



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 985 OF 2022

Bhupinder Singh and Gurpreet KaurCOMPLAINANT

VERSUS

SRS Real EstateRESPONDENT(1)

Canara BankRESPONDENT(2)

Directorate of EnforcementRESPONDENT(3)

2. COMPLAINT NO. 922 OF 2022

3. COMPLAINT NO. 933 OF 2022

4. COMPLAINT NO. 935 OF 2022

5. COMPLAINT NO. 936 OF 2022

6. COMPLAINT NO. 937 OF 2022

7. COMPLAINT NO. 938 OF 2022

8. COMPLAINT NO. 939 OF 2022

9. COMPLAINT NO. 940 OF 2022

10.COMPLAINT NO. 941 OF 2022

11.COMPLAINT NO. 942 OF 2022

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311. COMPLAINT NO. 1594 OF 2022
312. COMPLAINT NO. 1750 OF 2022
313. COMPLAINT NO. 1828 OF 2022

CORAM: Rajan Gupta Chairman
Dilbag Singh Sihag Member

Date of Hearing: 23.08.2022

Hearing: 2nd (in all complaints)

1st (in complaint no. 1594, 1750, 1828 of 2022)



Present:

For Complainants:

Mr. Rahul Bhardwaj, Advocate
Mr. Kamaljeet Dahiya, Advocate
Mr. Narender Yadav, Advocate
Mr. Akshat Mittal, Advocate
Mr. Saket Singh, Advocate
Mr. Hem Sagar Singh, Advocate

For Respondents:

None for respondent no.1
Ms. Rahish Pahwa, Advocate, for Canara Bank
Mr. Anirudh Sood, Advocate for Directorate of
Enforcement
Mr. Alankrit Bhardwaj, Advocate for State Bank of
India
Ms. Rupali Verma, Advocate for HDFC
Ms. Pratima Jaiswal, Advocate for AXIS Bank
Ms. Sapna Sehrawat, Advocate for L & T Housing
Finance Limited
Mr. Gaurav Gupta, proxy for Mr. Arun Sharma
Advocate for Indian Bank
Mr. Sandeep Bakshi, Advocate for Tata Capital
Housing Finance
Mr. Suman Puri, Advocate for PNB Housing
Mr. O.P Narang, Advocate for LIC Housing Finance
Mr. Hitender Kansal, Advocate for Bajaj Finance
Limited and Piramal Finance
Mr. Arjun Kundra, Advocate for Jammu and Kashmir
Bank

ORDER: (RAJAN GUPTA-CHAIRMAN)

Captioned bunch of 313 complaints have been taken up
together with lead complaint No. 985 of 2022. Out of listed 313 complaints,
251 complaints had been taken as a bunch in the 1st hearing dated 08.07.2022



and interim orders had been passed. In addition, another bunch of 57 complaints has been filed before Authority with lead complaint No. 661 of 2022 titled as 'Mausmi Karmakar Vs. SRS Real Estate Ltd.' which was taken up for consideration on 14.07.2022. Since second bunch of 57 complaints pertained to same project of the respondent-company and had similar facts and circumstances as the earlier bunch of 251 complaints, therefore, both the bunches of complaints were heard together today i.e. 23.08.2022. A common order, accordingly, is being passed by clubbing together the earlier bunch of 251 complaints and second bunch of 57 complaints.

2. Five more individual complaints no. 982, 1513, 1594, 1750 and 1828 of 2022 were separately received relating to the same project and for the same cause of action. Therefore, these complaints have also been included in the bunch of complaints for consideration and disposal.

3. Notice was issued to respondent M/s SRS Real Estate Ltd, (SRS Royal Hills, Sector 87, Faridabad) in 251 complaints through Sh. Anil Jindal, Director, SRS Real Estate Ltd. The notice was served to the Director Sh. Anil Jindal through Jail Superintendent, Neemka Jail, Sector 73, Faridabad which was duly received by him on 06.08.2022. Notice to the respondent SRS Real Estate Ltd. has not been delivered in 62 complaints numbered as 661, 662, 663, 666, 669, 670, 672, 674, 675, 676, 677, 678,



679, 680, 682, 683, 684, 685, 692, 693, 694, 702, 704,705,706,708,709,711,713,715,717,719,722,725,726,738,770,785,806, 813,837,856,863,866,875,876,982,1059,1168,1301,1303,1309,1316,1318, 1328,1421, 1442, 1444, 1513, 1594, 1750, 1828 of 2022. Notice in these 62 complaints was sent to respondent-company at their registered address, but same was received back with the report "receiver refused delivery".

However, since one common reply has been received from Sh. Anil Jindal Director of respondent-company by taking complaint No. 985 of 2022 as lead complaint, Authority has decided to pass this common order including therein above said 62 complaints in which notice could not be delivered by courier to the respondent. Facts and circumstances of said 62 complaints are exactly similar to rest of the matters.

4. Now Authority proceeds to deal with entire bunch of 313 complaints.
5. 57 applications have been filed by Sh. Akshat Mittal, learned counsel for complainants in complaint nos. 661, 662, 663, 666, 669, 670, 672, 674, 675, 676, 677, 678, 679, 680, 682, 683, 684, 685, 692, 693, 694, 702,704,705,706,708,709,711,713,715,717,719,722,725,726,738,770,785, 806,813,837,856,863,866,875,876,1059,1168,1301,1303,1309,1316,1318, 1328,1421, 1442, 1444 of 2022 requesting Authority for impleading M/s SRS Real Estate Ltd. as respondent No.2, Canara Bank as respondent No. 3



and Enforcement Directorate through authorised officer as respondent No.4. Vide said applications it has also been prayed that complete amended 57 complaints along with Annexures thereto may also be taken on record. In complaint no.726 of 2022, an application for impleading Smt. Dimple Bhambhani as co-complainant has also been filed by learned counsel for the complainant.

Upon consideration, Authority accepts the prayer and 57 complaints are allowed to be amended. Accordingly, M/s SRS Real Estate Ltd., Canara Bank and Enforcement Directorate are allowed to be impleaded as respondents. Application in complaint no.726 of 2022 for impleading co-complainant is also allowed.

6. During the course of hearing, a question was posed to learned counsels for the Canara Bank and the Enforcement Directorate as to whether they would like to file separate replies in 62 complaints. Ms. Rahish Pahwa, learned counsel for Canara Bank and Sh. Anirudh Sood, learned counsel for Enforcement Directorate stated that since all these complaints are of similar nature and common reply for dealing with all complaints has already been filed, therefore, reply already filed by them may be taken into consideration in respect of additional 62 complaints also. Facts and circumstances of the matters being similar, therefore, there is no need to file separate replies to deal with these 62 complaints.



7. Authority on the basis of averments made by learned counsel Sh. Akshat Mittal for consideration of 57 applications filed by him for amendment of complaints and impleadment of parties, and verbal statement made by learned counsels for Canara Bank and Enforcement Directorate allows the applications and allows impleadment of Canara Bank and Enforcement Directorate as respondents in all 57 complaints. Similar view is being held in respect of additional five individual complaints bearing No.982, 1513,1594,1750,1828 of 2022.

8. When the bunch of 251 complaints had come up for consideration of Authority on 08.07.2022, Authority had captured facts of the matter and also had passed certain interim orders. The facts, averments of different parties and the interim view expressed by Authority are relevant for disposal of all the captioned 313 complaints, therefore, the order dated 08.07.2022 is being made a part of this order and the same is reproduced below: -

1. Captioned bunch of 251 of complaints is based on similar facts pertaining to same project of respondent No.1. Relief sought in all the cases is also similar. Interim relief sought is also similar. Therefore, entire bunch of 251 complaints has been taken up together for passing this order.

2. Notices were issued to respondent No.1 in all the cases which have not been delivered except in two complaints. In complaint nos. 1281, 1305 of 2022, notice was delivered to Shri Anil Jindal,



Director of respondent company through Jail Superintendent. In remaining 249 cases, notice could not be delivered at the address provided by complainants. In these 249 cases, delivery courier has reported that notices have not been delivered "due to shifted address". Notices to the respondents No.2 & 3 i.e. Canara Bank and Enforcement Directorate were delivered in all cases.

3. Even though facts/averments made in all complaints are similar, but, list of respondents in some of cases are different because Enforcement Directorate has not been arrayed as respondent in some cases; and in some individual complaints, LIC Housing, Axis Bank, ICICI Bank, India Bulls Housing Company, Bajaj Finance Services, Piramal Finance, HDFC, Panjab National Bank Housing Finance, State Bank of India, TATA Capital Services, Bajaj Housing Finance, Indian Bank, Allahabad Bank, J&K Bank, and L&T Housing Finance have also been arrayed as respondents.

4. Reply has been received from respondent No.1 M/s SRS in two complaint cases i.e. complaint Nos.1281 and 1305 of 2022. Canara Bank which is respondent in all cases has submitted its reply in 215 cases. Enforcement Directorate has filed its reply in large no of cases. State bank of India which is respondent in some cases has also submitted its reply in 17 cases. In complaint no. 1162 of 2022, respondent, State Bank of India states that they have not given loan to the complainant.

5. A bird-eye view of this bunch of matter is that respondent No.1 M/s SRS Real Estate Ltd. received license No.69 and license No.46 in the year 2008 and 2009 respectively from State Government for development of a residential project with the



name of 'SRS Residency', Sector-87, Faridabad. The project 'SRS Residency' is comprised of two portions namely 'SRS Royal Hills and 'SRS Builder Floors'. Total project is comprised of 1491 built up apartments. Most of the project is completed and sold. Department concerned of the State Government has granted occupation certificate to the project. Promoter accordingly, after receipt of entire consideration from allottees and grant of occupation certificate, handed over possession to the allottees in the years 2014 to 2016. Complainants have been living in their apartments peacefully since then.

Further, respondent No.1 had originally got the project financed from State Bank of India in the year 2009. Respondent No.1 settled his account with SBI and re-deemed the mortgage in January, 2013. Thereafter in September 2013 respondent No.1 raised a term loan of Rs.110 crores from Canara Bank who is respondent in all cases. This project in question was mortgaged with bank as security. Apparently, entire loan was disbursed by the bank to Respondent No.1 in one go. The loan was to be repaid from June, 2015 to March, 2017 in eight quarterly instalments of Rs.13.75 crores each. The account of respondent No.1 with Canara Bank was classified as non-performing assets (NPA) in September, 2016 which lead to initiation of proceeding before Ld. Debt Recovery Tribunal, (DRT) Chandigarh by Canara Bank. Ex-parte proceedings were held by learned DRT against respondent No.1, whereby all mortgaged assets of respondent No.1 were ordered to be attached by Ld. DRT. Against the order passed by Ld. DRT some allottees approached Hon'ble Punjab & Haryana High Court by way of Civil Writ Petition Nos.14889,



16979 and 29956 of 2018 against M/s SRS Real Estate Ltd. herein R-1 and Canara Bank herein R-2. Hon'ble High Court while issuing certain directions substantially upheld the orders passed by learned DRT Chandigarh.

There-after some allottees filed writ petitions under Article 32 before Hon'ble Supreme Court further challenging the orders passed by learned DRT. Hon'ble Supreme Court ordered that the grievances of writ petitioners and other similarly placed persons who are home buyers of said project can be assuaged and redressed by Real Estate Regulatory Authority (RERA), inter alia in the light of dictum of Hon'ble Apex Court in Bikram Chatterjee and Ors. Versus UOI and Ors. Hon'ble Apex Court allowed the petitioners and other similarly placed persons to approach RERA for redressal of their grievances.

6. All the complainants of captioned complaints are before this Authority in accordance with liberty granted to them by Hon'ble Supreme Court.

7. Now, Authority will capture the facts and averments made by various parties by way of written and oral submissions.

8. Shri Rahul Bhardwaj who appeared on behalf of complainants in largest bunch of complaints submitted as follows, keeping in view facts of complaint No.985 of 2022, Bhupinder Singh Versus SRS Real Estate Ltd:

(i) Complainants booked an apartment in the project of respondent No.1 in respect of which a builder-buyer agreement was executed on 08.12.2012. Flat No.301 tower P-4 was allotted to the complainant. Physical possession of apartment was



delivered to complainant on 18.05.2014 after clearance of entire outstanding dues in respect of total sales consideration payable.

(ii) Competent authority of State Government Haryana granted occupation certificate in respect of the project vide Memo No.3664 dated 17.02.2014 and Memo No.6086 dated 16.04.2015.

(iii) The Complainant in the year 2017 learnt that respondent No.2 Canara Bank had sanctioned a loan of ₹110 crores to respondent No.1 and a charge/mortgage had been created on the land on which residential project in question was constructed.

(iv) Hon'ble DRT Chandigarh vide their final judgement/order dated 13.05.2019 issued recovery certificate allowing respondent No.2 Canara bank to recover outstanding loan amount to the tune of Rs.109.32 crores from sale of hypothecated/ mortgaged properties. The hypothecated properties included the apartments of complainants in which they had been living peacefully and lawfully since 2014-15. Some allottees filed civil writ petition bearing No.1243 of 2019 captioned as Gulshan Arora and Ors. Versus SRS Real Estate Ltd. under Article 32 of Constitution of India before Hon'ble Supreme Court for protection of their fundamental rights under Article 14, 19 and 21 of the Constitution.

(v) Enforcement Directorate, herein respondent No.3, vide notice dated same date 22.02.2022 attached entire project by way of provisional attachment order under Section 5 of the Prevention of Money Laundering Act, 2002 in the Enforcement case information report No. ECIR/03/CDZO, 2018, wherein



directions to vacate the premises i.e. apartments of the complainant was issued against allottees/residents.

9. Learned counsel Shri Rahul Bhardwaj further argued the matter and submitted as follows:

(i) That complainants are invoking jurisdiction of this Authority under Section 31 of RERA Act, 2016 praying for execution of conveyance deed of purchased apartments because respondent No.1 has failed to execute the same despite innumerable requests made for this purpose. Further, complainants have paid entire consideration amount and are in lawful possession of their flats.

(ii) That respondent No.2 M/s Canara Bank is an instrumentality of State under Article 12 of Constitution of India. Further, as per provisions of Section 2(zk) of RERA Act, respondent No.2 Canara Bank also falls within definition of promoter being an assignee of the promoter.

(iii) Learned counsel argued that complainant is lawfully and rightfully an allottee of flat No.301 tower B-4 having super area 1130 sq. ft. He was handed over physical possession of his apartment only after issuing NOC by the respondent signifying that nothing was due from the allottee-complainant. A copy of possession letter dated 18.2.2014 exhibiting that no amount was outstanding against him has been annexed with complaint as Annexure C-II. Copy of occupation certificate granted by Town & Country Planning Department has also been annexed as Annexure C-III.

(iv) Learned counsel argued that as per various provisions of RERA Act, respondent No.1 is duty bound to execute sale



deed in favour of complainant. He seeks direction in this regard to be issued to respondent No.1.

(v) Learned counsel Sh. Rahul Bhardwaj further argues that in the year 2013 respondent No.2 Canara Bank had sanctioned loan of Rs.110 crores for which charge/mortgage was created by respondent No.1 on the land on which subject residential project has been constructed. Ld. counsel argued that respondent No.1 has played fraud on the complainants as well as lending bank.

Further, while lending loan to the promoter- respondent No.1, respondent No.2 bank completely over looked the fact that ownership of undivided share in the land had already passed in favour of allottees/flat owners by way of execution of BBA, acceptance of sale consideration and handing over of possession. Therefore, respondent No.2 Bank should not have accepted said land as security in lieu of extending credit facilities to respondent No.1. It was argued that title of the land has already got transferred in favour of complainant and other similarly placed allottees. Canara Bank could not have taken security of the property which belonged to complainants and did not belong to respondent No.1. He argued that it is the Canara Bank which itself is responsible for wrongfully extending loan facility to respondent No.1. Complainants do not owe anything either to respondent No.1 or to respondent No.2 bank. They are in lawful possession of their apartments and have paid entire consideration amount. Their possession is lawful and should not be allowed to be disturbed. Ld. counsel states that directions deserve to be issued to respondent No.1 for execution of conveyance deed for perfecting title of complainant-allottees on their apartments.



(vi) Further arguing in respect of notice dated 22.02.2022 issued by Directorate of Enforcement i.e. respondent No.3, learned counsel Sh. Bhardwaj states that complainants herein are bona fide purchasers of flats who are facing threat of dispossession from their homes by Enforcement Directorate as well as respondent No.2 Canara bank. Complainants are running from pillar to post for protecting their absolute and lawful right in the property which had been vested in them after making full payment of consideration amount and after taking lawful possession. Learned counsel states that complainants allottees should not be allowed to suffer for wrongful actions of respondent No.1. The attachment orders passed by Canara Bank respondent No.2 and by Enforcement Directorate respondent No.3, were vehemently assailed by Ld. counsel.

(vii) It is also argued that respondent No.2 Canara Bank has acted in contravention of RBI Master Circular dated 7.2.10 which obligates the loanee builder and the lender bank to inform flat buyers of any mortgage/charge being created by them in respect of apartments/ project of the allottee-complainants.

(viii) Learned counsel referred to the law laid down by Hon'ble Supreme Court in Bikram Chatterjee Versus Union of India (2019 SCC online 901). Learned counsel also referred to judgement dated 14.02.2022 of Hon'ble Supreme Court passed in Union Bank of India Versus Rajasthan Real Estate Regulatory Authority and others (SLP No.1861 and 1871 of 2022).

(ix) Learned counsel referred to various provisions of the RERA Act more specifically Sub-Section (1) of Section 17, for pressing for reliefs claimed for execution of conveyance deed in their favour.

(x) Concluding his arguments learned counsel prayed for issuing directions to respondent No.1 for execution of conveyance deeds; to direct respondent No.2 Canara Bank not to execute recovery certificates qua their flats; to direct respondent No.3/4 i.e. Directorate of Enforcement not to execute provisional attachment order under Sub Section-1 of Section 5 of the Prevention of Money Laundering Act,2002,

10. Shri Saket Singh, learned counsel appearing in four of the complaint's states that complainants in his matters are yet to be offered possession of their apartments. However, they have made full payment of consideration amount. In addition to execution of the conveyance deed he sought directions be issued to respondent No.1 for handing over possession of apartments to the complainant allottees.

11. Shri Kamaljeet Dahiya, learned counsel has filed complaint No.1281 of 2020 titled Gulshan Arora and others Versus SRS Real Estate Ltd. and others. This is a common cause complaint filed on behalf of 82 allottees of the project. Apart from promoter SRS Real Estate Ltd/SRS Real Infrastructure Ltd., Canara Bank has been arrayed as respondent. The facts presented by him are similar to the complaint No.985 of 2022. During oral submissions Ld. counsel referred to provisions of Section 11(4)(a)(f) & (h) of the RERA Act and stated that by virtue of these provisions, promoters are duty bound to execute conveyance deed in favour of complainants/allottees.

12. Ms. Rahish Pahwa, learned counsel appeared on behalf of Canara Bank. Learned counsel made oral and written submissions as follows:



i) That subject project was originally financed by State Bank of India in the year 2009. Land underneath the project was mortgaged to State Bank of India. Promoters-respondent No.1 settled its account with State Bank of India and redeemed the mortgage by the month of June, 2013. In September 2013, respondent No.1 approached Canara Bank for obtaining term loan of Rs.110 crores. The loan was proposed to be granted against mortgage of land underneath the project of respondent No.1. Canara Bank exercised due diligence before acceptance of mortgage of project land. The project appraisal group of the bank made complete assessment of the project including the amount spent on existing construction. The total sale value of the booked flats was assessed at ₹265.32 crores. Further, as per CA certificate, the total booking amount received by respondent No.1 in respect of the booked apartments was ₹191.79 crores. Accordingly, after finding the proposal viable, term-loan of Rs.110 crores was sanctioned and land underneath the project was got mortgaged in favour of the bank. Ld. Counsel argues that super structure raised over the land also stood hypothecated in terms of common hypothecation agreement dated 26.09.2013. As per averments of respondent No.3 Canara Bank, entire sum of ₹110 crores were disbursed in favour of respondent No.1 to be repaid in 8 quarterly instalments of ₹13.75 crores each w.e.f. June, 2015, ending March 2017.

ii) A board displaying the fact that project has been financed by respondent No.2 was placed at a conspicuous place at the site. It was made clear that after 25.09.2013 whenever a flat buyer requires a home loan from any bank or financial institution, he/she was directed by respondent no.1 to obtain an NOC from



Canara Bank. It was averred that about 170 such requests were received by Canara Bank. Further, an arrangement was made that whenever a home buyer obtained loan from any financial institution, it should be deposited into an escrow account. It is understood that said Escrow account was dedicated for repayment of loan sanctioned by Canara Bank. It has been stated that good number of home buyers had deposited consideration of the flat in the escrow account.

iii) It has been submitted in writing by respondent No.3 Canara Bank that at the time of sanction of loan super structure of the project was complete to the extent of 30-35% in the project. Further, none of flat owners were in occupation of any flat. At the time of loan appraisal, only 792 out of 1491 flats had been booked. Booking of remaining 699 flats was done after 25.09.2013 i.e. after creation of mortgage in favour of respondent No.3. It was argued that those persons, who have booked flats after 25.09.2013 cannot plead ignorance about mortgage having been executed in favour of respondent No.3. It has also been stated that complainants are well aware that answering respondent bank has already moved an application under Section 7 of Insolvency and Bankruptcy Code 2016, which at present is pending before the learned NCLT, Chandigarh.

iv) It was further argued that respondent no.3 bank was well within its right to classify the account as NPA and also to file an O.A. before learned DRT, Chandigarh. The answering respondent is well within its right to recover its dues by attachment and sale of securities mortgage available with it. Complainants have no legal title to the flats till the time land underneath the project remains mortgaged with the bank.



v) Learned counsel for respondent No.3 Canara Bank sought dismissal of the complaints for the foregoing reasons.

13. Shri O.P. Narang, learned counsel appearing for M/s LIC Housing Finance Ltd. who appeared in complaint No. 1200 of 2022, stated that complaint suffers from misjoinder of party because under Section 31 of the RERA Act read with Regulation 3 of the Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of Complaint) Regulations, 2018, LIC Housing Finance is neither a promoter nor an allottee nor a Real Estate Agent. He further averred that no interim order deserves to be issued against them. He further stressed the point that apartment in question is under charge/mortgage in favour of LIC Housing Finance in view of housing loan given by it to complainant borrower, and same has been held as security against the said loan. Sh. Narang learned counsel prayed for dismissal of complaint qua LIC Housing Finance Ltd.

14. Learned counsel Sh. Naveen Madan, appearing on behalf of State Bank of India, Faridabad, Sh. Sumer Pal appearing on behalf of PNB Housing and Finance and Piramal Finance, Sh. Arun Sharma appearing on behalf of Indian Bank, Sh. Arjun Kundra appearing on behalf of Jammu & Kashmir Bank, Sh. Jatin Sehrawat appearing for L&T Finance requested for adjournment for submitting their replies.

15. Sh. Anirudh Sood, learned counsel appearing for Directorate of Enforcement submitted as follows: -

i) That this complaint is liable to be dismissed qua Enforcement Directorate for misjoinder of parties under Section 31 of the

RERA Act read with Regulation 3 of the Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of Complaint) Regulations, 2018. Under these provisions aggrieved person can file complaint only against a promoter, an allottee, or a real estate agent. Further, instant complaint is not maintainable because Authority cannot direct respondent Enforcement Directorate to stay the proceedings instituted under Prevention of Money Laundering Act, 2002. Further, complaint is also not maintainable because this Authority cannot issue directions to respondent Directorate for deferment of attachment of the subject matter units as same will be dealt with in accordance with the law under the PMLA 2002.

ii) Learned counsel argues that it is untenable to direct answering respondent to take recourse to alternative remedies against those involved in commission of offence of money laundering under Section 3 punishable under section 4, of PMLA-2002. Also, no interim orders can be issued against the respondent in view of Provisions of Section 35, Section 36 and Section 37 of RERA Act, 2016.

iii) In para 23 of reply it has been averred that investigation of the matter is still going on and it is through investigation only it will be ascertained whether complainant-home buyers are bona fide allottees or not. Further, in the absence of transfer of title and registration of a valid conveyance deed, title still stands in the name of respondent No.1 and now this asset stands attached. Therefore, complainant cannot be said to be having good title of the property in question at present.



16. A hand written reply has been received from Sh. Anil Jindal son of Sh. Girraj Singh from District Jail, Neemka, Sector-73, Faridabad. Sh. Anil Jindal is Director of promoter-company arrayed as respondent No.1 in all the complaints.

Essentially, Sh. Jindal has stated that they are not in a position to verify statement of accounts of buyers, therefore, they need time to do so. He further states that the property has been attached by Enforcement Directorate allegedly having been created from proceeds of crime, whereas actually the property was created from funds contributed by customers, banks loans and contribution made by promoters. Sh. Jindal states that company is having sufficient assets to repay bank loan. He has prayed that a committee should be constituted comprised of bank officials, customers and promoters to resolve and settle this issue. He also stated that they are in jail for the last 3 ½ years on account of FIR No. 440 of 2017 filed against them in respect of which investigations are going on. Sh. Jindal has prayed that since company has more assets than liabilities, efforts should be made to resolve the issues in a reasonable way.

17. Authority observes that almost all 251 complaints have been filed before this Authority in pursuance of the liberty granted to the complainants by Hon'ble Supreme Court in Writ Petitions (C) No. 1243 of 2019 along with Writ Petitions No. 834 of 2021 and No. 2009 of 2022. Judgment dated 1.4.2022 passed by Hon'ble Apex Court is reproduced below: -

"These petitions have been filed by the home-buyers to issue direction to the Canara Bank (Respondent No. 3) not to precipitate the action under Section 13(4) of the Securitization



and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act") against them being genuine home-buyers, who had purchased property in the concerned projects (SRS Royal Hills and SRS Pearl Residency) by taking loan from other banking/financial institutions much before the transaction effected between the Canara Bank and the builders-respondent No. 1 (SRS Real Estate Ltd.) and respondent No. 2 (SRS Real Infrastructure Ltd.).

It is also noticed from the pleadings that besides the action initiated by the Canara Bank under SARFESI Act with regard to the subject project, there are some other proceedings under the Prevention of Money Laundering Act against the Directors and Officials of the respondents-builders, in which attachment orders have been issued including affecting the home-buyers.

These proceedings are mutually exclusive and need to proceed in accordance with law.

In addition, the grievances of the writ petitioners and similarly placed persons (home-buyers of the subject project) can also be assuaged and redressed by the Real Estate Regulator Authority (RERA), inter alia, in light of the dictum of this Court in Bikram Chatterjee and others Versus Union of India and others, reported in (2019) 19 SCC 161. We need not dilate on the merits of the issues required to be dealt with in the concerned proceedings.

After hearing learned counsel for the writ petitioners, intervenors, impleadment applicants and also concerned banks/financial institutions and the respondent Nos. 1 and 2-builders, we are of the considered opinion that these matters need



to be disposed of by continuing the interim protection given to the petitioners and similarly placed genuine home-buyers in the subject project to enable them to approach the concerned Forum and seek further relief, as may be advised. The petitioners and similarly placed genuine home-buyers may do so within eight weeks from today.

The interim protection already given to the respective petitioners and similarly placed genuine home-buyers in the subject projects shall continue to operate, if they resort to appropriate proceedings before the concerned Forum within eight weeks from today and until appropriate orders are passed by the concerned Forum after hearing all concerned. The concerned Forum may decide all pleas on its own merits and in accordance with law, keeping in mind the legal position expounded in the aforementioned reported decision or any other enunciation pressed into service by the concerned parties.

Needless to observe that this liberty would also ensure in favour of the banks/financial institutions who have granted loan to the genuine home-buyers before transaction effected between the Canara Bank and respondents-builders. Even those banks/financial institutions may take recourse to appropriate proceedings as may be advised, which can be dealt with by the concerned forum in accordance with law.

Needless to observe that the concerned forum may deal with the proceedings filed by respective parties as per the liberty given in this order expeditiously. In the event any adverse order is passed by the stated forum affecting the possession of genuine home-buyers, the same shall not be given effect to for a period of four



weeks from the date of such order to enable them to take recourse to appropriate remedy.

We reiterate that all contentions as may be available to the concerned parties, including appropriate remedies as per law are left open, to be decided as and when occasion arises.

The writ petitions and all pending applications including applications for impleadment/intervention are disposed of in the above terms".

[Emphasis added]

18. Authority further observes that SRFAESI Act, 2002, was enacted by the Parliament of India which came into force at 17.12.2002. The basic purpose of the Act is to facilitate banks and financial institutions to take possession of securities held by them and sell them for recovery of loans advanced by banks/FIs against such securities.

Authority also observes that Parliament of India has also enacted Insolvency and Bankruptcy Code (IBC), 2016. Purposes of this Code are to streamline and consolidate provisions of different laws, and make insolvency resolution process simple and efficient. The Code aims at consolidating various similar laws including the SRFAESI Act, 2002. Under the Code, a speedy and efficacious mechanism has been provided for disposal of stressed assets and for satisfaction of proportionate claims of different categories of creditors.

19. Parliament of India has also enacted Real Estate (Regulation and Development) Act, 2016 (RERA Act). Aims and objectives of RERA Act are to ensure sale of apartments in

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real estate projects in efficient and transparent manner; to protect interests of consumers of real estate sector; and to establish an adjudicating mechanism for speedy redressal of grievances. The RERA Act has consolidated at one place various rights and obligations of promoters of real estate projects on one hand and rights and obligations of allottees of projects on the other. Some provisions of the Act relevant for the purpose of this order are reproduced below: -

“Section 79 "Bar of Jurisdiction" - The Real Estate (Regulation and Development Act, 2016): No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 80 "Cognizance of Offences" - The Real Estate (Regulation and Development Act, 2016)

(1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Section 89: Act to have overriding effect:

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Rule 27: Enforcement of order, direction or decision of adjudicating officer, Authority or Appellate Tribunal Section 40.-

(1) Every order passed by the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, under the Act or rules and the regulation made thereunder, shall be enforced by an adjudicating officer of the Authority or Appellate Tribunal in the same manner as if it were a decree or a order made by a civil court in a suite pending therein, and it shall be lawful for the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order send such order to the civil court, to execute such order

Section 11 "Functions and duties of promoter" - The Real Estate (Regulation and Development Act, 2016):

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case



may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the

allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

Section 15 "Obligations of promoter in case of transfer of a real estate project to a third party" - The Real Estate (Regulation and Development Act, 2016)

(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Section 17 "Transfer of title" - The Real Estate (Regulation and Development Act, 2016)

(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining



thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

Section 19: Rights and duties of allottees:

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4.”

20. The basic facts of the matter remain undisputed and un rebutted that respondent No.1 had launched the project in question in a lawful manner after getting licence No. 69 of 2008 and licence No. 46 of 2010, Sector-87, Faridabad from Town and Country Planning Department, Haryana. Even though not so specifically stated, it is presumed that construction of the project has been undertaken in accordance with plans approved by the department concerned of the State Government. This presumption is supported by the fact that department concerned has granted Occupation Certificates to the project in the year 2014 and 2015.

21. Further undisputable fact is that complainants have purchased the apartments in a lawful manner by duly executing Builder Buyer Agreements. The agreement in lead complaint No. 985 of 2022 was executed on 8.12.2012 for purchase of flat No.301 Tower B-4 in the project. It is also undisputed that complainant has paid full consideration amount. After receipt of the entire payment, possession was handed over to complainant on 18.5.2014. The complainants therefore became lawful owner in lawful possession of lawfully constructed apartment. Complainant contends that he is entitled to enjoy his lawful possession without any obstruction. It has been stated that rest of the complainants are also similarly placed.

Authority observes that the law of the land is that once full consideration has been paid, property has received occupation certificate from the State Government authorities, and possession is handed over in a lawful manner, the property in the apartment gets transferred automatically in favour of buyers. The

allottee gets its legal ownership at the same moment of discharging his part of obligations. The seller loses its ownership in favour of allottee at that very moment. Thereafter, execution of conveyance deed remains a mere formality for updating the records and signifying to the public at large regarding perfection of title. Non-execution of conveyance deed will not in any way adversely affect the rights of allottee. Right of allottee to get conveyance deed executed crystallises irrevocably at the same moment when he pays full consideration and obtains lawful possession. Delay caused by promoter in executing conveyance deed will not render imperfect an otherwise perfect title.

22. In the considered view of this Authority ownership of the apartment has already got vested in the complaint. This prayer for execution of conveyance deed was their right under general law of the land, now made unambiguously clear by Section 17 of the RERA Act.

23. Above cited provisions of Section 11(4) of the RERA Act provides that promoters are under an obligation to execute registered conveyance deed of the apartment in favour of allottees. In fact, this provision of RERA Act goes a step further to say that allottee also becomes owner of proportionate share in common areas of the project. In simple words, after an allottee has discharged its obligations as provided in Builder Buyer Agreement he becomes full owner of the property, and promoter gets saddled with an obligation to get conveyance deed executed in his favour, not only of the apartment but also of undivided proportionate share in common areas of the project.

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24. Authority has been consistently taking a view that provisions of RERA Act have crystallised and clarified already existing law of the land that ownership of apartments/plots shall get transferred from promoters to the allottee in proportion to obligations discharged by allottee after paying due consideration amount. After full payment, full ownership gets transferred regardless of execution of conveyance deed.

25. Authority goes a step further that even if an allottee is yet to pay full consideration amount, even in such cases ownership right will deem to have got vested in him subject to the fulfilment of remaining obligations. In the event of default on the part of promoter, allottee could press for Specific Performance of the Contract by way of delivery of possession. Interpretation of law in any other manner will be patently unfair, unjust and contrary to provisions of statute and even letter and spirit of Constitution of India.

26. Authority is of the considered view that after taking lawful possession of the apartment and after having paid full consideration amount, ownership and title of property stands transferred in favour of allottees. Now, execution of registered conveyance deed remains only a formality for the knowledge and information of general public. Authority is unable to agree with the view expressed by learned counsel for Enforcement Directorate that property cannot be said to have been vested in the complainants for the reason of non-execution of conveyance deeds. Authority would reiterate that conveyance deeds ought to have been executed the very moment when entire consideration was paid and lawful possession was handed over. It is the

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respondents who have delayed in execution of the conveyance deed. The delay in execution of the conveyance deed cannot make title of the complainants defective which otherwise had already been perfected and had vested in them.

27. Ld. Counsel for Enforcement Directorate has further averred that this Authority do not have jurisdiction to give any direction to the ED because provisions of RERA Act mandates that jurisdiction of Authority extends only to allottees, promoters and real estate Agents.

Authority would observe that these orders are being passed essentially in regard to the legal and contractual relationship between the allottee on one hand and the promoter on the other. Both the bank as well as ED are seeking to affect ownership, possession and other rights of allottees through the promoters. It is through the route of alleged wrong doings of promoters through which allottees are sought to be touched and reached. Authority observes that if promoters have done something wrong or have violated any provisions of law, they themselves will face its consequences. Hundreds of allottees of the project will not automatically become co-accused and offenders. They have fulfilled their obligations and have become owners of their houses. For all legal purposes, the relationship of promoter and allottee has come to an end. The route leading to allottees has stopped. Now, allottees are independent owners of their houses having no relationship with promoters. Therefore, this Authority is only exercising its jurisdiction to determine current stage of the relationship of promoter and complainant allottees. Determination this promoter-allottee relationship is very much



within jurisdiction of this Authority. If this relationship was lawful and valid, then chain of criminal liability will end and snap at the level of promoter. It cannot extend to the allottees.

It is further observed that even Hon'ble Supreme Court has observed that grievances of allottees can be assuaged by RERA.

Therefore, Authority observes that surely it has no jurisdiction to give any direction to ED, but it surely has jurisdiction to declare whether allottees of the project had come into ownership and possession of their apartments in lawful manner or not. Further, merely by the fact that promoters are offenders of law, will not automatically make allottees also the offenders. In order to implicate an allottee, a specific finding qua that particular allottee of having violated provision of PMLA-2002 has to be established. If any allottee is found to be an offender, law must take its own course, but their legal ownership and possession rights cannot be taken away just because the promoter at some point had violated law or had committed a crime. Liabilities and responsibilities of promoter and allottee are not common. They do not even overlap at any stage. They were never together on one side. In fact, it is the allottee who are pressing for their rights against the promoter.

28. Authority would further observe that right to housing is a fundamental right as has been interpreted by Hon'ble courts. This right is enshrined in Article 14, 19 and 21 of the Constitution. Such right cannot be taken away except by due process of law.



No due process of law appears to have been followed in respect of allottees. Complainant allottees were not privy to the loan agreement executed by promoter respondent No.1 with lending bank respondent No.3. Respondent No.1 offered securities of the properties of which ownership rights had already been vested in complainants. This situation is an akin to getting a loan sanctioned against property belonging to a another person without his consent. .

29. Authority observes that first of all respondent No.1 promoter had no right to offer properties which had vested in complainants as security by way of hypothecation for raising loan. Such offer of security by promoters, therefore, was void ab-initio. Nobody can bind anybody else into a legal obligation without his lawful consent and authorisation. No consent or authorisation whatsoever had been obtained from complainant-allottees.

Secondly, Canara Bank-respondent No.3 could not have accepted the securities offered by respondent No.1 which did not belong to them. Even before enactment of RERA Act, law of the land was that purchaser of a property acquires an enforceable interest in the property after execution of Builder Buyer Agreement and upon fulfilling his part of obligations. A lawful buyer of property could press for specific performance of the contract.

Respondent No.3 Canara Bank ought to have been aware of the law of the land. They had all legal wherewithal to examine whether properties being offered as security really belonged to respondent No.1, who was wanting to raise the loan or not. The



fact that respondent No.3 Canara Bank accepted the property belonging to somebody else as security makes such security void ab-initio vis-a-vis allottees who are complainants in these matters and also other similarly placed persons.

30. The conduct of promoter on one hand, and lending bank on the other renders the very process followed by them illegal, wrongful and unconstitutional. All actions taken by lending institution, therefore, in regard to allottees who had acquired vested interest in their apartments shall be deemed wrongful and void ab-initio.

31. Authority at this stage would also refer to Article 300-A of the Constitution of India, which provides that "No person shall be deprived of its property save by authority of law".

In this context, Authority would refer to proceedings undertaken by respondent No.3 Canara Bank before learned DRT Chandigarh. Relevant portion of the orders of learned DRT are reproduced below: -

".....

4. The defendants were served notice to appear before this court to file written statement but defendants were proceeded ex-parte vide order dated 28.11.2017.

[emphasis added]

5. In support of the OA, affidavit of Shri Sachin Kumar has been filed. Thereafter, Shri Raj Kumar, Bank Officer appeared and brought all original documents which were seen & compared

with the Annexure-A1 to A24 filed by the bank along with OA and returned back.

6. Heard ex-parte arguments, from the perusal of all the Annexure-A1 to A24. It is proved that the defendants approached applicant bank for taking the loan facility which was granted to them and they executed all the relevant documents but they did not pay the loan as per terms and conditions of the agreement and their accounts were declared NPA and from the documentary evidence it is proved that bank is entitled to recover a total sum of Rs. 109,32,15,449/- from the defendants jointly and severally.

7. The bank has claimed interest @ 15.15% p.a. with monthly rests from 04.07.2017 till the realization as per agreement between the parties. Therefore, bank is entitled to recover Rs. 109,32,15,449/- with a simple interest @ 15.15% p.a. from the date of filing of OA till the realization of money.

8. In the result, the application is allowed declaring that the defendants are liable to pay to the applicant a total sum of Rs. 109,32,15,449/- (Rupees One hundred nine crore thirty-two lakh fifteen thousand four hundred forty-nine one) jointly and severally, with costs, current and future simple interest @ 15.15% p.a. from 04.07.2017, till the date of realization of the amount. Accordingly, the applicant bank shall be entitled to recover aforesaid amount from the sale of hypothecated/mortgaged properties of the defendants in execution proceedings if not sold earlier under the provisions of the SARFAESI Act, 2002. If the dues of the bank still remain unsatisfied, it shall be entitled to recover the same by attachment



and sale of personal assets of the defendants. The applicant is at liberty to enforce the claim through due process of law.....”

32. In regard to proceedings before learned DRT, Authority would observe that firstly M/s Canara Bank never impleaded any of the complainant-allottees as respondent. The complainant-allottees therefore have gone unrepresented and unheard. The order has been secured against them by Canara Bank at their back without making them a party. This is gross violation of principles of natural justice.

Secondly, as is evident from para-No.4 above of the order of Ld. DRT, even proceedings against promoter-respondent No.1 have been held ex-parte. The orders have been passed on the basis of documents presented by Canara Bank without exhibiting whether those documents were to be seen subject to vested rights of allottees. As such, Authority would consider that proceedings before learned DRT have been pursued by respondent No.3 in one sided manner, without impleading complainant herein who were vital and interested parties as respondents and without giving them a right to be heard.

Canara Bank ought to have presented full facts before learned DRT stating the fact that ownership of properties of complainants had already got vested and transferred in the complainants, and they could not be dispossessed of the same without following due process of law.

33. Action of respondent No.3 therefore directly contravenes constitutional right granted by Article 300-A of the Constitution of India. It amounts to violation of principles of

natural justice. Right to housing being a fundamental right, complainants could not have been proceeded against in the manner respondent No.3 Canara Bank has chosen to proceed.

34. Canara Bank respondent no.3 was fully aware that not only complainant allottees were interested parties in the assets of the project, but there were several other lending institutions who had advanced loans to the allottees. Canara Bank had been granting NOC for facilitating such loans and even had an escrow arrangement for receipt of money from allottees. Those lending institutions also had proportionate right in the assets of the project. Therefore, right course of action for respondent No.3 was to approach Hon'ble NCLT under IBC-2016. The proceedings under IBC code would have ensured that all secured creditors get proportionate share from proceeds of remainder of the assets of the project.

It has been stated by the respondent No.3 itself that they have also filed an application before the NCLT under Section 7 of the Act. Authority observes that in the absence of further information being provided, it is unable to understand how they are now approaching the NCLT after having secured an order from Ld. DRT. Respondent No.3 Canara Bank should make detailed statement in this regard on the next date of hearing.

35. Authority will resist the temptation of commenting upon Canara Bank in having advanced entire amount of Rs.110 crores of loan to respondent No.1 in one go. Ordinarily, it is understood, that loans are released in accordance with progress of the project. Authority will not go into the aspect whether Canara Bank have violated guidelines and circulars issued by



Reserve Bank of India in this regard and whether they had exercised due diligence in disbursing lumpsum loan. Enough to say that Canara Bank had accepted wrong securities which did not belong to respondent No.1, and such acceptance of wrong securities may give Canara Bank a right to proceed against respondent No.1 in an appropriate proceeding, but it cannot adversely affect rights of allottees. It is reiterated that allottees have never been privy to the contract executed by respondent No.3 with respondent No.1.

36. Coming to the attachment orders dated 22.02.2022 passed by learned adjudicating authority under Prevention of Money Laundering Act by way of provisional attachment order under Section 5 (1) of PMLA 2002, Authority would infer from the facts placed before it that there are serious allegations against respondent No.1 in having violated provisions of PMLA-2002. From the facts placed so far before it, Authority would further conclude that alleged violation of PMLA-2002 has deep relation with Rs.110 crores loan secured by promoter-respondent No.1 from Canara Bank respondent No.3.

It has been observed by Hon'ble Supreme Court that "...these proceedings are mutually exclusive and needs to proceed in accordance with law". The Authority has no jurisdiction to comment upon proceedings initiated by Enforcement Directorate against the respondent No.1. The Enforcement Directorate is also well within its rights to proceed against an allottee who is proved to have knowingly benefited from proceeds of crime. In whichever is case, such an allegation against a specific allottee is proved, law must take its own course. May it be an allottee or

a promoter or any other person, whosoever has violated law, must face consequences, However, before he/she faces its consequences it is important to establish that he/she has knowingly participated in commission of crime, and was aware of it before coming in possession of proceeds of the crime.

37. Authority would also observe that execution of conveyance deed in favour of allottees as prayed for will not in any manner adversely affect prosecution of the matter before Enforcement Directorate. The property in apartments already stands vested in allottees as per law of the land and provisions of RERA Act. At this stage, execution of conveyance deed is only a formality for perfecting the title. If an individual allottee is actually found to be have been knowingly dealt with proceeds of crime, such properties can always be attached whether or not conveyance deed has been executed of that.

38. It is understood that the FIR in this case was registered in 2018. Allottees of the project had entered into Building Buyer Agreement mostly in 2013 or before. They had paid entire consideration amount by the year 2014 and had come in possession of their apartments in 2014 and 2015. All such allottees must continue to enjoy peaceful possession of their apartments till such time as after following due process of law it is proved that they had come in possession of such properties in violation of any law, PMLA 2002 in particular. Proceedings against respondent No.1 for alleged violation of PMLA 2002, cannot automatically render allottee complainants as co-accused and partners in crime. Allottees have paid to the respondent no.1. They are not recipients of money from respondent no.1. Each



allottee must be specifically, for reasons to be stated, impleaded as a co-accused to be able to lawfully proceed against them. A due process of law, which includes preliminary investigation and filing of FIR, should be followed before attachment properties of each individual. Authority would consider that without following such due process of law, allottees will continue to be lawful owner in possession of their properties and protection granted to them by the provisions of RERA Act will continue to be available.

39. Complainants have extensively referred to case law laid by Hon'ble Apex Court in 'Bikram Chatterjee and others Vs. Union of India and others'. In fact, Hon'ble Supreme Court itself in the writ petitions No. 1243 of 2019 and other matters, has referred to the law laid down in Bikram Chatterjee's case. Relevant part is reproduced below:-

".....the principle "fraud vitiates" is clearly attracted and such a transaction would become unenforceable and would be against the public trust doctrine. Real Estate business can never prosper in case of breach of trust, bankers, Authorities in connivance and the builders are permitted to take away the innocent home buyers/ money without being accountable to their action/inaction. From tomorrow Authorities sleep in slumber, permitting diversion of money of buyers/ bankers, etc., and the home-buyers will be paying the dues of all concerned without investment of a penny by builder and rather they are diverting the money of the home-buyers in connivance with Authorities and Bankers and they are left without dream homes. If that is a factual scenario, no Court can permit such fraud to be

perpetrated. Since "fraud vitiates", the bounden duty of the Court is to act as *parens patriae* not only to save the home-buyers but also to ensure that they are not cheated".

".... has clearly held that "the agreement initially executed in favour of home buyers to purchase flats may not create any right in the property in present, it will only on the execution of the registered document that title is going to be perfected, but investment in project is only of home-buyers. In this case, as they have paid money invested in projects, it is for the courts to do complete justice between the parties and to protect the investment of home-buyers and to ensure that get the perfect title and the fruits of their hard-earned money and lifetime saving invested in the projects. It was further held by this Hon'ble Court in the said judgment that "....the agreement entered into at the time of allotment is the basis of investment in the projects made by home-buyers, it cannot be a scrap paper. It is their valuable investment which is required to be protected and cannot be permitted to be taken away by builder or secured creditors in an illegal manner. The provision of section 17 of the Registration Act, no doubt registered document has to be executed that has to be taken care by the Courts so as to protect the interest of Home Buyers."

40. Coming to the case of several other financial institutions and banks which have been arrayed as respondents by individual complainants, Authority would observe that those institutions have given loans to home buyer allottees. The loan so given by financial institutions would have been paid into the Escrow account of respondent No.1, of which beneficiary was

respondent No.3 Canara Bank. Those loans were advanced by way of agreement between allottees on one hand and lending financial institutions on the other. No grievance appears to have been raised against any of the financial institutions. No relief has been sought qua them. Prima-facie, therefore, allottees on one hand and lending financial institutions on the other will discharge mutual obligations agreed upon between them in due course. Learned counsel for LIC Housing Finance has categorically stated that they are misjoinder to the proceedings. Their argument appears to be correct.

All other financial institutions who have been arrayed as respondents by individual allottees have prayed for granting them time to file their reply. Authority grants them time to file their reply. However, arguments put forward by Sh. O.P. Narang, Id. Counsel for LIC Housing appears to be correct. As such their name deserves to be deleted from the array of respondents. Final views in this regard, however, will be expressed during next hearing of the matter.

41. In the light of foregoing discussions Authority considers that interim reliefs prayed for by complainants deserves to be allowed in following terms: -

(i) Authority is prima-facie of the view that the loan agreement executed by promoter-respondent No.1 with Canara Bank respondent No.3 vide which properties which had already been vested and passed on to complainant-allottees were hypothecated was void ab-initio to the extent of binding complainants allottees. Respondent No.3 has failed to implead complainant-allottees as respondents in the proceedings before learned DRT,

therefore, while recovery proceedings against any other assets of promoter respondent No.1 may continue as per law but same shall remain stayed qua the complainant-allottees and all other similarly placed persons.

(ii) RERA Act came into force in 2017, and by virtue of aforementioned Section 79 and Section 89 of the Act, proceedings before RERA will take precedence over proceedings under any other law in force. Therefore, no action shall be taken for dispossession of complainant-allottees till final orders are passed by this Authority. Complainants therefore, will continue to enjoy peaceful possession of their properties till disposal of this matter by this Authority as per law.

(iii) As regards provisional attachment order under sub section 1 of Section 5 of PMLA 2002, such proceedings may continue qua all or any assets belonging to the respondent No.1, but such proceedings cannot continue in respect of the properties which did not belong to respondent No.1. Prima-facie, complaint-allottees have come in possession of their properties in a lawful manner, after paying full consideration amount, and after Occupation certificate having been granted by authorities concerned of the State Government. The protection granted by provisions of RERA Act to the allottees will continue and their otherwise lawful possession and title will not get tainted because promoter of the project had contravened provisions of PMLA 2002. If any allottee is specifically proved to be knowingly had come in possession of proceeds of crime, the law will take its own course qua such an allottee. Entire class of allottee numbering hundreds would not automatically be termed

criminals just for having purchased their homes from respondent No.1. Their right to housing is protected by Article 14, 19, 21 and Article 300-A of the Constitution of India. A due process must be followed before they are dispossessed of their houses. Needless to state that such due process will include supply of list of allegations and an opportunity to be heard.

(iv) Prima-facie all complainant-allottees who have paid full consideration amount and are in lawful possession of their apartments deserve to get sale deed/conveyance deed executed in their favour. It shall be presumed that if the respondent No.1 himself had offered them lawful possession, and allottees have discharged their obligations, conveyance deed deserves to be executed in their favour. Final orders in this regard, however, will be passed after final hearing of the matter on next date of hearing. Respondents may submit their objections in each individual case failing which it will be presumed that they have nothing to say and have no objection to execution of conveyance deed. Respondent No.1 and 3 may specifically supply list of allottees who may not have paid entire consideration amount or those who still are not in possession of property.

(v) An order deserves to be passed for handing over possession of apartments to those complainants who have paid entire consideration amount but have not been handed over possession of their apartments. A final order in this regard will be passed after hearing respondents.

(vi) The respondent No.3 Canara Bank is directed to submit latest position of proceedings undertaken by them before



Hon'ble NCLT and also implications of such proceedings on the orders passed by learned DRT.

(vii) It is understood that only 300-400 allottees in these 251 complaints are before this Authority at this point of time. Actually, there are 1491 allottees in whole of this project. As stated by Canara Bank, 792 apartments had been sold at the time of sanctioning loan in 2013. There may be large number of allottees who are similarly placed as complainants in this bunch of captioned complaints. Authority in exercise of the powers conferred upon it by Section 36, Section 37 and 38 (2) of RERA Act, would order that this order will also be applicable upon all the allottees of the project who are similarly placed as the complainants. They need not approach the Authority separately. These orders, however, would not be applicable in case of which facts are different from the facts of captioned bunch of complaints.

(viii) A copy of this order alongwith a copy of complaints be served to respondent No.1 through Superintendent of Jail, Neemka, Sector-73, Faridabad, through process server of the Authority.

9. A reply dated 16.08.2022 was received in the office of Authority on 22.08.2022 from Sh. Anil Jindal, Director of respondent No.1-company sent from District Jail, Neemka, Faridabad. Sh. Anil Jindal, Director has submitted in his reply as follows: -

- i) That Directors of the promoter company are in judicial custody since 05.04.2018.



- ii) That in all the complaints, it has been stated that project properties have been attached by Enforcement Directorate and also by Canara Bank. However, in their opinion, the property has also been attached by Income Tax Department, Faridabad. Sh. Anil Jindal states that this issue should also be taken care of at the time of taking a final decision.
- iii) That in addition to about 251 complaints there are 1240 other allottees of the project. Their interest should also be taken care of by the Authority.
- iv) That Enforcement Directorate has illegally attached the property which belonged to customer homebuyers and not respondent M/s SRS Real Estate. Those properties were constructed from sale proceeds received from customers and from bank loans. The sale proceeds from customer were taken either as per Construction Link Plan (CLP) or under One Time Payment Plan (OTPP).
- v) Against the sale proceeds received from customer-homebuyers, flats/plots/villas were lawfully handed over to them. That the Enforcement Directorate had provisionally attached the properties on 08.01.2020 stating that these were constructed from proceeds of crime without doing proper investigation. Sh. Jindal states that flats were constructed from payments made by allottees and not from

proceeds of crime. Further, all the customers are having receipts of payment made as consideration for flats; receipts of full and final payment having been made; possession certificate; and other required documents. Therefore, allottees are lawful owners of flats. Further, some of the allottees have got conveyance deeds executed and others have not. Sh. Jindal states that properties now belong to allottees and not to M/s SRS Real Estate Ltd., therefore, Enforcement Directorate has illegally attached the property belonging to allottee homebuyers.

- vi) In fact, Sh. Jindal has also stated that vide order dated 31.08.2021 learned Adjudicating Authority of Enforcement Directorate has observed that the properties belonging to bonafide homebuyers and Enforcement Directorate has illegally and wrongly attached those properties and had ordered vacation of provisional attachment order.
- vii) Sh. Jindal has further stated that conveyance deed deserves to be executed in favour of homebuyers allottees as they are lawful owners of their flats subject to making payments (if any) to the company. Further, no investigation is going on against any of the customer-allottees. Investigation is going on only against M/s SRS Real Estate.



viii) Sh. Jindal further states that in May, 2018, Income Tax Department has searched and raided the properties of respondent SRS. In the year 2021 Income Tax Department completed assessment proceedings and had created demand of thousands of crores on respondent company. Since they are in judicial custody since 05.04.2018 they could not contest their case before Income Tax Authorities, therefore, Income Tax Department treated entire credits in the bank account as income and has computed Income Tax on the entire amount. They have even treated the amounts received from customers, investors, bankers etc. as deemed income. Further, since huge income tax demand has not been served, they have provisionally attached all the properties of SRS companies.

Sh. Jindal has given similar argument, as was given in the case of Enforcement Directorate, that Income Tax Department cannot attached properties which actually belong to consumer-allottees.

ix) In regard to Canara Bank, Sh. Jindal states that Canara Bank has filed a petition for Corporate Insolvency Resolution Process (CIRP) before NCLT Chandigarh to recover its dues. He states that company is having more assets than its liabilities, therefore, Canara Bank dues will be settled during CIRP proceedings. In regard to orders of the DRT Sh. Jindal had made a similar averment that properties which



belong to homebuyers allottees cannot be made part of the order of DRT.

- x) Sh. Jindal states that Enforcement Directorate, banks and Income Tax Department are having issues vis-à-vis respondent-company and not with their customers. After CIRP proceedings are concluded all banks and other creditors will get their genuine dues. He has reiterated that conveyance deed deserves to be executed in favour of allottees and they are ready to sign the same as per court orders and to go to the office of Sub Registrar for execution of conveyance deeds.

10. A copy of the reply received from Sh. Anil Jindal Director on behalf of respondent No.1 was supplied to all the learned counsels appearing for complainants, Enforcement Directorate, Canara Bank and other institutions.

11. Sh. Rahul Bhardwaj, learned counsel appearing for complainants in 161 complaints submitted as follows: -

- i) At the outset, Sh. Rahul Bhardwaj ld counsel recaptured broad facts of the matter that complainants were allotted their apartments between the years 2010-2014. Occupation certificate of the apartments was received in the year 2015. Entire consideration amount was paid before offer of possession given by the respondent No.1 to the complainants. All the complainants had taken peaceful



possession of their properties much before they learnt about loan taken by respondent No.1-company from the Canara Bank. Sh. Bhardwaj reiterated that complainants have nothing at all to do with loan agreement executed by respondent No.1 with Canara Bank. Complainants are not privy to the loan agreements and such agreement cannot bind them into any legal obligation. Having taken lawful possession of their apartments after paying entire consideration amount, complainants have become lawful owners of the property. Respondent no.1 and Canara Bank cannot execute their private agreement to impose any legal obligation upon the allottees.

- ii) Complainants have acquired inalienable right to get conveyance deed executed in their favour. Learned counsel referred to provisions of Section 17 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act 2016 in brief) in support of his arguments that execution of conveyance deed is their statutory right.
- iii) Learned counsel argued that the loan agreement executed between the Canara Bank on one hand and respondent No.1 on the other, was a fraudulent transaction. Respondent No.1 were having no authority or powers to hypothecate property which did not belong to them, and of which deemed ownership had already vested in favour of allottees-homebuyers. Such fraudulent transactions could not bind

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allottees. In support of his contentions, he cited judgement dated 23.07.2019 of Hon'ble Supreme Court passed in Vikram Chatterjee Vs. Union of India and others (2019 SCC online 901), relevant portion of which is reproduced below: -

"the principle "fraud vitiates" is clearly attracted and such a transaction would become unenforceable and would be against the public trust doctrine. Real estate business can never prosper in case of breach of trust, bankers, Authorities in connivance and the builders are permitted to take away the innocent home buyers/money without being accountable to their action/inaction. From tomorrow Authorities sleep in slumber, permitting diversion of money of buyers/bankers, etc., and the home buyers will be paying the dues of all concerned without investment of a penny by builder and rather they are diverting the money of the homebuyers in connivance with Authorities and bankers, and they are left without dream homes. If that is a factual scenario, no Court can permit such fraud to be perpetrated. Since "fraud vitiates", the bounden duty of the Court is to act as parens patriae not only to save the homebuyers but also to ensure that they are not cheated."

Learned counsel Sh. Bhardwaj argued that ratio of above judgment clearly applies to the facts of the present matter.

- iv) Learned counsel Sh. Bhardwaj states that all the complainants have paid entire agreed consideration amount. In support of his contention, he drew attention of Authority towards page 58 of the



lead complaint No. 985 of 2022, stating that as per ledger account furnished by respondents, zero balance was outstanding against him. He further drew attention of the Authority towards Annexure C-6 (pages 82 to 111), which contains information furnished by respondent No.1 before Hon'ble Supreme Court. Learned counsel argued that as per the information, only a small amount ranging from about ₹25000/- to ₹30000/- remained payable by various allottees. Furthermore, this amount is actually payable to State Government authorities as stamp fee etc. for getting conveyance deed executed. Nothing actually remained payable to respondent-company.

- v) Summing up his arguments Sh. Rahul Bhardwaj, learned counsel states that complainants have paid entire agreed consideration amount. They are in lawful possession of their apartments duly handed over to them by the respondent-company. They came in possession of their apartments much before proceedings were initiated by Canara Bank or by Enforcement Directorate. Having nothing at all to do with bank loan raised by respondent-company from Canara Bank or with alleged violation of PMLA-2002 allottee-homebuyers cannot be made party to such proceedings and no order can be issued by DRT or by ED against them. It is internal affairs of respondent No.1 as to how they have dealt with Canara Bank and



the Enforcement Directorate. The complainants are innocent homebuyers-allottees. As per provisions of Section 17 of the RERA Act, homebuyer-allottees have inalienable right to get conveyance deed executed in their favour. He prayed that Authority may order immediate execution of conveyance deeds in favour of homebuyer-allottees.

12. Sh. Kamaljeet Dahiya learned counsel appeared in complaint No. 1281 and 1305 of 2022. He submitted as under: -

- i) Learned counsel stated that complaint No. 1281 of 2022 has been filed jointly on behalf of 82 allottees and complaint no.1305 of 2022 on behalf of 40 allottees.
- ii) He drew attention of the Authority towards Sub para (i) of Para 41 of the order dated 08.07.2022 passed by this Authority and stated that this Authority has already expressed its prima-facie view that loan agreement executed by promoter-respondent No.1 with Canara Bank-respondent No.3, vide which properties which had already vested and passed on to complainant-allottees were hypothecated, was void-ab initio to the extent of binding complainant-allottees. Learned counsel Sh. Dahiya prayed that prima-facie view expressed by Authority should be confirmed. He further stated that the agreement executed by respondent No.1 with Canara Bank was



fraudulent in nature because properties which had already factually got vested in allottees could not have been hypothecated. The allottees were not privy to such an agreement and they have not ratified such an arrangement entered into between respondent No.1 and Canara Bank. The loan agreement being fraudulent in nature cannot bind a third party and such an agreement is void-ab initio. Learned counsel reiterated that views already expressed by the Authority may be confirmed.

- iii) Sh. Dahiya, learned counsel further drew attention of the Authority towards para 41(ii) of the order dated 08.07.2022. He submitted that by virtue of Section 89 of the RERA Act, proceedings before RERA shall take precedence over proceedings under any other law in force. As per provisions of RERA, the property had already been transferred in favour of allottees, and now as per provisions of Section 17 of the Act, conveyance deeds have to be executed in favour of allottees. He prayed that categorical orders should be passed to the effect that those allottees who have fulfilled their part of agreement, shall not be dispossessed from their properties.
- iv) Learned counsel referred to judgment of this Authority passed in lead case No.383 of 2018 titled as 'Gurbaksh Singh Vs. ABW Infrastructure Pvt. Ltd. and ors.' He stated that Authority has laid

down a clear principle that rights of allottees of real estate projects shall be held superior most compared with rights of creditors of any other category. He further stated that Authority had held that even in an under-construction project allottees of the project shall be treated deemed owners of the project. Further, promoters of the project and lending financial institutions cannot alienate ownership rights of the allottees at their own level without express consent of the allottees. Referring to ratio of the judgment passed in complaint no.383 of 2018, learned counsel argued that complainant-allottees in this matter also should be held to be having superior most rights and their rights could not have been alienated by promoters or by financial institutions. Any arrangement made at the back of allottees in this regard should be held void-ab initio.

- v) Sh. Dahiya argued that as per provisions of RERA and ratio of the judgment in cited complaint No. 383 of 2018, property belongs to allottees, and builder should be deemed to be only a contractor.
- vi) Referring to the reply submitted by Sh. Anil Jindal, Director of the respondent No.1 company, learned counsel argued that it has been categorically admitted that no proceeds of crime have travelled to allottees. Allottees have paid full consideration amount. They have come in possession of the property in a lawful manner. The allottees

are not privy to the agreement executed by respondent No.1 with Canara Bank and they have nothing at all to do if the respondent No.1 has violated any of the provisions of PMLA 2002. Therefore, allottees being innocent owners of their lawfully allotted apartments, they deserve to be insulated from the proceedings initiated by the Enforcement Directorate and Canara Bank against the respondent-company.

- vii) Referring to the judgment of Hon'ble Supreme Court in 'Union Bank of India Vs. Rajasthan RERA (2022, Live Law SC 171)' Sh. Dahiya states that "RERA Authority has the jurisdiction to entertain a complaint filed by an aggrieved person against the bank as a secured creditor, if the bank take recourse to any of the provisions contain in Section 13 (4) of the SARFAESI Act." He also stated that law of estoppel applies against Canara Bank.
- viii) Learned counsel Sh. Dahiya referring to Section 41 of Transfer of Property Act stated that by virtue of this provision, complainants having discharged their part of the obligation, and having received lawful possession in good faith from respondent No.1, who was ostensible owner of the property, the transfer of property by respondent No.1 in favour of complainants is protected by the provisions of Section 41 of Transfer of Property Act. He further

refers to Section 53A of Transfer of Property Act, and reiterated that allottees having come in lawful possession of the properties, the promoter or any person claiming under him, shall be debarred from enforcing against allottees any right in respect of the property of which the transferee has taken possession. In other words, allottees having paid entire consideration, and being offered lawful possession, and having taken possession in good faith, now, respondent-promoter or respondent No.3-Canara Bank who is claiming through the respondents-promoter, are debarred from claiming any right qua the allottees. Learned counsel reiterated that no incumbrance can be created on a property in respect of which part consideration had been paid by the allottees. In the instant matter, entire consideration had been paid. Learned counsel stated that the respondent No.1 was debarred from creating any incumbrance in respect of the property which belonged to allottees who had paid full or part consideration.

- ix) Summing up his arguments, learned counsel Sh. Dahiya stated that the agreement executed by respondent No.1 with Canara Bank should be declared fraudulent, thus void-ab initio. The allottees have superior most rights over their allotted properties compared with any other creditors. Respondent No.1 itself has admitted that full

consideration has been received and lawful possession has been handed over to the allottees. Therefore, conveyance deed deserves to be executed in their favour. Learned counsel prayed that now title of the complainants over their property should be perfected by execution of conveyance deeds.

13. Learned counsel Sh. Narinder Yadav reiterated the same views as were expressed by Sh. Rahul Bhardwaj and Sh. Kamaljeet Dahiya. He stated that a small amount of only ₹8000/- to ₹10000/- remains payable by some of the complainants. This amount may actually be payable to the State Government and not to respondent No.1. He reiterated the law laid down by Hon'ble Supreme Court in Vikram Chatterjee matter, and stated that agreement executed between respondent No.1 and bank should be termed fraudulent. In fact, he referred to an application filed by Canara Bank with CBI for lodging of a FIR. Nothing further, however, was stated as what has been the outcome of this application. Learned counsel also referred to para 36 (iv) of the judgment of Hon'ble High Court of Rajasthan in CWP no.13688/2021 and stated that RERA has jurisdiction to entertain complaint filed by an aggrieved person against the bank as a secured creditors if Bank takes recourse to any of the provisions contained in Section 13 (4) of the SARFAESI Act.

14. Sh. Akshat Mittal, learned counsel appearing for complainants in bunch of complaints, adopted argument put forward by other learned counsels

appearing on behalf of complainants and stated that allottees are deemed owners of their apartments. Now conveyance deed deserves to be executed in their favour so as to perfect their title. Further, if any amount is found to be payable by the allottees, they will pay the same.

15. Ms. Rahish Pahwa, learned counsel appearing for Canara Bank stated that in furtherance of orders of learned DRT, Chandigarh and the orders of Hon'ble Punjab and Haryana High Court, large number of allottees had submitted their claims before the Canara Bank. She produced an uncertified and unverified statement of accounts in respect of large number of allottees. She sought time to place on record various representations received from allottees for making payments to Canara Bank for discharging their properties from hypothecation. She further stated that an escrow account may be created in which all the money received from allottees may be credited and proceeds received in such an escrow account may thereafter be appropriated in accordance with law amongst various claimants. Learned counsel further argued that large amount of money remains to be paid by respondent No.1 and consequently allottees of the project to the Bank. The bank had given loan to respondent No.1 after carrying out due diligence by their experts. The loan was disbursed strictly as per law. The hypothecation of properties was done as per law. Therefore, attachment orders issued by the learned DRT are valid and lawful. Therefore, without discharging



entire liability in respect of each allottee, hypothecation of properties cannot be released, and conveyance deed cannot be executed.

16. Sh. Anirudh Sood, learned counsel appearing for Enforcement Directorate stated that conveyance deeds cannot be executed in favour of allottees. Learned counsel further referred to interim order dated 03.07.2022 passed by Hon'ble Supreme Court vide which status-quo was granted. It was argued that status-quo pertained not only in terms of handing over of further possession to allottees but also in relation to execution of the conveyance deeds in favour of complainant-allottees. Learned counsel argued that status quo as was ordered vide order dated 03.07.2022 should be deemed to be continuing even after passing of final order dated 01.04.2022. Learned counsel argued that provisional attachment of property done by learned Adjudicating Officer had been confirmed as per law. Further, final attachment order passed by learned Adjudicating Officer of Enforcement Directorate remains in force. It has not been modified by any appellate court. Said attachment order having attained finality cannot be disregarded by this Authority. Learned counsel concluded by stating that if conveyance deeds are allowed to be executed at this stage, it will render the attachment order passed by Adjudicating Officer redundant. Sh. Sood referred to SLP (Criminal) No.4634 of 2022 dated 27.07.2022 'Vijay Madan Lal Chaudhary Vs. Union of India' in support of his arguments.



17. Learned counsel, Sh. O.P. Narang, learned counsel, appearing for LIC Housing, Sh. Vijiayesh Malhotra, appearing for M/s DHFC, Sh. Alankrit Bhardwaj, appearing for SBI, Sh. Sandeep Bakshi, appearing for Tata Capital Housing Finance, Ms. Rupali Verma, appearing for HDFC and Sh. Arjun Kundra, appearing for J&K Bank, stated that as already observed by Authority they are not party to the dispute and no relief has been demanded against them. Therefore, they are unnecessary parties. Their names should be deleted from the array of respondents.

18. Authority has gone through facts of the matter. It has carefully examined the documents placed before it. Authority has given serious consideration to the oral averments made by learned counsels. It observes and orders as follows: -

- i) Authority had captured facts of the matter in detail and had also expressed its views in regard to the concept of transfer of ownership of a property in paras 20 to 26 of its order dated 08.07.2022. The said views are reiterated and reproduced below: -

20. The basic facts of the matter remain undisputed and unrebutted that respondent No.1 had launched the project in question in a lawful manner after getting licence No. 69 of 2008 and licence No. 46 of 2010, Sector-87, Faridabad from Town and Country Planning Department, Haryana. Even though not so specifically

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stated, it is presumed that construction of the project has been undertaken in accordance with plans approved by the department concerned of the State Government. This presumption is supported by the fact that department concerned has granted Occupation Certificates to the project in the year 2014 and 2015.

21. Further undisputable fact is that complainants have purchased the apartments in a lawful manner by duly executing Builder Buyer Agreements. The agreement in lead complaint No. 985 of 2022 was executed on 8.12.2012 for purchase of flat No.301 Tower B-4 in the project. It is also undisputed that complainant has paid full consideration amount. After receipt of the entire payment, possession was handed over to complainant on 18.5.2014. The complainants therefore became lawful owner in lawful possession of lawfully constructed apartment. Complainant contends that he is entitled to enjoy his lawful possession without any obstruction. It has been stated that rest of the complainants are also similarly placed.

Authority observes that the law of the land is that once full consideration has been paid, property has received occupation certificate from the State Government authorities, and possession is handed over in a lawful manner, the property in the apartment gets transferred automatically in favour of buyers. The allottee gets its legal ownership at the same moment of discharging his part of obligations. The seller loses its



ownership in favour of allottee at that very moment. Thereafter, execution of conveyance deed remains a mere formality for updating the records and signifying to the public at large regarding perfection of title. Non-execution of conveyance deed will not in any way adversely affect the rights of allottee. Right of allottee to get conveyance deed executed crystallises irrevocably at the same moment when he pays full consideration and obtains lawful possession. Delay caused by promoter in executing conveyance deed will not render imperfect an otherwise perfect title.

22. In the considered view of this Authority ownership of the apartment has already got vested in the complainant. This prayer for execution of conveyance deed was their right under general law of the land, now made unambiguously clear by Section 17 of the RERA Act.

23. Above cited provisions of Section 11(4) of the RERA Act provides that promoters are under an obligation to execute registered conveyance deed of the apartment in favour of allottees. In fact, this provision of RERA Act goes a step further to say that allottee also becomes owner of proportionate share in common areas of the project. In simple words, after an allottee has discharged its obligations as provided in Builder Buyer Agreement he becomes full owner of the property, and promoter gets saddled with an obligation to get conveyance deed executed in his favour, not only

of the apartment but also of undivided proportionate share in common areas of the project.

24. Authority has been consistently taking a view that provisions of RERA Act have crystallised and clarified already existing law of the land that ownership of apartments/plots shall get transferred from promoters to the allottee in proportion to obligations discharged by allottee after paying due consideration amount. After full payment, full ownership gets transferred regardless of execution of conveyance deed.

25. Authority goes a step further that even if an allottee is yet to pay full consideration amount, even in such cases ownership right will deem to have got vested in him subject to the fulfilment of remaining obligations. In the event of default on the part of promoter, allottee could press for Specific Performance of the Contract by way of delivery of possession. Interpretation of law in any other manner will be patently unfair, unjust and contrary to provisions of statute and even letter and spirit of Constitution of India.

26. Authority is of the considered view that after taking lawful possession of the apartment and after having paid full consideration amount, ownership and title of property stands transferred in favour of allottees. Now, execution of registered conveyance deed remains only a formality for the knowledge and information of general public. Authority is unable to agree with the

view expressed by learned counsel for Enforcement Directorate that property cannot be said to have been vested in the complainants for the reason of non-execution of conveyance deeds. Authority would reiterate that conveyance deeds ought to have been executed the very moment when entire consideration was paid and lawful possession was handed over. It is the respondents who have delayed in execution of the conveyance deed. The delay in execution of the conveyance deed cannot make title of the complainants defective which otherwise had already been perfected and had vested in them.

- ii) Authority orders that for the reasons stated above right of ownership has already been vested in the allottees. Therefore, all those allottees who have been handed possession of their apartments by respondents shall be entitled to get conveyance deeds executed in their favour. Respondent No.1 also have consented to get conveyance deeds executed in favour of allottees.

It is apparent that almost all complainant-allottees have paid full consideration amount and now the amount in respect of stamp duty etc. remains payable which is payable to the State Government authorities at the time of execution of conveyance deeds. Such expenditure for payment of stamp duty etc. in individual cases shall

be incurred by complainants at their own level. Respondents-company shall depute a duly authorised representative to be present before Registrar for getting the conveyance deeds executed in favour of allottees. Compliance of this order shall be made within 90 days as provided in Rule 16 of HRERA Rules 2017.

- iii) There is a small category of complainant allottees who are yet to be handed over possession of their apartments. They appear to have paid most of the consideration amount and some amount still remains payable by them. Authority orders that such allottees are entitled to take possession of their apartments subject to payment of balance consideration amount. Respondent shall send an offer of possession along with a statement of account to all such allottees within next 3 months.
- iv) It has been argued by learned counsels for complainants that loan agreement executed between respondent No.1 and Canara Bank-respondent No.3, should be declared fraudulent and consequently covered by ratio of judgment of Hon'ble Supreme Court in Vikram Chatterjee's case. Authority observes that it will not comment upon fraudulent nature or otherwise of the loan agreement between respondent No.1 and respondent No.3. It however, observe that allottees-complainants were not privy to such a contract. They are

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not beneficiaries of the loan received by respondent no.1. They have paid full consideration amount to respondent No.1. Therefore, loan agreement executed between respondent No.1 and respondent No.3- Canara Bank, will not bind any allottee-homebuyers of the project. They shall remain fully insulated from the effects and fall out of such a loan agreement. The respondent No.1 promoter itself will face consequences of the loan agreement at his own level and from other properties owned by him. Those properties which were booked by complainant-allottees in respect of which full/substantial consideration had been paid and peaceful possession was handed over to them by respondent-company shall not be affected in any manner by the orders of Id. DRT.

v) As per provisions of RERA Act even those allottees who have not yet paid full consideration amount, but are willing to pay, will also be entitled to claim ownership of their properties after fulfilling their part of obligations. Section 8 of RERA Act allows allottees to complete the project at their own level if promoter is unable to do so. Therefore, if the allottees who are yet to take possession and who are willing to do so may seek possession subject to the condition of fulfilling their remaining obligations. Allottees falling in this

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category may file their claims before the respondent and respondent is directed to take further action as per principles laid herein.

- vi) As regard attachment order under PMLA 2002, Authority has already expressed its views in para 27 of its earlier order dated 08.07.2022, which is reproduced below:

27. Ld. Counsel for Enforcement Directorate has further averred that this Authority do not have jurisdiction to give any direction to the ED because provisions of RERA Act mandates that jurisdiction of Authority extends only to allottees, promoters and real estate Agents.

Authority would observe that these orders are being passed essentially in regard to the legal and contractual relationship between the allottee on one hand and the promoter on the other. Both the bank as well as ED are seeking to affect ownership, possession and other rights of allottees through the promoters. It is through the route of alleged wrong doings of promoters through which allottees are sought to be touched and reached. Authority observes that if promoters have done something wrong or have violated any provisions of law, they themselves will face its consequences. Hundreds of allottees of the project will not automatically become co-accused and offenders. They have fulfilled their obligations and have become owners of their houses. For all legal purposes, the

relationship of promoter and allottee has come to an end. The route leading to allottees has stopped. Now, allottees are independent owners of their houses having no relationship with promoters. Therefore, this Authority is only exercising its jurisdiction to determine current stage of the relationship of promoter and complainant allottees. Determination this promoter-allottee relationship is very much within jurisdiction of this Authority. If this relationship was lawful and valid, then chain of criminal liability will end and snap at the level of promoter. It cannot extend to the allottees.

It is further observed that even Hon'ble Supreme Court has observed that grievances of allottees can be assuaged by RERA.

Therefore, Authority observes that surely it has no jurisdiction to give any direction to ED, but it surely has jurisdiction to declare whether allottees of the project had come into ownership and possession of their apartments in lawful manner or not. Further, merely by the fact that promoters are offenders of law, will not automatically make allottees also the offenders. In order to implicate an allottee, a specific finding qua that particular allottee of having violated provision of PMLA-2002 has to be established. If any allottee is found to be an offender, law must take its own course, but their legal ownership and possession rights cannot be taken away just because the promoter at some point

had violated law or had committed a crime. Liabilities and responsibilities of promoter and allottee are not common. They do not even overlap at any stage. They were never together on one side. In fact, it is the allottee who are pressing for their rights against the promoter.

Authority observes that Enforcement Directorate is well within its rights to attach any property which belong to accused respondent No.1 or any other accused. However, provisions of PMLA 2002 cannot reach complainant-allottees or other similarly placed persons merely for the reason that they are allottees of a project promoted by the accused respondent No.1. The complainant-allottees herein have paid money to the respondent No.1. They had entered into lawful agreement. The project has been constructed with lawful consideration paid by the complainant-allottees. They by no stretch of imagination can be called recipient of proceeds of crime. In order to implicate individual allottees as being in possession of proceeds of crime, a specific case against individual allottees may have to be lodged and investigated and thereafter appropriate orders passed by competent authority. Unrelated tainted activities of promoters cannot render lawful ownership and possession of an allottee automatically tainted or unlawful. Allottees are not privy to the alleged wrongful deeds of respondent no.1. Authority reiterates its views expressed in its order dated 08.07.2022



that right to housing is a fundamental right protected by Article 14 and Article 21 of the Constitution. It is also a constitutional right under Article 300-A of the Constitution of India. The provisional attachment order confirmed by learned Adjudicating authority without impleading allottees as parties or without any investigation carried out qua such individual allottee cannot be called due process of law in respect of allottees. Order of attachment is enforceable against properties of the accused respondent no.1 and not against the properties which do not belong to him. Ownership of property had already been transferred as per provisions of Section 11(4) and Section 17 of RERA Act to complainant-allottees. They cannot be deemed to having been divested of their rights merely because of initiation of certain criminal proceedings against the promoters of the project. Mere delay caused for any reason in executing conveyance deed cannot disentitle them of their ownership rights in the property.

Learned counsel for Enforcement Directorate vehemently opposed execution of conveyance deeds in favour of allottees. Authority observes that for action under PMLA 2002, execution of conveyance deeds or otherwise would have no effect. If an individual is proved to be in possession of proceeds of crime, law

will still catch that person regardless of execution of conveyance deeds. Conveyanced property can also be attached as per law. Under PMLA 2002, all proceeds of crime can be attached whether or not conveyance deeds had been executed. Authority, therefore, observes that not only allottees have lawful right under RERA Act as well as under general law of the land to get conveyance deeds executed in their favour but such execution in no way would adversely affect on going proceedings under PMLA 2002. For this reason, also, Authority reiterates that conveyance deeds as prayed for deserves to be executed in favour of allottees.

- vi) Learned counsel for Canara Bank has stated that they have already initiated proceedings under Corporate Insolvency Resolution Process (CIRP) against respondent company. Such proceedings will take care of claims of various claimants. No document, however, has been placed before this Authority by learned counsel in regard to ongoing proceedings before Hon'ble NCLT, nor any argument was put forth as to what effect would that have on the orders passed by Ld. DRT. Authority reiterates its view that proceedings under IBC, 2016 against promoter-company will have no effect at all on the allottees who have paid entire consideration and have taken

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peaceful possession of their apartments. Such properties will remain outside the purview of any court including Hon'ble NCLT.

Going a step further, proceedings before Hon'ble NCLT will also have no effect on other allottees who are willing to take possession after discharging their part of obligations. This Authority has laid down a law in complaint No. 383 of 2018 Gurbaksh Singh Vs. ABW Infrastructure Ltd. whereby allottees have been declared to be having superior most right over any other claimant or creditor. Relevant part of the orders passed in complaint No. 383 of 2018 Gurbaksh Singh Vs. ABW Infrastructure Ltd. is reproduced below:

"13. We are of the considered view that the right granted to an allottee by the amendment ordinance of 2018 is a value-able right and that right can be pressed before the appropriate forum/authority for satisfaction of their claims against the promoters/debtors.

However, we are of the further view that the rights guaranteed by the RERA Act, 2016 for protection of allottees are very wide in nature and must be interpreted accordingly. As already stated in the arguments listed in Para 10 above that the allottees of a project, after having paid the EDC and substantial amount of money to the developer should be treated as deemed owners of the proportionate piece of the land and assets of the project, and their rights cannot be alienated by way of an agreement made between the promoter and the lending financial institution. Rights of the allottees must be treated superior to the rights of the lending financial institutions. The financial institutions, in so far as the assets of the related real estate project are concerned, are free to satisfy the claims from the remainders of the assets of the project after satisfaction of the claim of the allottees, and in addition they are



free to set their claim satisfied from other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.

14. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments it is observed as follows: -

(i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend money. They have expert manpower and machinery to adjudge the viability of the project and creditworthiness of the promoters. They have capability to understand risk factors involved. Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending.

Lending institutions are also supposed to monitor progress of the project in order to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.

(ii) On the other hand, an allottee typically is a middle-class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot access or understand

the account of the project nor does he have any power to monitor progress of the project on day-to-day basis. The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.

(iii) It is relevant to quote here the provisions of Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.

Section 79: Bar of Jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 89: Act to have over-riding effect- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

It is observed that Section 89 explicitly mandates that provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, Section 18 guarantees that in the event of a project not being completed he shall have a right to seek refund of his money along with interest without prejudice to any other remedy available. Similarly Sub Section 3 and Sub Section 4 of Section 19 assure the allottee that he will be given refund of the money deposited by him in the event of default in completion of the project by the promoters.

This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for

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the time being in force, the rights of the allottee, therefore, shall be treated superior to that of the rights of other creditors including the financial institutions.

(i) The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.

(ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.

(iii) ***

(iv) ***

(v) The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in rule 15 of the HRERA Rules, 2017.

Authority would reiterate its views expressed therein.



- vii) The arguments of learned counsel for Canara Bank that representations have been received by them from allottees showing certain specified amounts are payable by allottees to Canara Bank. Authority reiterates that allottees have nothing at all to do with Canara Bank and vice versa. Allottees are not privy to the loan agreement. Allottees are bound only by the provisions of builder-buyer agreement. Said representations might have been received as consequence of orders of the learned DRT and thereafter orders passed by Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 13688 of 2021. It is to be noted that finally matter had reached Hon'ble Supreme Court in Writ Petition No. 1243 of 2019 filed under Article 32 of the Constitution. Therefore, orders passed by learned DRT and Hon'ble High Court shall be deemed to have been subsumed into the judgment of Hon'ble Supreme Court. Now final judgment of the Hon'ble Supreme Court only remains in force and to be followed by all courts in the country. Hon'ble Supreme Court has directed this Authority to take cognizance of this matter and to deliver its verdict. These orders are being passed in furtherance thereof.
- viii) The prayer made on behalf of financial institutions named LIC Housing, M/s DHFC, SBI, Tata Capital Housing, HDFC and J&K

Bank, that they are unnecessary parties to these proceedings, is accepted and their names are deleted from the array of respondents.

No orders are being passed qua them.

19. In accordance with above findings, it is ordered that respondent-promoter shall authorise an official of the company to execute conveyance deeds in favour of allottees. Respondent shall prepare draft conveyance deed and send to each allottee-complainant within 60 days. Thereafter, conveyance deed shall be got executed as per law. It is reiterated that in all those cases in which possession has been handed over voluntarily by respondents, it will be deemed that complainants have already paid entire consideration amount unless it was stipulated otherwise by way of a separately executed document. These orders shall be applicable on all other similarly placed allottees also whether or not they have approached this Authority by way of a complaint.

20. **Disposed of** in above terms. File be consigned to record room after uploading the orders on website of the Authority.


.....
(RAJAN GUPTA)
CHAIRMAN


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(DILBAG SINGH SIHAG)
MEMBER