



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

## 1. COMPLAINT NO. 985 OF 2022

Bhupinder Singh and Gurpreet Kaur

....COMPLAINANT

VERSUS

SRS Real Estate

....RESPONDENT(1)

Canara Bank

....RESPONDENT(2)

Directorate of Enforcement

....RESPONDENT(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
- 12.COMPLAINT NO. 961 OF 2022

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- 13.COMPLAINT NO. 962 OF 2022
- 14.COMPLAINT NO. 963 OF 2022
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248. COMPLAINT NO. 1413 OF 2022  
249. COMPLAINT NO. 1414 OF 2022  
250. COMPLAINT NO. 1429 OF 2022  
251. COMPLAINT NO. 1469 OF 2022

**CORAM:**

**Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**





**Date of Hearing: 08.07.2022**

**Hearing: 1<sup>st</sup>**

**Present:** Mr. Narender Yadav, counsel for complainants  
in complaint nos. 922, 935, 936, 937, 938, 938,  
939, 940, 941, 942, 961, 962, 963, 964, 965,  
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1107, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231  
1232, 1233, 1236, 1237, 1239, 1240, 1253 of 2022

Mr. Rahul Bhardwaj, counsel for complainants  
in complaint nos. 987, 988, 989, 990, 991,  
992, 993, 994, 995, 996, 997, 998, 999, 1000, 1002,  
1003, 1004, 1005, 1006, 1007, 1009,  
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1193, 1194, 1195, 1198, 1200, 1202, 1192, 1204, 1205,  
1206, 1207, 1209, 1210, 1211, 1212, 1213, 1215, 1218,  
1219, 1222, 1249, 1254, 1255, 1256, 1257, 1258, 1269  
1274, 1313, 1413, 1414, 1429 OF 2022

Mr. Akshat Mittal, counsel for complainants  
in complaint nos. 1247, 1250, 1251, 1252, 1268, 1271,  
1272, 1282, 1283, 1284, 1286, 1287, 1288, 1289, 1296,  
1297, 1298, 1299, 1300 of 2022

Mr. Hem Sagar Singh, counsel for complainant  
in complaint no. 933 of 2022

Mr. Kamaljit Dahiya, counsel for complainants  
in complaint nos. 1281,1305 of 2022

Mr. Saket Singh, counsel for complainants  
in complaint nos. 1329,1330,1345,1469 of 2022

None for respondent no.1

Ms. Rahish Pahwa, counsel for respondent no.2, Canara Bank

Mr. Anirudh Sood, counsel for respondent no.3, Directorate  
of Enforcement

Mr. Alankrit Bhardwaj, counsel for respondent (State Bank of  
India)

Mr. Jatin Sehrawat, counsel for respondent, L & T Housing  
Finance Limited

Mr. Gaurav Gupta, proxy for Mr.Arun Sharma Advocate for  
Indian Bnak

Mr. Sandeep Bakshi, proxy counsel for respondent, Tata  
Capital

Mr. Suman Puri, Counsel for respondent, PNB Housing

Mr. Hitender Kansal, Counsel for respondent, Bajaj Finance  
Limited and Piramal Finance

Mr. Arjun Kundra, counsel for respondent, Jammu and  
Kashmir Bank

**ORDER: (RAJAN GUPTA-CHAIRMAN)**

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.

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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 Charterjee 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 8.12.2012. Flat No.301 tower P-4 was allotted to the complainant. Physical possession of apartment was delivered to complainant on 18.5.2014 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

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No.3664 dated 17.2.2014 and Memo No.6086 dated 16.4.2015.

- (iii) The Complainant in the year 2017 learnt that respondent No.2 Canara Bank had sanctioned a loan of Rs.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 13.5.2019 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 22.2.2022 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 18.2014 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 complaints 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 22.2.2022 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 complaints 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 Kamaljit 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 Rs.265.32 crores. Further, as per CA certificate, the total booking amount received by respondent No.1 in respect of the booked apartments was Rs.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 26.9.2013.

As per averments of respondent No.3 Canara Bank, entire sum of Rs.110 crores were disbursed in favour of respondent No.1 to be repaid in 8 quarterly instalments of Rs.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 25.9.2013 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 re-payment 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 25.9.2013 i.e. after creation of mortgage in favour of respondent No.3. It was argued that those persons, who have booked flats after 25.9.2013 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 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):**

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(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,

*[Handwritten signature]*



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

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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.

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.

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

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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.

42. Adjourned to 23.08.2022.



सत्यमेव जयते

(RAJAN GUPTA)  
CHAIRMAN

(DILBAG SINGH SIHAG)  
MEMBER