

**BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**

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**Date of Decision: July 08, 2025**

**(1) Appeal No.350 of 2020**

Indiabulls Housing Finance Limited, M 62-63, 1<sup>st</sup> Floor,  
Cannaught Place, New Delhi

Appellant.

Versus

Haryana Real Estate Regulatory Authority, Gurugram, new  
PWD Rest House, Civil Lines, Gurugram

Respondent

**(2) Appeal No.351 of 2020**

Indiabulls Housing Finance Limited, M 62-63, 1<sup>st</sup> Floor,  
Cannaught Place, New Delhi

Appellant.

Versus

Haryana Real Estate Regulatory Authority, Gurugram, new  
PWD Rest House, Civil Lines, Gurugram

Respondent

**(3) Appeal No.352 of 2020**

Indiabulls Housing Finance Limited, M 62-63, 1<sup>st</sup> Floor,  
Cannaught Place, New Delhi

Appellant.

Versus

Haryana Real Estate Regulatory Authority, Gurugram, new  
PWD Rest House, Civil Lines, Gurugram

Respondent

Present: Mr. Randeep Singh Rai, Sr. Advocate assisted by  
Ms. Rubina Virmani, Advocate,  
Ms. Randhika Mehta, Advocate for the appellant.  
  
Mr. Siddhant Arora, Advocate for the respondent.

**CORAM:**

**Justice Rajan Gupta**  
**Rakesh Manocha**

**Chairman**  
**Member (Technical)**

**O R D E R:**

**RAJAN GUPTA, CHAIRMAN:**

This order shall dispose of above mentioned three appeals, as common question of law and facts are involved. However, the facts have been extracted from Appeal No. 350 of 2020.

2. Present appeal is directed against order dated 17.09.2020, passed by the Authority<sup>1</sup>. Operative part thereof reads as under:

*“6. The following directions are issued in this regard:*

*i. That in accordance with section 4(2)(1)(D), out of the 100% money withdrawn in the excess of 30% of the proceeds, after RERA Act coming into effect into force shall be deposited back in the designated RERA Account.*

*ii. That forensic audit be conducted of the funds received in order to check any fund diversion.*

*iii. That the project must be registered with the Authority by submitting detailed project information, online filing of form A to H and bringing on record all requisite approvals.”*

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<sup>1</sup> Haryana Real Estate Regulatory Authority, Gurugram

3           It was vehemently argued by Mr. Rai that Indiabulls, appellant herein, is merely a financial institution and therefore cannot step into the shoes of the builder, as it has no expertise in construction activities. According to him, it was for the Authority to consult the appropriate government, as it deemed fit, for carrying out the remaining development works in a manner to be determined by them. In this context, he placed reliance on Sections 32(d) and 34(f) of the Act<sup>2</sup>. He further argued that it was entirely within the Authority's domain to take appropriate measures as provided under Section 32(d) of the Act to ensure compliance with the obligations cast upon the promoter. However, financial institutions such as the appellant, do not fall within the ambit of Section 34(f) of the Act.

4.           We have heard the learned counsel for the parties and given careful thought to the facts of the case.

5.           We find no merit in the stand taken by the appellant–Indiabulls. The entire matter has already been considered by the Rajasthan High Court in ***Union Bank of India v. Rajasthan Real Estate Regulatory Authority and Others***<sup>3</sup>. Relevant paragraphs from the said judgment are reproduced hereunder for ready reference:

*"28. The last question surviving for our consideration is, does RERA have the authority to issue any directions against a bank or financial institution which claims security interest over the properties which are subject matter of agreement between the allottee and the developers. The term "allottee" has been defined under Section 2(d) of RERA Act as to mean in relation*

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<sup>2</sup> The Real Estate (Regulation and Development) Act, 2016

<sup>3</sup> DB Civil Writ Petition No. 13688 of 2021, decided on 14.12.2021

*to real estate project the person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter and would include a person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent. The term "promoter" is defined in Section 2(zk) as under:-*

*"(zk) "promoter" means,--*

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

*(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

*(iii) any development authority or any other public body in respect of allottees of-*

*(a) buildings or apartments, as the case may be constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*

*(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*

*(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

*(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

*(vi) such other person who constructs any building or apartment for sale to the general public.*

*Explanation. For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder.*

*29. The term "real estate agent" has been defined in Section 2(zm) as to mean any person who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building in a real estate project by way of sale with another person and who receives remuneration or charge for the services so rendered. Under sub-section (1) of section 31, any aggrieved person may file a complaint before RERA adjudicating officer for any or before the violation or contravention of the provisions of the Act or the rules and regulations against any promoter allottee or real estate agent, as the case may be. The complaint by an aggrieved person thus would be restricted to being filed against any promoter allottee or real estate agent. It is in this context the definition of term "promoter" and its interpretation assumes significance. We have reproduced the entire definition of the term "promoter". Perusal of the provision would show that the same is worded "as to mean" and therefore prima facie is to be seen as restrictive in nature. However, various clauses of Section 2(zk)*

*would indicate the desire of the legislature to define this term in an expansive manner. As per Clause (i) of Section 2 (zk) "promoter" means a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees. By couching this clause in "means and includes language the definition of a term "promoter" is extended by including within its fold not only a person who constructs or causes construction of independent building but also his assignees.*

*30. The term "assignee" has not been defined anywhere in the Act. We would therefore have to interpret the term as it is ordinarily understood in the legal parlance in the context of the provisions of RERA Act. The Advance Law Lexicon by P. Ramanatha Aiyar expands the term "assignee" as to grant, to convey, to make an assignment; to transfer or make over to another the right one has in any object as in an estate. It further provides that an assignment by act of parties may be an assignment either of rights or of liabilities under a contract or as it is sometimes expressed in assignment of benefit or the burden of the contract. The rights and liabilities of either party to a contract may in certain circumstances be assigned by operation of law, for example when a party dies or becomes bankrupt."*

6. From the aforesaid observations, it is clear that the term 'promoter' includes a person who constructs or causes to be constructed an independent building consisting of apartments and, for the purpose of selling the same, includes his assignees. In the instant case, there can be no doubt that the appellant is a lender who provided loan for the development of the project. The assignment was required to be executed

through legal documentation. The Authority came to the conclusion that the parties avoided execution of a separate deed of assignment to escape payment of heavy stamp duty and instead incorporated the terms within a registered mortgage deed over the immovable properties of the promoter. The Authority thus held that the appellant was an assignee of M/s Supertech Limited, who was the promoter of the project 'Araville'. Accordingly, the appellant fell within the definition of 'promoter' under the Act and stepped into the shoes of the original promoter. It also qualified as an assignee under Section 2(zk) of the Act due to the inclusive nature of the definition. The relevant observations of the Authority are reproduced hereunder:

*"iii. The Authority is of the view that the lender 'caused the project to be constructed' by giving construction loan to develop the project which in turn would be sold and the receivables would generate revenue with which the loan of the lender could be repaid. The borrower i.e. the respondent no. 2 assigned its rights in the projects to consolidate the lender's risk. This assignment is done by way of proper documentation as is provided under the Transfer of Property Act, 1882. Though it works in equity, as the rights which are assigned uncertain but the form in which it takes place is couched in as a legal or statutory assignment. It is noted that generally in practice in order to exclude the astronomical stamp duty the lenders prefer not to execute a separate deed of assignment but join it together with the deed of registered mortgage. It executes over the immovable property of the borrower. Therefore, the respondent No. 1 (lending bank) is an assignee of the respondent no.2 i.e. M/s Supertech Limited, who is a promoter for the project 'Araville'.*

*Accordingly, it is established that being a competent assignee, respondent No. 1, consequently falls within the definition of promoter and is well within the ambit of RERA Act, 2016."*

7. The aforesaid observations clearly indicate an element of collusion between the promoter and the financial institution. They avoided executing a separate deed of assignment and instead reflected all such terms within the registered mortgage deed, which was executed over the immovable properties mortgaged to Indiabulls. It appears that the Authority lifted the corporate veil and found that the lending institution, Indiabulls, was in fact an assignee of the promoter, M/s Supertech Limited, for the project 'Araville'. Consequently, it rightly held that the assignee was equally liable under the Act.

8. Having found collusion between the parties in avoiding the execution of a deed of assignment and an attempt to suppress material facts, we are of the considered view that the judgment in Union Bank of India v. Rajasthan Real Estate Regulatory Authority (supra) squarely applies, and the appellant is liable for the loss caused to the allottees.

9. It must be emphasised that when the allottees entered into agreements with M/s Supertech Limited, they may not have been aware of the mortgage created by the promoter in favour of Indiabulls. Normally, at that stage, the allottees would not have anticipated a situation where the project might fail or the promoter might become financially unviable. If there was suppression of truth inducing the allottees to part with their money without disclosure of the promoter's transactions with



the lending institution, then the sale of plots or apartments cannot be said to be transparent, thus defeating one of the primary objectives of the special enactment. Where the transaction lacks transparency, there can be no hesitation in holding it to be collusive, deceptive, and thus fraudulent.

10. The Authority rightly found that the enactment of the Act supersedes private agreements between the parties. Therefore, the mandate of Section 4(2)(D) of the Act that 70% of the allottees' money must be deposited in a separate account and withdrawn only with the approval of the engineer, architect, and chartered accountant, as prescribed—must be adhered to. Accordingly, the following directions were issued:

*"6. The following directions are issued in this regard:*

*i. That in accordance with section 4(2)(1)(D), out of the 100% money withdrawn in the excess of 30% of the proceeds, after RERA Act coming into effect into force shall be deposited back in the designated RERA Account.*

*ii. That forensic audit be conducted of the funds received in order to check any fund diversion.*

*iii. That the project must be registered with the Authority by submitting detailed project information, online filing of form A to H and bringing on record all requisite approvals."*

11. We find no infirmity in the order passed by the Authority. Furthermore, the judgment in **Union Bank of India v. Rajasthan Real Estate Regulatory Authority** (supra) has been affirmed by the Hon'ble Supreme Court in **Union Bank of**

***India v. Rajasthan Real Estate Regulatory Authority and Others<sup>4</sup>.***

12. The appeals are accordingly dismissed.

13. It is surprising that the Authority's direction to conduct a forensic audit of the funds received, in order to check fund diversion, was never complied with. It was only after a query was raised by this Bench during the hearing on 06.03.2024 that an affidavit was filed by the Secretary of the Authority on 12.12.2024, apprising the Tribunal that a DDR had been lodged with the local police. It is inexplicable what purpose would be achieved by merely lodging a DDR unless same is converted into an FIR and followed by a thorough investigation. It must be noted that the direction regarding the forensic audit was never stayed by the predecessor Bench of the Appellate Tribunal and should, therefore, have been complied with in letter and spirit. It needs to be underscored that fund diversion, if any, is a serious issue warranting detailed enquiry and investigation.

14. Copy of the order be sent to the parties/their counsel and the Authority.

15. Files be consigned to records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)

July 08, 2025  
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<sup>4</sup> Petition for Special Leave to Appeal (C) Nos. 1861-1871 of 2022, decided on 14.02.2022