

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.622 of 2024

Date of Decision: December 05,2025

M/s Conscient Infrastructure Private Limited, 10th Floor, Tower D,
Global Business Park, MG Road, Gurugram-122002 through its
authorised representative Munish Kumar Garg

...Appellant
Versus

Haryana Real Estate Regulatory Authority, Gurugram, PWD Rest
House, Civil Lines, Gurugram-122001

...Respondent

CORAM:

Justice Rajan Gupta	Chairman
Dr. Virender Parshad	Member (Judicial)
Dinesh Singh Chauhan	Member (Technical)

Present: Mr. Munish Kumar Garg, Advocate for the appellant.

Mr. Sidhant Arora, Advocate for the respondent.

O R D E R:

JUSTICE RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 18.07.2024,
passed by the Secretary to Authority at Gurugram¹. Operative part
thereof reads as under:

*“4. The promoter has obtained the approval of service
plans and estimates and fire scheme within the
stipulated time period mentioned in the conditions.
However, the environmental clearance has been
obtained with a delay of 73 days.*

¹The Real Estate Regulatory Authority, Gurugram

5. The Authority, in its meeting dated 01.01.2024 decided that compliances by the promoter must be made without fail within the time line of conditional registration failing which the BG/security be forfeited.

6. A show cause notice dated 01.07.2024 was issued to the promoter as to why the security amount submitted in lieu of the timely submission of approved architectural control sheet shall not be forfeited with an opportunity of hearing on 18.07.2024.

7. On 18.07.2024, Sh. S. K. Kaushik (AR) appeared on behalf of the promoter and stated that they have received the Environmental Clearance vide identification no. EC24C3801HR5179988N dated 18.07.024.

The AR of the promoter further stated that they were requested to obtain the environmental clearance within 6 months from date for registration for which the company sent a letter dated 02.05.2024 to the Authority requesting the extension of 4 months for submission of environmental clearance and submitted an application to the relevant department regarding the same. The SEAC reviewed and recommended the approval to SEIAA during their 278th meeting on 13.10.2023. Due to unforeseen administrative challenges, specifically the unavailability of Hon'ble Chairman at SEIAA, the final approval has been delayed.

The AR of the promoter requested not to forfeit the amount deposited as security for procuring environmental clearance as the same has been obtained now.

8. However, it is not disputed that the promoter was granted conditional registration at its own accord and depositing of security amount in the form of bank guarantee in lieu of submission of the requisite clearances within the time specified in the conditional registration. It was clearly mentioned in the registration certificate that these BGs shall be forfeited in case the conditions are not fulfilled by the promoter

within the stipulated time period mentioned in the conditions.

9. In view of the fact that the environmental clearance has been obtained with a delay of 73 days, the security amount submitted on account of timely submission of environmental clearance is hereby forfeited.

10. Since the promoter has now complied with the conditions mentioned in the registration certificate, the case is filed.”

2. Learned counsel for the appellant has assailed the impugned order on several grounds, primarily contending that forfeiture of the security amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) by the Secretary is arbitrary and unsustainable in law. As per him, there was no wilful default or deliberate non-compliance on the part of the appellant/promoter. He further contends that penalty has been imposed on the promoter on the ground that it could not submit environmental clearance certificate from State Level Environmental Impact Assessment Authority and State Expert Appraisal Committee in time. This was for the reason that Chairman of State Level Environmental Impact Assessment Authority was not appointed by the Government.

3. It is further contended that the action of forfeiture is disproportionate to the alleged default. The impugned order is cryptic, devoid of reasoning, and passed by an officer (i.e., the Secretary to the Authority) who, as per the appellant, is not vested with quasi-judicial powers under the Act. Therefore, the impugned order is *non est* in the eyes of law and liable to be set aside.

4. Learned counsel for the respondent justified the impugned order by contending that the same was passed after giving opportunity of hearing to the appellant-promoter.

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

6. The question which arises before this Tribunal for adjudication is whether the Secretary was justified in ordering forfeiture of the amount and whether he was vested with any power to pass an order of this nature.

7. After perusal of record, it has been noticed that the impugned order has been passed by the Secretary of the Authority. There is nothing on record to show that the Secretary has been vested with powers to pass orders of the nature impugned in the instant case. Perusal of the observations made in ***M/s Newtech Promoters and Developers Pvt. Ltd. V. State of UP***² shows that the Act³ does not contemplate delegation of any judicial powers to any other official except a member of the Authority or the Adjudicating Officer, as the case may be. Otherwise also, delegation of judicial power is not in consonance with any law or the jurisprudence on the subject. Needless to observe that all these functions ought to be performed by the Authority in which this power is vested. It is, thus, inexplicable how quasi-judicial powers were exercised by the Secretary of the Authority.

8. In ***Brijmani Devi v. Pappu Kumar***⁴, Hon'ble Supreme Court, after reiterating the principles laid down in ***Kranti Associates Pvt. Ltd. V. Masood Ahmed Khan and others***⁵, held that a quasi-judicial authority must engage in a thorough examination of the issues and provide a reasoned decision. This is crucial for maintaining the integrity of the adjudicatory process.

9. Apart from above, it is clear that the order passed by the Authority is wholly cryptic and bereft of reasons. Any attempt to justify non-speaking and cryptic order by an affidavit filed during course of appellate proceedings has to be rejected. In **Assistant General Manager State Bank of India and another v. Tanya Energy Enterprises**

²2022(1) RCR (Civil) 367

³The Real Estate (Regulation and Development) Act, 2016

⁴(2022) 4 SCC 497

⁵(2010) 9 SCC 496

through its Managing Partner Shri Alluri Lakshmi Narasimha Varma⁶, Hon'ble Supreme Court held that validity of an order, which is under challenge in the proceedings, must be tested on the basis of ground(s) mentioned in it in support thereof; and any additional ground, to support the order under challenge, cannot be allowed to be raised in the reply affidavit or in course of arguments. Relevant paragraph thereof is extracted below for ready reference:

“35. To refresh our memory, the aforesaid decisions are authorities for the proposition that validity of an order, which is under challenge in the proceedings, must be tested on the basis of the ground(s) mentioned in it in support thereof; and any additional ground, to support the order under challenge, cannot be allowed to be raised in the reply affidavit or in course of arguments. The underlying principle is that an order which is bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out....”

10. The aforesaid judgment echoes the view earlier expressed by Hon'ble Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner***⁷.

11. The justification for forfeiture would vary on case-to-case basis. The decision to forfeit security amount would depend on the nature and extent of default in each case. This practice may not be resorted to where the builder is able to explain the delay in completing the formalities. However, this would necessarily require an opportunity of hearing to be afforded to it before the decision of forfeiture. It is well-settled that principles of natural justice are to be read into every statute. Needless to say, such opportunity has to be granted by a duly empowered forum. Such orders cannot be passed by 'any' official of a quasi-judicial body on his *ipsi dixit*. This casual approach needs to be

⁶Civil Appeal No. 11134 of 2025, decided on 15.09.2025

⁷(1978)1 SCC 405.

deprecated. All facts and circumstances of the case and reasons for forfeiture must be contained in the order itself.

12. In view of the observations made above, this Bench deems it fit to remit the matter to the Authority to consider the matter afresh after opportunity of hearing to the parties. It shall pass a fresh order at the earliest, in any case, not later than three months after such opportunity and perusal of the entire record. The Authority shall also be at liberty to examine whether the project is proceeding as per undertaking(s) given at the time of seeking registration. It may also initiate appropriate action in case any violation comes to its notice.

13. Appeal is allowed in the aforesaid terms.

14. Parties are directed to appear before the Authority on 05.01.2026.

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

16. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

Dinesh Singh Chauhan
Member (Technical)

December 05, 2025
mk