BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.308/2024

In : Complaint No.RAJ-RERA-C-N-2023-6115

Baroda Rajasthan Kshetriya Gramin Bank, having its head office at Plot No.2343, 2nd Floor, Aana Sagar Circular Road, Vaishali Nagar, Ajmer-305004, having one of its Branches at Dadabari Vistar Yojana, Kota (Rajasthan)- 324009, through its Senior Manager & Branch Head – Mr. Anil Kumar Jain.

...Appellant

Versus

1. Rajasthan Real Estate Regulatory Authority, Jaipur through Registrar.

....Respondent

2. Surendra Kumar Katyal S/o Shri Shivram Das Katyal R/o A-908, Shreenath Oasis, Khedli Phatak, Station Road, Kota-324002 And/Or Flat No/E-502, Mahima IRIS-2 SWEJ FARM, New Sanganer Road, Near Trinity Mall, Jaipur-302019.

Allottee-Respondent

3. M/s. Akriti Landcon Private Limited through its Director, Lalit Kishore Chaturvedi, Shrinath Estate, Station Road, MDS Nagar, Kota (Rajasthan).

4. Naresh Sharma, Shrinath Estate, Station Road, MDS Nagar, Kota (Rajasthan).

5. Purshottam Dayal Dubey, Shrinath Estate, Station Road, MDS Nagar, Kota (Rajasthan).

....Respondents

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

PRESENT:

For Appellant-Bank : Mr. Ram Naresh Vijay, Advocate assisted by
: Ms. Shruti Sharma, Advocate

For Respondent No.1-RERA : Mr. Aftab Khan, Advocate

For Complainant-Respondent No.2 : Mr. Mohit Khandelwal, Advocate

For Promoter-Developer Nos.3 to 5 : None present

O R D E R

Reserved on 05th May, 2026:

Pronounced on 19th May, 2026:

Per: Justice Madan Gopal Vyas, Hon'ble Chairperson

The present appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RERA Act, 2016") against the impugned-order dated 30/10/2024 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur (hereinafter referred to as the "Regulatory Authority") whereby, the complaint filed by complainant-respondent No.2/Surendra Kumar Katyal seeking relief against the appellant-bank for getting NOC from the bank and seeking further direction to the appellant-bank not to attach the unit of the complainant-respondent No.2, was disposed of with certain direction to the Bank.

2) The facts in brief of the complainant are that complainant-respondent No.2 booked a Flat No.A-908 for a total sale consideration of Rs.25,00,000/-. The full amount was paid at the time of executing the Agreement for Sale on 12/09/2015. The project commenced in 2013, with the respondent-promoter committing to hand over possession within 36 months but it failed to do so. Furthermore, the flat and the entire project were mortgaged to the appellant-bank in the year 2014, without disclosing the

said encumbrance to the complainant. The complaint was disposed of by the learned Regulatory Authority vide impugned-order dated 30/10/2024, as under:-

> *"Being an assignee of the promoter and having taken control of the project in exercise of its rights as such assignee, the respondent Bank is to be treated as a promoter under Section 2(zk) of RERA Act.*
>
> *The complainant is a bonafide allottee in the project and no proceedings under the SARFAESI Act can deprive him of their rights under RERA Act. Therefore, bank is directed to issue NOC to the complainant to sell his unit.*
>
> *In the light of aforesaid discussions, the complaint is disposed of".*

3) Hence, this appeal with the following prayer:-

> *"a) This appeal may kindly be disposed of and the impugned order dated 30/10/2024 passed by the Learned Real Estate Regulatory Authority, Jaipur in Complaint No.RAJ-RERA-C-N-2023-6115 titled "Surendra Kumar Katyal Versus Aakriti Landcon Private Limited & Others" may kindly be quashed and set aside thereby dismissing the said complaint filed by the Respondent No.2/Complainant.*
>
> *b) Any other order or direction or relief which this Hon'ble Tribunal may deem fit and proper be also passed in favour of the applicants".*

4) Mr. Ram Naresh Vijay, learned counsel appearing for the appellant argued that:-

(i) The learned Authority has failed to deal with the written submissions filed by the Appellant Bank while passing the impugned-order dated 30/10/2024.

(ii) The learned Authority has failed to decide the complaint in the light of the judgment rendered by the Hon'ble Apex Court dated 14/02/2022 in **SLP (C) No.1861-1871/2022 : Union Bank of India Vs. Rajasthan Real Estate Regulatory Authority and Others** and has misinterpreted the same.

(iii) The finding given by the Authority is contrary to the settled legal position inasmuch as, the sale deed in question itself was executed in favour of the

complainant on 30/09/2021, whereas the subject project is mortgaged in favour of the Appellant Bank on 28/04/2014. As such, the said sale deed or any other sale deed executed after creation of mortgage in favour of the Appellant Bank are null and void and there is no need to challenge the same before any court/authority as per the settled legal position.

(iv) The finding given by the Authority to seek recourse to other remedies under the IBC, 2016 or liquidation or restructuring etc. is illegal, whereas as per the settled legal position, the Appellant Bank is entitled to sell the entire project/flats including flat in question under the SARFAESI Act since the subject project was legally mortgaged in favour of the appellant. Further, the charge of the Appellant Bank on the entire plot of land & building is also registered with the CERSAI and in this view of the matter also, the appellant is entitled to proceed against the subject entire secured asset so as to recover its dues. The complainant ought to have verified the charge of the Appellant Bank from the relevant revenue records prior to entering into the Agreement for Sale or the Registered Sale-Deed. The appellant-bank being the first charge holder, is entitled to proceed under the SARFAESI Act. Therefore, without prior NOC being taken from the appellant, the respondents No.3 to 5 could not have sold the flats, which they did so.

(v) Agreement for Sale was executed on 12/09/2015, whereas the subject entire land had already been mortgaged in favour of the appellant-bank on 28/04/2014 and that too prior to commencement of the RERA Act, 2016 and

RERA Rules, 2017. Therefore, the learned Authority was having no jurisdiction to entertain the complaint in view of the finding given by the Hon'ble Rajasthan High Court dated 14/12/2021 in the matter of **Union Bank of India Vs. Mukesh Agarwal** as well as the finding given by the Hon'ble Apex Court in the matter of **SLP (C) No.1861-1871/2022** supra. Hence, the appellant does not fall within the category of 'promoter'.

(vi) The only jurisdiction was vested in the Debt Recovery Tribunal and not the RERA Authority, for redressal of the grievances of the complainant.

(vii) As per provisions of Section 26-E of the SARFAESI Act, the appellant has been given priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or the State Government or Local Authority, therefore, the complaint was liable to be dismissed.

(viii) As per provisions of Section 18(2) of the RERA Act, 2016, Promoter/Builder shall compensate the allottees in case of any loss caused to them due to title of the land, on which the project is being developed or has been developed, in the manner as provided under the Act and the claim for compensation under the Act shall not be barred by limitation hence, allottees can claim for compensation from the respondent-builder but in no case, the relief can be sought against the appellant-bank.

(ix) As per provisions of Section 18(3) of the Act, if the Promoter/Builder fails to discharge any other obligation imposed on him under the Act or the Rules or

Regulation or in accordance with the terms and conditions of the Agreement for Sale, the builder shall be liable to pay such compensation to the allottee.

(x) As per provisions of Section 19(4), the allottee shall be entitled to claim for refund with interest from the promoter in case the possession is not provided, therefore, the complainant ought to have raised grievance against respondents No.3 to 5 and not against the appellant-bank.

(xi) The complainant did not implead Mr.Lalit Kishor Chaturvedi co-signee of the Sale Deed, therefore, the complaint was liable to be dismissed.

(xii) In the Sale Deed dated 30/09/2021, there is no mention about the Agreement for Sale dated 12/09/2015, which was not brought on record before the Authority.

(xiii) Learned Authority has failed to consider that action of the bank under the SARFAESI Act can only be challenged before DRT and DRAT constituted under the Recovery of Debts and Bankruptcy Act and no other court. In support of his contention, counsel relied on the judgment of the Hon'ble Apex Court in the matter of **United Bank of India Vs. Satyawati Tandon : (2010) 8 SCC 110.**

5) ***Per contra,*** **Mr. Mohit Khandelwal, learned counsel appearing for complainant-respondent No.2 has argued that:-**

(i) The appellant bank has no locus to file the present appeal. The interest of the bank has been duly secured by the learned Regulatory Authority and they have been permitted to exercise their security interest over the unallotted units. Despite this, the bank has unnecessarily invoked the appellant jurisdiction at the cost of innocent allottee.

(ii) The respondent allottee is the bonafide purchaser of the unit and he had no knowledge regarding the purposed loan transaction. The mortgage of the project to the appellant bank is the result of fraud and the rights of the allottees cannot be allowed to be defeated on the basis of a mortgage created in a fraudulent and collusive manner. As per the condition of the sanction letter, the funds should be received in the escrow account and the appellant was responsible for ensuring the compliance of the same but the appellant failed to do so and is now just trying to recover the amount for the flats, which were already sold to the allottees including the allottee-respondent No.2 and the physical possession has also been handed over to the allottees. As per condition of the sanction letter, name of the appellant bank should have been displayed at the project site as a lender. No monitoring was made by the appellant bank regarding the funds collected by the promoter-developer from the allottees, though the allottees including the present allottee have genuinely paid all the money into the bank account of the promoter developer. Therefore, the allottees cannot be made to suffer for the default of the appellant bank.

Hence, there is a collusion between the appellant bank and promoter developer.

(iii) In the instant case, the project "Shreenath Oasis" is a RERA registered project bearing Registration No.RAJ/P/2017/318. The project commenced in 2013 and the promoter-developer started taking allotments immediately thereafter and multiple units were allotted much prior to the date of sanction of the loan i.e. 28/04/2014.

(iv) The controversy in hand has already been settled by the Hon'ble Rajasthan High Court while disposing of **Union Bank of India Vs. Rajasthan RERA : SBCWP No.13688/2021 vide order dated 14/12/2021** and which has also been upheld by the Hon'ble Apex Court vide order dated 14/02/2022 in **SLP (Civil) No.1861-1871/2022**. Thus, it has been upheld that : **(a)** appellant-bank will be the promoter for the purposes of the RERA Act as the appellant had exercised its power under Section 13(4) of the SARFAESI Act, **(b)** the RERA Act, 2016 would prevail over the SARFAESI proceedings and the rights of the allottees cannot be compromised by the Banking Institution under the garb of recovery of money, **(c)** the DRT will not affect the rights of the allottee to approach the RERA Authority and **(d)** Section 11(4)(h) of the RERA Act, 2016 will have the retrospective applicability in the cases of fraud or collusion, as has also been discussed by the Hon'ble Apex Court in the matter of **Bikram Chatterji Vs. Union of India : (2019) 19 SCC 161.** Thus, most of the

arguments raised by the counsel for the appellant-promoter in this appeal stand settled and are no more *res integra.*

(v) As per Section 11(4)(g) of the RERA Act, 2016, the promoter developer is always liable to discharge the liability of the loan. The intent of the RERA Act is quite clear that any liability of the promoter developer shall be discharged by it and such liability shall subsist even after the transfer of the units to the allottees. Thus, the RERA Act, 2016 does not contemplate the situation where the obligation of the promoter is transferred to the allottees or the allottees become the victim of non-compliance by the promoter. Otherwise also, the rights of the allottee are also well protected under Section 11(4)(h) of the RERA Act, 2016 and the learned Regulatory Authority rightly relied upon the aforesaid provisions to protect the right of the respondent No.2-allottee.

(vi) The Hon'ble Supreme Court in the matter of **Bikram Chatterji** supra dealing with the similar circumstances concluded that the *liabilities of the Bank cannot be fastened upon the allottees.*

(vii) The learned Authority has directed the appellant bank to issue NOC to the complainant-respondent as he is the bonafide allottee of the project. The learned Authority has further directed appellant bank to recovery its loan and may auction the promoter's properties that serve as collateral or auction unallocated flats, as the same is the very purpose of enacting the RERA Act, 2016. Thus, the rights of the appellant bank were also duly secured by the

Authority. However, the appellant bank is pursuing the present litigation solely to protect the interest of the Developer and the Land Owners (Promoters), which is against the public function of the appellant bank, which amounts to utter misuse of its powers so as to protect the defaulters, who have raised this loan facility in a wrongful manner after colluding with the officials of the appellant bank.

(viii) The appellant bank is hiding its fraudulent conduct by raising frivolous claims against the complainant as in the Sale Deed, the respondents-promoter themselves mentioned that the *flat is free from any encumbrances, dispute or liability.*

(ix) Since the project is pending project, provisions of the RERA Act, 2016 are applicable to the present case.

(x) The appellant bank has acted in contravention of the Guidelines framed by the Reserve Bank of India vide RBI Circular No.RBI/2011-12/245 dated 03/11/2011 and RBI/2009-10/131 dated 27/08/2009 and the Banks were advised to adhere to these guidelines but the appellant bank in utter disregard to the abovesaid circulars issued by the RBI, disbursed the payment to the promoter developer. The respondent-promoter did not mention in the Agreement for Sale about this term loan.

(xi) The appellant bank ought to have published regarding the mortgage at a visible place in the project but it failed to do so and in such case, the bank cannot blame the allottee for the fault and non-compliance.

(xii) Counsel for respondent No.2 placed reliance upon the order dated 15/12/2025 passed by the RERA Authority in leading Complaint No.RAJ-RERA-C-N-2023-6113 : **Indu Bala Sharma Vs. Aakriti Landcon Private Limited & Ors.** and connected 5 complaints to argue that in the similar facts and circumstances of the case, the Authority *restrained* the Baroda Rajasthan Kshetriya Gramin Bank *from taking any action including auction, sale or dispossession, in respect of the units belonging to the complainants.* The Authority issued further direction that *the status quo with respect to their possession and ownership shall be maintained.*

6) Mr. Aftab Khan, learned counsel appearing for the RERA Authority adopted the arguments advanced by the learned counsel for the complainant-respondent No.2 contending that the impugned-order does not suffer from any illegality or impropriety and hence, counsel prayed for dismissal of the appeal.

7) We have heard learned counsel for the parties and perused the material available on record including the case law cited by the learned counsel for the parties on the issue.

8) JURISDICTION OF RERA TO ENTERTAIN COMPLAINT

It is not disputed between the parties that the subject project was mortgaged by the respondent/promoter-developer in favour of the appellant-bank on 28/04/2014, whereas the sale-deed in favour of the complainant-respondent No.2 was executed on 30/09/2021. During the course of arguments, counsel for the appellant-bank raised some legal questions regarding overriding effect of the SARFAESI Act and jurisdiction of the DRT and as per provisions of Section 18(2) of the RERA Act, 2016; the promoter-builder is duty bound to compensate the allottees in case of any loss caused to them. Both the counsel for the parties relied upon the pronouncement of the Hon'ble Rajasthan High Court rendered in **SBCWP No.13688/2021** : **Union Bank of India Vs. RERA & Ors.,** which was disposed of vide order dated 14/12/2021 and the same was upheld by the Hon'ble Apex Court. Hon'ble Rajasthan High Court decided this controversy in the matter of **Union Bank of India (supra)** on the basis of pronouncement of the Hon'ble Apex Court in the matter of **Bikram Chatterji (supra)** that in the event of conflict between the RERA Act and SARFAESI Act, the RERA Act would prevail. The relevant paras of the said judgment are being reproduced, as under:-

> *"134. Learned senior counsel on behalf of the Bank of Baroda submitted that the provisions of section 11(4)(h) of RERA provides that the promoter, after he executes an agreement for sale for any apartment, plot or building, cannot mortgage or create a charge on such an apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then 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. The provision has a non-obstante clause. As the provision has given an overriding effect by non-obstante clause, the provision is no help to the Banks as the agreement had been by promoters with home buyers entered into earlier in point of time to the creation of the mortgage. There could not have been any mortgage created subsequently and even if validly created, it would not affect the right and interest of the*

allottee as intended by RERA. Thus, the right and interest of the allottee are safeguarded by virtue of the provisions contained in section 11(4)(h). As the project was pending, the provision intends to confer a right on the allottee and save the allottees and also their interests from such liability. Even if the provision is held not applicable on the ground that RERA came into force later, since there was no valid mortgage as held by us, it was incapable of affecting the right or interest of the allottee. Had it been ensured that the money due to Noida and Greater Noida authorities was paid by the promoters to the authorities, the fraud of siphoning of money would not have taken place to the extent it has been done. Moreover, the money borrowed from Banks has not been invested in the projects. In fact, projects required no funding. It would be iniquitous to charge the allottees with the banker's money. Thus, in the peculiar facts and circumstances of the case, we hold that rights or interests of the allottees are not at all affected by the mortgage created by the bankers or by the dues of the Noida or Greater Noida authorities.

137. A submission has also been raised that the RERA recognises and protects interests of the lenders and does not in any manner take away rights under any of the existing statutes such as T.P. Act, Debt Recovery Tribunal Act, SARFAESI Act. It is apparent from a perusal of RERA, which is a special Act, that certain rights have been created in favour of the buyers. The provisions of RERA have to prevail. When we come to the question of protection of rights of buyers even if RERA had not been enacted, under aforesaid laws in the facts of the case, a different view could not have been taken. However, there is no dispute that the bankers would have the right to recover their dues from whom and in what manner is the question which we have already answered. The provisions of RERA are beneficial to the home buyers and are intended to insulate them from fraudulent action, ensures completion of the building and it is the duty of the court to protect and ensure the home buyers' interest and at the same time to hold them responsible for the duties enjoined upon them under the said statute. We are not absolving the home buyers from the discharge of their liability if any. At the same time, they have the right of enforcement of their right for compensation due to undue delay in completion of the project."

Learned counsel for the appellant-bank argued that since the mortgage was prior to the enactment of the RERA Act, 2016, therefore, the banking institutions shall only fall under the scope of the RERA Act, 2016 when the mortgage for the transaction is a result of collusion or fraud.

The complainant-respondent No.2 annexed the sanction of advance facilities to M/s. Akriti Landcon Private Limited on 19/06/2014 as Anx.R/1 issued by the appellant-bank. Some terms & conditions agreed by the appellant-bank with the promoter-developer M/s. Akriti Landcon Private Limited are required to be reproduced, as under:-

"2. The company will submit monthly status report of the project or as and when disbursement is required duly certified by the Chartered Accountant and an Architect in respect of the building being constructed under the project".

"5. ***Mode of disbursement:***

- *The limit will be released proportionate to the margin (matching contribution) brought in by the promoters. The disbursement toward construction will be allowed based on Monthly Progress Report after recovering stipulated margin.*
- *The company is to submit 'Monthly Progress Report' of the construction work completed, supported by Architecture certificate duly signed by the Company and the progress report should be submitted on Monthly basis till entire period of construction, as per disbursement requirement of the Company. The progress report is to be supported by a statement of the residential units booked, 'Agreement to Sale' is executed, booking amount received, sale deeds executed, possession handed over, etc. till the entire period of the facilities.*
- *All the collection from the sales of Flats, promoter's contribution by way of equity, unsecured loans, raised by the promoters & loan disbursement will be routed through special current a/c [Escrow a/c].*

Hence forth Total expenses made on the Project will be routed through special current a/c [Escrow a/c]"

"9) All the money advanced or to be advanced by the bank will be utilised exclusively for the purpose set forth in application/project report submitted to the bank. In case the advance is utilised or attempted to be utilised for any other purpose or if the bank apprehends or has reasons to believe that the said loan is being utilised for any other purpose, the bank shall have the right to recall the entire or any part of the loan/advance forthwith without assigning any reason thereof. The operations in the Accounts of the company should be monitored and the actual performance viz. Sales/production should be compared with estimations made/accepted on regular basis".

"13) The company shall display our Bank's name plate at any prominent place of the company's project/office".

"25) The company should route all banking transactions related to this project exclusively through our bank and should undertake not to avail credit facilities from any other bank/institution without our prior concurrence".

"47) Company has to submit a certificate from Chartered Accountant in having brought in the entire capital and unsecured loans as projected and also an undertaking that the unsecured loans will not be withdrawn during the currency of credit facilities".

- *"51) All booking advance, proceeds, final payment, etc. received from the customer/s to be credited/deposited in Current Account. The entire future sale proceeds are deposited in the Current Account, as undertaken by the Company".*

Furthermore, the directors of the promoter-developer M/s. Akriti Landcon Private Limited executed one Undertaking on 19/06/2014 regarding not to withdraw deposits by the directors etc. till the advance is liquidated.

In the light of above terms & conditions of Sanction Letter dated 28/04/2014 & Undertaking dated 19/06/2014, it is crystal clear that the advance loan of Rs.1500.00 Lacs was sanctioned subject to the condition that one Escrow Account would be opened in the appellant-bank and all booking advance, sale proceeds, final payment etc. received from the customer(s) to be credited/deposited in the Current Account till the entire future sale proceeds deposited in the current account is undertaken by the company. If this condition is read with the Undertaking of the Directors of the respondent/promoter-developer, not only the progress of construction was required to be supervised by the appellant-bank as per the monthly progress report but also the sale proceeds are under the control of the appellant-bank.

It is pertinent to mention herein that the appellant bank has not taken any action to recover the loan. Counsel for the complainant-respondent No.2 argued that in the present matter, one Agreement for Sale was executed on 12/09/2015 and on the basis of the impugned order mentioned in the written submission that prior to mortgage, two Agreements for Sale were executed on 22/03/2014 and 26/04/2014 in favour of Mamta Shrivastava & Sunita Sharma, respectively, but all agreements for sale are not available on record but admittedly, the sale deed was executed in favour of the complainant-respondent No.2-Surendra Kumar Katyal on 30/09/2021. The promoter developer mentioned in the sale deed that the disputed flat is free from any

encumbrances, dispute or liability. The relevant extract of the sale deed is being quoted hereinbelow:-

> ''यह कि उपरोक्त बेचान किया गया फ्लेट/युनिट पूर्व में अन्य जगह पर रहन, बैय, वसीयत आदि नहीं हो रहा है तथा ना ही किसी बैंक, सरकारी संस्था, गैर सरकारी संस्था अथवा अन्य दीगर जगह पर बन्धक है। यानी की उपरोक्त फ्लेट/युनिट हर प्रकार से भार मुक्त है।''

Meaning thereby, the promoter developer did not disclose the fact of equitable mortgage to the complainant-allottee till date of execution of the sale-deed. Surprisingly, the appellant bank also watched the proceedings or sale deed as a silent spectator from 28/04/2014 to 30/09/2021. It is the duty of the promoter developer and appellant bank to disclose the fact of equitable mortgage to the complainant respondent not only on the basis of sanction letter dated 28/04/2014 (Anx.R/1) but also as per the guidelines of RBI Circular No.RBI/2011-12/245 dated 03/11/2011, as under:-

> *i. "The builder/developer/company would disclose in the Pamphlets/Brochures etc., the name(s) of the bank(s) to which the property is mortgaged.*
> *ii. The builder/developer/company would append the information relating to mortgage while publishing advertisement of a particular scheme in newspapers/magazines etc.*
> *iii. The builder/developer/company would indicate in their pamphlets/brochures, that they would provide No Objection Certificate (NOC)/permission of the mortgagee bank for sale of flats/property, if required".*

Therefore, the appellant bank has acted in contravention to the agreed terms & conditions and also abovementioned RBI Circulars dated 03/11/2011 and 27/08/2009.

It is not the case of the appellant-bank that name of the appellant-bank as a lender was displayed/published at the project site or disclosed at the time of booking or execution of the sale deed. Accordingly, the fact of mortgage was not within

the knowledge of the complainant-allottee. Surprisingly, the appellant bank first time affixed the public notice dated 15/07/2022 stating that the bank has sanctioned a loan of Rs.1500.00 Lacs to the promoter developer and the project property was mortgaged against the said loan but there is no justification to keep mum regarding compliance of the terms of Sanction Letter from 2014 to 2022; despite this, the bank account of the promoter-developer was declared as NPA on 30/09/2019. It is also noted that the promoter developer M/s. Akriti Landcon Private Limited neither appeared before the RERA Authority nor this Tribunal to controvert all these facts. In such circumstances, the allottees deposited sale consideration in the account of promoter-developer because the fact of equitable mortgage was never disclosed by the appellant-bank or by the promoter-developer prior to 15/07/2022, therefore, being the bonafide allottees, the complainants have power to file complaint before the RERA Authority against the appellant-bank also if the proceedings under the SARFAESI Act were initiated by the bank under Section 13(4) of the SARFAESI Act. The Hon'ble Rajasthan High Court in the matter of **Union Bank of India (supra),** has laid down the principle that in the event of any conflict between the RERA and SERFAESI, the provisions of the RERA Act would prevail and the rights of allottees cannot be compromised by the banking institutions under the garb of recovery of money. In such circumstances, the learned Regulatory Authority has jurisdiction to decide complaint against the appellant bank under Section 31 of the Act.

9) STATUS OF THE APPELLANT-BANK

Learned Regulatory Authority observed in the impugned-order that the respondent-bank fall under the definition of promoter as "assignee" as per the mandate of Section 2(zk)(i) of the RERA Act. Section 2(zk)(i) of the RERA Act defines the term "promoter", which reads, as under:-

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

It is admitted fact that the respondent-developer and the respondent-landowners have assigned their rights in the project by way of mortgage and executed mortgage-deed in favour of the respondent-bank.

The term "mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" have been defined under Section 58(a) of Transfer of Property Act, 1882 (hereinafter referred to as the "Act of 1882"), which reads as under:-

> *"58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.—(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.*

The term "mortgage deed" however is defined under the Act of 1882 vide Section 2(17), as under:-

> *"2.(17) 'mortgage deed'.-Mortgage deed includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing, or future debt, or the performance of an engagement, one person transfers, or creates to, or in favour of another, a right over, or in respect of specified property."*

Therefore, the learned Regulatory Authority has rightly concluded that being an assignee of the promoter-developer, the appellant-bank falls within the ambit of the definition of 'promoter' as provided under Section 2(zk) of the RERA Act, 2016 and the Authority has power to issue directions under Section 37 of the said Act.

10) RITGHT OF COMPLAINANT-ALLOTTEE TO SELL THE UNIT

The learned Regulatory Authority while deciding Point No.(c) has rightly concluded that despite the bank's claim of having the first charge on it, the bonafide complainant-allottee has every right to sell the disputed flat registered in his name in the light of the provisions of Section 11(4)(h) of the RERA Act, 2016 and bank was rightly directed to issue NOC to the complainant enabling him to sell his unit.

So far as the recovery of outstanding amount is concerned, the appellant bank has not only a right to recover the outstanding amount from the promoter developer but also from the guarantor mentioned in the sanction letter dated 28/04/2014 namely; Mr.Lalit Kishore Chaturvedi, Mr.Purshottam Dayal Dubey and Mr.Naresh Kumar Sharma, who were the proposed personal guarantors. In such circumstances, the learned Regulatory Authority has rightly concluded, as under:-

> *"The respondent Bank is entitled to recover its loan and may auction the promoter's properties that serve as collateral, or auction unallocated flats. If these actions do not fully recover the loan, the Bank may consider restructuring the loan or pursuing insolvency resolution through the NCLT under the Insolvency and Bankruptcy Code, 2016, or seek liquidation under the Companies Act, 2013 in the High Court. However, it cannot sell or auction the allotted flats.*
>
> *Moreover, according to section 11(4)(h) of the RERA Act, the Bank cannot auction flats that were allotted before or after the mortgage was established. If the promoter is routinely prohibited from selling flats, they cannot complete the project or repay the loan. The key point is that while the Bank has rights to the cash flows from mortgaged allotted flats, the allotment itself remains valid despite the mortgage.*

Homebuyers should not be held accountable if their allotted flats are mortgaged by the promoter for past or future loans. They cannot be penalized for the promoter's failure to obtain required NOCs from the lending bank, repay the loan, or for the Bank's inability to monitor the project's financial health or recover its loan without auctioning the allotted flats. The Bank's actions in taking over and auctioning the allotted flats to a third party violate section 11(4)(h) of the RERA Act".

11) In view of above observations, therefore, the appeal fails hence, dismissed and the impugned-order dated 30/10/2024 passed by the learned Regulatory Authority in Complaint No.RAJ-RERA-C-N-2023-6115 : Surendra Kumar Katyal Vs. Aakriti Landcon Private Limited & Ors., is affirmed.

12) A copy of this order be transmitted to the counsel for the parties and Raj-RERA, Jaipur.

The file be consigned to record.

Yudhisthir Sharma,
Member (Judicial)

(Madan Gopal Vyas) J,
Chairperson

Anil Goyal-PS/Suppl.2