

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.932 of 2024
In
Civil Writ Jurisdiction Case No.15444 of 2021

M/S Nesh India Infrastructure Pvt. Ltd. a Company incorporated Under the Companies Act, 1956 having its Registered Office at Nesh Inn Building 19 and 20, Kidwaipuri, P.S.-Budha Colony, District-Patna-800001 through its Managing Director, Shri Shashi Bhushan Singh, Male aged About 53 Years, Son of Late Chandrika Prasad, resident of 501, Laxmi Hari Niwas, Nageshwar Colony, Kavi Raman Path, P.S. - Buddha Colony, District- Patna-800001.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Vikash Bhawan, Bailey Road, Patna - 800015.
2. Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Vikash Bhawan, Bailey Road, Patna-800015.
3. The Officer on Special Duty, Bihar Real Estate Appellate Tribunal, Patna-800001.
4. Savita Sah Daughter of Late Bharat Sah Son of Indira Deo Singh Resident of A/416, Hazari House, South-West Corner of Park, A.G. Colony, District- Patna- 800025.
5. Ram Singh Sita Son of Sri Indira Deo Singh A-488, East Corner of Park, A.G. Colony, P.S. - Shastri Nagar, District- Patna- 800025.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Abhinav Shrivastava, Sr. Advocate Mr.Raushan, Advocate Mr.Pushkar Bhardwaj, Advocate Mr.Krishna Murari, Advocate Mr.Sahil Kumar, Advocate
For the Respondent/s	:	Mr.D.Ksinha,Sr. Advocate Mr.Ram Babu Sah, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 02-09-2025



Appellant has assailed the order of the learned Single Judge dated 28.08.2024 passed in CWJC No. 15444 of 2021. Appellant and Respondent No. 4 – *Savita Sah* & Respondent No. 5 - *Sita Ram Singh* have entered into certain agreement in respect of developing land.

2. Respondent Nos. 4 & 5 are the owners of the land and land promoter is appellant herein. There were certain disputed issues relating to earmarking certain flats in favour of Respondent Nos. 4 & 5. Initial agreement was for construction of five floors. Thereafter, number of floors was increased from five to seven. In this regard, Respondent Nos. 4 & 5 sought certain additional benefits on account of increase in the number of floors. That apart, there were certain belated completion of work for which Respondent Nos. 4 & 5 are entitled to compensation and other benefits. Arising out of these facts and circumstances, Respondent Nos. 4 & 5 have invoked the remedy before the Adjudicating Authority and Adjudicating Authority has passed an order of payment of compensation in their favour against the appellant herein.

3. Appellant feeling aggrieved by the order of the Adjudicating Authority preferred appeal before the Appellate Authority. Initially Appellate Authority proceeded to pass order



directing the appellant to deposit 30% of the compensation amount. Thereafter, one more order was passed on 10.08.2021 directing the appellant to deposit 100%.

4. Feeling aggrieved by the order of the Appellate Authority, appellant has preferred CWJC No. 15444 of 2021. The learned Single Judge has affirmed the Appellate Authority's order insofar as directing the appellant to deposit 100% compensation. Hence, the present LPA on behalf of the appellant.

5. Learned counsel for the appellant submitted that Appellate Authority has committed error in not apprising with reference to the relief sought by the Respondent Nos. 4 & 5 before the Adjudicating Authority in the light of Section 43(5) read with Section 71 of RERA Act, 2016. The Hon'ble Supreme Court in the appellant's case itself in Civil Appeal No(s). 6745-6749 of 2021 arising out of SLP (Civil) Nos. 3711-3715 of 2021, in Paras 121 & 122 held as under:-

“121. Before we examine the challenge to the proviso to Section 43(5) of the Act of making predeposit for entertaining an appeal before the Tribunal, it may be apposite to take note of Section 43(5) of the Act, 2016. Section 43(5) reads as follows:-

“43. Establishment of Real Estate Appellate Tribunal-

.....

(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.

Explanation – For the purpose of this subsection “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

122. It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal against the order of an authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal against an order of authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee which includes interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is to be instituted.”

6. The learned Single Judge has not appreciated insofar as interpretation of Section 43(5) to the extent of depositing 30% or 100%. It is further submitted that for non-payment of 100% deposit appeal within the time limit, appeal has been dismissed.



On 10.08.2021 and 10.09.2021, Appellate Authority has passed the following orders:-

*“ THE REAL ESTATE APPELLATE
TRIBUNAL, BIHAR*

(BREAT) at Patna

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REAT Appeal No. 28 of 2021

With

REAT Appeal No. 29 of 2021

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*1. M/s Nesh India Infrastructure Private Ltd
having its registered office at Nesh Inn Building
19+20, Kidwaipuri, P.S. Budha Colony, District
Patna at present C/o- Shashi Bhushan Sinha,
Commercial Block, Tiruvantpuram City, AG
Sector Ashopur Road, Khagaul, Danapur, Town
and District Patna through its Managing
Director.*

*2. Shashi Bhushan Sinha, S/o late Chandrika
Prasad, R/o- 501, Laxmi Hari Niwas, Nageshwar
Colony, Kavi Raman Path, P.S. Buddha Colony,
District Patna – 800001*

*..... Appellant (in
both the appeals)*

Versus

Appeal No. 28 of 2021

*Sita Ram Singh, A-488, East Corner of Park, A.G.
Colony, P.S. Shastri Nagar, District Patna, Pin
Code 800025*

..... Respondent

Appeal No. 29 of 2021

*Savita Sah D/o late Bharat Sah, R/o-, A/416,
Hazari House, South-West Corner of Park, A.G.
Colony, P.S. Shastri Nagar, District Patna, Pin
Code 800025*

..... Respondent

Appearance:

(in both the appeals)

*For the appellant: Abhinav Shrivastava, Advocate
and*

Mr. Roshan, Advocate.



(in both the appeals)

For the appellant: Mr. Ram Babu Sah, Advocate

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Dated: 10th,

August, 2021

CORAM:

Hon'ble Mr. Justice Arun Kumar, Chairman

Mr. Arbind Madhav, Judicial Member

Mr. Sunil Kumar Singh,

Administrative/Technical Member

ORDER

1. The petition dated 23.7.2021 filed by the respondent is treated as review petition of order dated 20.7.2021 passed by the Tribunal.

2. Arguments were heard on behalf of the petitioner/respondent as well as learned counsel for the appellant on previous occasion.

3. The Tribunal by order dated 20.7.2021 rejected the objection of the respondent for pre-depositing 100% of the awarded amount as only 30% of the said amount was deposited in the Tribunal by the appellant.

4. The adjudicating officer in RERA/CC/753/2019/RERA/AO/233/2019 has passed the impugned order dated 9.3.2021 directing the promoter/appellant to pay compensation, interest, and litigation cost within 60 days of passing the order. The appellant being aggrieved has preferred the appeal but has pre-deposited only 30% of the amount under section 43(5) of Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the Act).

5. Moving the petition dated 23.7.2021 learned counsel of the respondent referring section 43(5) of the Act contended that there are two categories of conditions of pre-deposit under this provision; first category relates to penalty whereas second category relates to total amount to be paid to the allottee including interest and compensation imposed on the promoter.

6. Learned counsel further contended that imposition of penalty is made under sections 59 to



68 under chapter VIII of the Act whereas interest and/or compensation is allowed under sections 12,14,18 and 19 of the Act. The adjudicating officer has not awarded any penalty to the promoter rather compensation and interest is awarded in favour of the allottee, who is the landowner and in lieu of his land, the number of apartments as per terms and conditions of the agreement have not been provided. Learned counsel has placed reliance on several decisions in support of contention that in case of interest and compensation pre-deposit of 100% awarded amount in the Tribunal is pre-condition for entertaining the appeal.

7. Learned counsel has placed reliance in case of *Parinee Reality Pvt. Ltd. vs Rajiv Govind Bharwarkar* and another in Misc. application no. 490/2020 (review petition in Appeal no. AT 006000000031724) wherein Maharashtra Real Estate Appellate Tribunal by order dated 22.2.2021 reviewed the earlier decision of depositing 40% of the amount by the promoter by holding that section 43(5) of the Act envisages that in appeal, if the promoter challenges the order granting refund with interest or compensation, in such situation the total amount is to be pre-deposited by the promoter in order to entertain the appeal.

8. Reliance has also been placed in CWP 8548 of 2020 and other connected matters decided by Division Bench of the Hon'ble Punjab & Haryana High Court wherein it has been decided that in case of appeal filed against any other order which envisaged payment of amount of allottee in such circumstances the total amount is required to be paid by the promoter before the appeal is heard, only in case of minimum of 30% of the penalty amount or such higher amount as directed by the appellate Tribunal requires to be paid for making the appeal entertainable. Further reliance is placed upon the order dated 27.8.2019 passed in Appeal no. 7/2019 by the Haryana Real Estate Appellate Tribunal holding the same view.



9. The learned counsel of the respondent submitted that to make this appeal entertainable the appellant further requires to deposit 70% remaining amount in the Tribunal. In reply filed by the appellant it is stated that only 30% of the amount is required to be deposited by the appellant to make this appeal entertainable.

10. Learned counsel contended that the adjudicating officer by the impugned order has awarded penalty and not compensation and interest. The respondent has not paid any amount for purchasing apartment rather there is dispute with regard to number of apartments to be given to landowner in terms of the development agreement.

11. Learned counsel has placed reliance upon RERA appeal defective case no. 6/2021 decided by the single Bench of the Hon'ble Allahabad High Court and another case WP no. 29933/2019 (T. Chitty Babu Vs Union of India and others) decided by Division Bench of Hon'ble Madras High Court.

12. Having considered rival submissions of both sides the Tribunal find that by the impugned order, the adjudicating officer has not imposed any penalty to the appellant/promoter rather the amount awarded by the impugned order in favour of the respondent/allottee relates to compensation, interest and litigation cost. Moreover reliance on aforesaid decision placed by the appellant affirms to the contention of the respondent. In paragraph 26 of the said judgment the Hon'ble Madras High Court has held as follows:-

"There is, however, one question which has to be answered, namely, there is no discretion left in appellate authority at all to modify the terms of deposit as the statute requires a total deposit of the entire amount of compensation."

13. In CWP No. 8548/20 the Punjab & Haryana High Court has held in paragraph 14 of its judgment as follows:-



"It is further seen that where the order in appeal is against imposition of penalty, the promoter has to deposit at least 30% of the penalty amount or such higher amount as may be directed by the appellate Tribunal. Where the appeal is against any other order which involves payment of an amount to the allottee, then what has to be deposited with the appellate Tribunal is 'the total amount to be paid to the allottee' by such promoter/appellant including interest and compensation imposed on him, if any, or with both as the case may be. Further, such amount has to be deposited before the appeal is heard"

14. In view of the above discussion we find that the impugned order relates to compensation and interest, not the penalty, hence the Tribunal exercising its power under section 53 sub-clause 4(e) of the Act review its earlier decision dated 20.7.2021 by directing the appellant/promoter to deposit the total amount of compensation and interest, litigation cost as directed by the Adjudicating officer in its impugned order however 30% amount already deposited by the promoter shall be adjusted against the deposit of total amount. The promoter is directed to deposit the total amount within one month and in failure to deposit such amount as directed, the appeal shall be dismissed as not entertainable for non-compliance of the proviso to section 43(5) of the Act.

Sd/-

(Justice Arun Kumar)

Chairman

Bihar Real Estate Appellate Tribunal

Sd/-

**(Arbind Madhav)
Judicial Member**

Sd/-

**(Mr. Sunil Kumar Singh)
Administrative/Technical Member"**



REAL ESTATE APPELLATE TRIBUNAL, BIHAR
ORDER SHEET

Serial No. of Order	Date of order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
		REAT Appeal No. 28 of 2021 With REAT Appeal No. 29 of 2021 = = = = <u>In both appeals:</u> M/s Nesh India Infrastructure Private Ltd & anr. Appellants Versus Sita Ram Singh (Appeal No. 28/2021) Smt. Savita Sah (Appeal No. 29/2021) Respondents =====	
	10.09.2021	Heard learned counsel for the appellants as well as the respondents. Learned counsel for the appellants moved a review petition dated 24.08.2021 for reviewing the earlier, order dated 10.08.2021 and placed on record some decisions of the Apex Court. Learned counsel submitted that section 43(5) of the Act making condition to pre-deposit the entire amount in matters of compensation and interest for entertaining the appellant is under challenge. Earlier two identical review applications were filed before the Tribunal by other case that dismissed by the tribunal. The appellant may file a fresh appeal and favorable subject to the decision of the Apex Court passed in Special Leave to Appeal No. 13005 of 2020. With this observation, the review petition stands dismissed. If the appellants do not per-deposit the total amount as directed by the adjudicating officer of the Authority in its impugned order dated 09.03.2021 within a fortnight, both the appellants shall stands dismissed without further reference to	



	the Bench. Sd/- (Justice Arun Kumar) Chairman Bihar Real Estate Appellate Tribunal Sd/- (Arbind Madhav) Judicial Member Sd/- (Mr. Sunil Kumar Singh) Administrative/Technical Member	
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7. Having regard to the factual aspects of the matter read with Section 43(5), appellant need not deposit 100%, therefore, impugned action of the Appellate Authority and order of the learned Single Judge is required to be modified appropriately.

8. *Per contra*, learned counsel for the contesting respondents submitted that there is no infirmity in the impugned action of the Appellate Authority and order of learned Single Judge. Hence, no interference is called for. It is submitted that tenor of Section 43(5) has been taken note of by the Appellate Authority as well as by the learned Single Judge.

9. Heard the learned counsels for the respective parties.

10. Facts are undisputed. Question for consideration is whether appellant is liable to deposit 30% or 100% insofar as entertaining appeal of the appellant under Section 43(5). It is necessary to re-produce Section 43(5) under Chapter VII of the



Bihar Real Estate (Regulation and Development) Act, 2016 and it 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 atleast 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.”

11. The Hon’ble Supreme Court in Para 122 in Civil Appeal No. 6745-6749 of 2021 has clearly held that 100% deposit is warranted only in respect of where return of the amount to the allottee is involved. In the present case, there is no question of return of the amount to the respondents. Further, it is to be noticed that grievance of the Respondent Nos. 4 & 5 before the Adjudicating Authority is not relating to any return of the amount, on the other hand, their grievance is relating to compensation.

[Underline Supplied]

12. In the light of these factual aspects read with the interpretation of Section 43(5) in Paras 121 and 122 of the Hon’ble Supreme Court decision (supra) is crystal clear that the appellant’s



case in respect of payment of compensation and not return of the amount to the allottee. Hence, both the Appellate Authority as well as learned Single Judge have committed error in not appreciating tenor of Section 43(5) read with the Hon'ble Supreme Court decision cited (supra) in particularly paras 121 & 122.

13. Accordingly, the order of the Appellate Authority dated 10.08.2021 read with the order of learned Single Judge stands modified to the extent that appellant is liable to deposit only 30%. It is learnt that appellant had already deposited 30% by virtue of earlier order of the Appellate Authority. Therefore, order of the Appellate Authority dated 10.08.2021 and 10.09.2021 stands modified to the extent that appellant need not deposit 100%.

14. In the light of these facts and circumstances, appellant's Appeal Nos. 28 and 29 of 2021 filed on behalf of the appellant stands restored on the file of the Real Estate Appellate Tribunal, Bihar. Appellate Tribunal is requested to decide the appeal on merits after providing ample opportunity of hearing to the respective parties and dispose of within a reasonable period of six months from the date of receipt of this order. Parties are requested to co-operate in deciding appeals.

15. Letters Patent Appeal No. 932 of 2024 is allowed in part.



16. Pending Interlocutory Application(s), if any, stands disposed of.

(P. B. Bajanthri, ACJ)

(Alok Kumar Sinha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.09.2025
Transmission Date	NA

