal that has been filed before it, if the promoter, who has filed such appeal, fails to comply with the direction for making the pre-deposit in terms of the proviso to Section 43 (5) of the Act.

15. Typically, where the Appellate Tribunal rejects the plea of the Appellant for waiver of pre-deposit, then it grants one more opportunity to the Appellant to make the pre-deposit within a reasonable time failing which it will proceed to dismiss the appeal on the following date that is has fixed for the hearing of the appeal. This is what has happened in each of the cases here. There cannot be an indefinite postponement of the date by which the pre-deposit has to be made as that would defeat the very object of the Act providing a mechanism for expeditious redressal of the disputes. As explained by the Supreme Court in *Technimont Pvt. Ltd. (supra)*, the Appellate Tribunal has no power to waive the requirement of the making of a pre-deposit as mandated by the proviso to Section 43 (5) of the Act. This Court has held likewise in *Neo Developers Pvt. Ltd. v. Union of India* (decision dated 19th August 2020 in CWP No. 12154 of 2020) and *Shri Mohan Singh v. Haryana Real Estate Regulatory Authority* (decision dated 6th March 2020 in RERA Appeal No. 6 of 2020). Further, as explained by the Supreme Court in *Union Bank of India v. Rajat Infrastructure Pvt. Ltd.* (decision dated 2nd March 2020 in CA No. 1902 of 2020), even the High Court cannot issue any direction in that regard contrary to the Act, since it



does not have the powers vested in the Supreme Court under Article 142 of the Constitution of India. In other words, if the Appellant fails to make the pre-deposit within the time granted for that purpose once by the Appellate Tribunal, the Appellate Tribunal would be justified in proceeding to dismiss the appeal for failure to make the pre-deposit.

16. Therefore, the challenge in these writ petitions on the abovementioned ground, to all such orders of the Appellate Tribunal, rejecting the request of Petitioners to be granted further time beyond the date as stipulated by the Appellate Tribunal or where the appeals have been rejected on account of the Petitioners' failure to make the pre-deposit as directed, is hereby rejected."

A perusal of the aforesaid judgment shows that it has been categorically held that when it comes to an appeal filed by the promoter, the requirement under the proviso to Section 43 (5) of the Act, will have to be mandatorily fulfilled, even for the purposes of the Appellate Tribunal having to pass orders in terms of Section 44 of the Act. The proviso to Section 43 (5) of the Act clearly states that the pre-deposit is required to be made "before the said appeal is heard." In other words, the Appellate Tribunal is not obliged to proceed to 'entertain' or hear an appeal that has been filed before it, if the promoter, who has filed such appeal, fails to comply with the direction for making the pre-deposit in terms of the proviso to Section 43 (5) of the Act.



Further, the Hon'ble Punjab and Haryana High Court has also in the recent order dated 22.05.2025 in CM-5647-C-2025 in RERA-APPL-21-2025 titled as "*M/s Everrich Buildcon Pvt. Ltd. through Its Authorized Person Ritik Mishra Versus Babreek Sharma and Others*" held as under:-

*"Appellant as undertaken before this Court would deposit the entire amount in compliance to the provisions of Section 43(5) of the RERA Act before the Appellate Tribunal on or before 15.07.2025.*

*It is made clear that in case the said deposit is not done and the proof regarding the same is not shown on the next date of hearing then the present appeal would be liable to be dismissed."*

Further, the Hon'ble Punjab and Haryana High Court in CWP No.8548 of 2020 and other connected matters, in the case of "**Janta Land Promoters Private Limited Versus Union of India and Others**", not only held that requirement of deposit of amount as required under Section 43(5) of the Act as mandatory in nature but also upheld the decision of not entertaining the appeal without deposit of amount as required under Section 43(5) of the Act taken by a single Member of Real Estate Appellate Tribunal and held such order as valid. For ease of reference the relevant paras from the said judgment are reproduced below:-

***"The requirement of pre-deposit***

82. As regards the issue regarding requirement of the pre-deposit under the proviso to Section 43 (5) of the Act, it has been dealt with in sufficient detail in a separate judgment delivered today by this Court in the Haryana RERA matters. The following observations therein would equally apply to the present case:

"15. Typically, where the Appellate Tribunal rejects the plea of the Appellant for waiver of pre-deposit, then it grants one more opportunity to the Appellant to make the pre-deposit within a reasonable time failing which it will proceed to dismiss the appeal on the following date that is has fixed for the hearing of the appeal. This is what has happened in each of the cases here. There cannot be an indefinite postponement of the date by which the pre-deposit has to be made as that would defeat the very object of the Act providing a mechanism for expeditious redressal of the disputes. As explained by the Supreme Court in *M/s. Technimont Pvt. Ltd. (supra)*, the Appellate Tribunal has no power to waive the requirement of the making of a pre-deposit as mandated by the proviso to Section 43 (5) of the Act. This Court has held likewise in *Neo Developers Pvt. Ltd. v. Union of India* (decision dated 19th August 2020 in CWP No.12154 of 2020) and *Shri Mohan Singh v. Haryana Real Estate Regulatory Authority* (decision dated 6<sup>th</sup> March 2020 in RERA Appeal No. 6 of 2020). Further, as explained by the Supreme Court in *Union Bank of India v. Rajat Infrastructure Pvt. Ltd.* (decision dated 2nd March 2020 in CA No. 1902 of 2020), even the High Court cannot issue any direction in that regard contrary to the Act, since it does not the powers vested in the Supreme Court under Article 142 of the Constitution of India. In other words, if the Appellant fails to make the pre-



deposit within the time granted for that purpose once by the Appellate Tribunal, the Appellate Tribunal would be justified in proceeding to dismiss the appeal for failure to make the pre-deposit.

**16. Therefore, the challenge in these writ petitions on the abovementioned ground, to all such orders of the Appellate Tribunal, where the request of Petitioners to be granted further time beyond the date as stipulated by the Appellate Tribunal or where the appeals have been rejected on account of the Petitioners' failure to make the pre-deposit as directed, is hereby rejected."**

83. The incidental issue regarding the Court exercising its discretion under Article 226 of the Constitution of India also does not impress the Court. In this context, the following observations in the Court's judgment delivered today in the Haryana RERA matters are as under:

"19. The above submissions, though attractive, are not impressive. In each of the individual writ petitions before this Court, where the order of the Appellate Tribunal declining to waive the requirement of pre-deposit has been challenged, this Court finds that in the facts and circumstances of the individual cases, no grounds have been made out to persuade this Court to exercise its writ jurisdiction under Article 226 of the Constitution to grant any relief in respect thereof. In none of the cases is the Court satisfied that a case of 'genuine hardship' has been made out."

84. One of the arguments by the Petitioners is that the Authority exercised jurisdiction that it did not possess and therefore, in the corresponding appeal filed against such order of the Authority there would be no requirement to make a pre-deposit. The following conclusion of this Court in the Haryana RERA matters would equally apply here in this regard:

"20. Further, on the interpretation of the provisions of the Act, and the conclusions drawn by this Court in this judgment on the scope of jurisdiction of the Authority and the AO respectively, and given the prayers in the individual complaints from which these writ petitions arise, none of the impugned orders of the Authority can be said to be without jurisdiction. In other words, the Authority cannot be held to have exercised a jurisdiction that it totally lacked. Whether on the facts of the individual cases the Authority ought to have decided the complaints differently is a matter of challenge on merits for which a remedy is in any event available by way of an appeal before the Appellate Tribunal."

85. Even where according to the party aggrieved the Authority lacked jurisdiction to decide the complaint, it would be for the Appellate Tribunal to decide that issue in light of the legal position explained in this judgment on the respective adjudicatory powers of the Authority and the AO. In such event, in view of the decision of this Court in M/s Landmark Apartments Pvt. Ltd. (supra), and which is further affirmed in the decision of this Court in the Haryana RERA matters, for the



purposes of the appeal before the Appellate Tribunal the making of the pre-deposit in terms of the Act would be mandatory. The Appellate Tribunal would order the keeping of that amount in a fixed deposit pending the final decision in the appeal. If it were to order release of the whole or part of the amount to the allottee, that would have to be upon the furnishing of adequate security. This would be necessary as in the event of the appellant succeeding the amount pre-deposited would be required to be refunded. Therefore, it cannot be said that great prejudice is going to be caused to the Petitioners on that score.

86. The Court notices that in some of these petitions, where the Appellate Tribunal had granted an extension of time to make the pre-deposit, the Petitioners did not make such pre-deposit, even within the extended time. An interim order was passed by this Court restraining the Appellate Tribunal from dismissing the appeal on the ground of failure to make the pre-deposit. This Court hereby vacates all such interim orders. However, as a one-time measure this Court grants time to the Petitioners to make the pre-deposit in all these cases in the manner indicated hereafter.

87. The conclusions in this judgment may be summarized thus:

XX XX XX

(h) The orders of the Appellate Tribunal declining to waive the pre-deposit are upheld. No case is made out for a direction to the Appellate Tribunal to entertain the appeal without insisting on the pre-deposit."



It is not out of context to mention that the decision by the Appellate Tribunal declining to waive the pre-deposit in the above said judgment was taken by a single Member of the Appellate Tribunal and the said decision of a single Member was upheld by the Hon'ble Punjab and Haryana High Court. A single Member of the Appellate Tribunal, cannot decide the grounds of appeal but can validly decline to entertain an appeal without the compliance of Section 43(5) of the Act i.e. the requirement of pre-deposit.

Further, the Hon'ble Apex Court has held that the Appellate Tribunal does not have the mandate/power under the Act to waive off the requirement of pre-deposit under Section 43(5) of

the Act. Since, this Appellate Tribunal does not have any such power therefore, any decision in respect of such request for non-requirement of pre-deposit is not within its purview and thus needs to be rejected. No Quorum is therefore necessary for rejection of such request for non-requirement of pre-deposit, fulfillment of which is a pre-condition before entertaining an appeal.

Further, vide order dated 17.10.2025 the Hon'ble Punjab and Haryana High Court has also dismissed the writ petition of the appellant to hear the appeal without compliance of Section 43(5) of the Act. However, in spite of this, the appellant has failed to comply with the provisions of Section 43(5) of the Act. The term used in the RERA Act is "shall" and it does not distinguish between any interim order and final order therefore no appeal can be entertained without the mandatory compliance of Section 43(5) of the Act.

Therefore, in view of the above the aforesaid appeal cannot be accepted and is accordingly prima facie dismissed on account of non-compliance of conditions necessary for filing an appeal under the Act.



*Sd/-*  
DR. SIMMI GUPTA, IRS (IT)  
CHIEF COMMISSIONER OF INCOME TAX (RETD.)  
MEMBER (TECH./ADMN.)

January 08, 2026  
VSL

**Certified To Be True Copy**

*Shananda Kaur*  
15.1.2026  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

*Shananda Kaur*