

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.698 of 2024 (O&M)

Date of Decision: 25.02.2025

Axis Bank Ltd. registered office at Pot No.503/2, Ground Floor, Old MG Road, Gurugram, Haryana 122001

Appellant

Versus

Haryana Real Estate Regulatory Authority office address at New PWD Rest House, Civil Lines, Gurugram Haryana 122002.

Respondent.

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr. Akshay Bhan, Sr. Advocate assisted by
Mr. Amrinder Singh, Advocate,
Ms. Samiksha Uniyal, Advocate,
Mr. Abishai Alfred George, Advocate,
for the appellant.

Mr. Siddhant Arora, Advocate
for the respondent-HRERA.

O R D E R:

RAJAN GUPTA, CHAIRMAN (ORAL):

Challenge in the present appeal is to order dated 20.05.2024, operative part whereof reads as under:

“5. It has come to the notice of this Authority on perusal of the reports of forensic audit of the project accounts conducted during the suo-motu proceedings of the Authority, against the promoter that there were certain questionable transactions of withdrawal from the project accounts.

As per the report submitted by the forensic auditor, the promoter has over withdrawn Rs. 56.90 crores from the 70% RERA account of the project. The withdrawal from

the RERA account was made in violation of the provisions of Act of 2016. A copy of brief summary of forensic audit report is attached herewith for your reference.

6. From perusal of the records available in the Authority, it is evident that the promoter has diverted the money of innocent allottees which would not have been possible but for connivance with the concerned staff of the bank as the same was in blatant violation of the provisions of Section 4(2) (1) (D) of the RERA Act, 2016 and the regulations made thereunder and the undertaking given by the bank at the time of registration of the project.

7. In view of the above, you are hereby directed to return the amount drawn without the requisite certificates in contravention to the provisions of Section 4(2)(1)(D) of Act of 2016 read with Rules and Regulations made thereunder from the RERA account of the project within a period of 30 days, failing which legal consequences including but not limited to criminal liability may follow.”

2. Aggrieved, appellant-Bank¹ has preferred the instant appeal.

3. Notice of the appeal was issued on 13.11.2024. Respondent-HRERA², thereafter, put in appearance and filed its reply. The stand taken therein is that office of HRERA directed the appellant-Bank to return the amount drawn without certificate, in contravention of provisions of Section 4(2)(1)(D) of the RERA Act³ (and Rules⁴ made thereunder) in respect of project Mahira Homes, Sector 104, Gurugram. In this context, a show cause notice dated 29.06.2022 was earlier issued to the concerned parties. As per stand of the Authority, instant notice (dated 20.05.2024) has been

¹ Appellant-Axis Bank

² Haryana Real Estate Regulatory Authority at Gurugram

³ Real Estate (Regulation and Development) Act, 2016

⁴ Real Estate (Regulation and Development) Rules, 2017

issued in continuation of the previous notice dated 29.06.2022. A stand has also been taken by the Authority that *suo moto* proceedings were initiated against the promoter due to certain questionable transactions of withdrawal of the project accounts. It referred to the forensic report to contend that the promoter had withdrawn an amount of ₹ 56.90 crores from the 70% amount required to be maintained in the RERA account in violation of the provision of the RERA Act and the Regulations. Para 9 of the reply is reproduced hereunder for ready reference:-

“That after from perusal of the records available in the Authority, it is evident that the promoter has diverted the money of innocent allottees which would not have been possible but for connivance with the concerned staff of the bank as the same was in blatant violation of the provisions of Section 4(2)(1)(D) of the RERA Act, 2016 and made thereunder and the undertaking given by the bank at the time of registration of the project.”

4. As per Mr. Bhan, the aforesaid show cause notice dated 20.05.2024 was issued by the Secretary, HRERA at Gurugram, who is not authorised to issue the same. As per him, the functions of the Authority are *quasi judicial* in nature, none of which can be delegated to any official of the Authority. As per him, such delegation of *quasi judicial* power would not be sustainable in law. Impugned notice, thus, needs to be set aside.

5. In view of above stand taken by the appellant-Bank, Mr. Siddhant Arora, learned counsel representing the respondent-HRERA was called upon to seek instructions and address.

6. Today, Mr. Arora has filed a reply in response to the query raised by this Bench. Same is taken on record. Referring to paras 4, 5 and 6 thereof, he states that the Secretary, HRERA at Gurugram merely issued show cause notice for which he was

authorised under Regulation 8 (vii) of the Regulations. Relevant paras of the reply read as under:

*“3. That the Authority has approved the noting for issuance of show cause notice to Mahira Homes-0104 situated at Sector 104, Gurugram on 20.05.2024 and the notice was issued on 20.05.2024. Copy of approval of noting from the Authority is enclosed as **Annexure R-1**.*

*4. That the Authority has approved the noting for issuance of show cause notice to Mahira Homes-95 situated at Sector 95 Gurugram on 29.05.2024 and the notice was issued on 29.05.2024. Copy of approval of noting from the Authority is enclosed as **Annexure R-2**.*

5. That thereafter the show cause notices dated 20.05.2024 and 29.05.2024 were issued by the Secretary HARERA, Gurugram after approval from the Authority.

*6. That as per the regulation No.01/RERA/GGM (Regulations) 2018, which was issued vide notification dated 16.2.2018, at regulation 8 (vii), the Secretary has been empowered to authenticate the orders passed by the Authority. A copy of the said regulation dated 16.2.2018 published in the Haryana Govt. Gazette No.26/2018 is enclosed at **Annexure R-3**.”*

7. Mr. Bhan in rebuttal to the reply submitted by the Authority states that same needs to be considered by the Authority in view of provision of the RERA Act. However, he may be given liberty to raise all the issues including those pertaining to jurisdiction in reply to show cause notice.

8. In view of above, we do not deem it fit to delve deeper into the issue at this stage. The appellant-Bank would be at liberty to file reply to the show cause notices impugned herein with liberty to rebut on merits as well as on the question of jurisdiction.

9. We expect that the matter would be decided expeditiously, in any case, not later than three months from today.

The matter is, thus, remitted to the authority for decision afresh after affording opportunity of hearing to the parties. It is made clear that direction, if any, issued by the Hon'ble Supreme Court in SLP(C) No.7649 of 2023 be kept in mind by the concerned.

10. Appeal is hereby disposed of with the aforesaid liberty.
11. Copy of this order be forwarded to the parties as well as their counsel.
12. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

25.02.2025
Manoj Rana