



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 276/2022

Present: Sri. P. H. Kurian, Chairman,
Smt. Preetha P. Menon, Member.

Dated 20th October 2023

Complainants

1. The Dewa Investors Association,
28/475, Koonamthai,
Edapally P.O, Ernakulam,
Pin – 682024
Represented by its President,
Mr. Prince Joseph,
Residing at 17D, Express Estate, Kaloor P.O,
Ernakulam – 682017
2. Mr. Jacob Xavier, Secretary
The Dewa Investors Association,
28/475, Koonamthai
Edapally P.O, Ernakulam
Pin-682024
Residing at Kayyalakakath,
Pala P.O, Kottayam – 686575



3. Rita Venugopal,
Srilekshmi, Opp. Chitranjali Theatre,
Cherthala P.O, Alapuzha 688524.

4. K S Venugopal
Srilekshmi, Opp. Chitranjali Theatre,
Cherthala P.O, Alapuzha 688524

[By Adv. M/s Santhosh Mathew, Adv. Vijay V Paul, Adv. Sheryl Elizabeth Sebastian, Adv. Uthara P.V and Adv. Gokul Krishnan]

Respondents

1. The Assistant General Manager & Authorized Officer,
Union Bank of India Consortium,
Union Bank of India, Ernakulam Main Branch,
Union Bank of Bhavan, M. G Road,
Ernakulam – 682035

2. Union Bank of India
239, Vidhan Bhavan Marg,
Nariman Point, Mumbai,
Maharashtra-40021
Represented by its General Manager – Legal

[R1 & R2 by Adv. Nidhi Sam John, Adv. Lijo Joseph, and Adv. Kevin Thomas]

3. Dewa Projects Private Limited,
T.C No. 25/1497, S S Kovil Road,
Thampanoor, Thiruvananthapuram,
Pin – 695001, Represented by its Liquidator,
Mr. Vinod Padinhare Veetil
Having address at 66-1058,
First Floor, Veekashanam Road,
Ernakulam North – 682018



4. M/s. Ansu Enterprises Private Ltd.
(formerly M/s. Ansu Enterprises),
No. 14, Sreenagar, Manacaud (P.O)
Thiruvananthapuram – 695009
Represented by its Managing Director.
5. Bank of Baroda, (Additional Respondent No.5)
M G Road Branch; 1st Floor;
Jose Annexe; Jose Junction, M G Road;
Ernakulam – 682016
6. Punjab National Bank. (Additional Respondent No.6)
SASTRA Ernakulam; Opp. St. Marys Basillica
Broadway; Ernakulam – 682031
7. Indian Overseas Bank. (Additional Respondent No.7)
Specialised ARM Branch; First Floor;
IOB Buildings; Near Kavitha Theatre;
M.G Road; Ernakulam – 682035
8. Small Industries Development Bank of India,
(Additional Respondent No.8)
MT Plaza; Kaloor – Kadavanthara Road,
Kaloor; Ernakulam – 682017
9. Edelweiss Asset Reconstruction Company Ltd,
(Additional Respondent No.9)
1st Floor; Edelweiss House;
Off C.S.T Road; Kalina;
Santacruz East; Mumbai – 400098
10. Asset Reconstruction Company (India) Ltd
(Additional Respondent No.10)
10th Floor; The Ruby; 29; Senapati Bapat Marg;
Dadar West; Mumbai - 400028



The above Complaint came up for hearing on 05-07-2023 for which a representative of the Complainant along with their Counsel and the Counsel for Respondents No. 1 and 2 attended directly. The Counsel for the Additional Respondents No. 5 & 7 attended online and the Liquidator appointed for Respondent No. 3 company; Adv. Vinod also attended online. Notices to the Respondents No.4 returned unserved and Paper publication has been produced by the counsel for the complainants. Additional Respondents 5-10 are members of the Respondent No. 1 Consortium.

ORDER

1. The facts of the complaint are as follows: The 1st Complainant is a registered Association of persons consisting of 66 home buyers and the 2nd Complainant is the Secretary of 1st Complainant. The 3rd and 4th Complainants are homebuyers also members of the 1st Complainant, who purchased apartments in the project 'DEWA PIER – 20' developed and promoted by M/s Deva projects Pvt Ltd., the 3rd Respondent herein along with 4th Respondent Ansu Enterprises Pvt. Ltd., a wholly owned subsidiary of Dewa Project Pvt. Ltd. The project was constructed on the land purchased from Goshree Islands Development Authority (GIDA)



in which the structure of one tower out of the promised 7 towers pertaining to the project has come up and the project is still incomplete. R3, Dewa Projects Private Limited and R4, M/s Ansu Enterprises Private Limited had availed various financial facilities from a consortium of banks and due to the default of loans availed, proceedings were initiated by Union Bank of India under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESAI Act). Various properties of the borrowers were sold and an amount of INR 306,90,00,000 has already been recovered by Union Bank of India against a claim of INR 514,64,79,707.86 but no amounts have been paid or returned to the innocent homebuyers till date. Union Bank of India had initiated proceedings and proposed to sell the incomplete apartment building and land without obtaining registration under RERA Act, 2016. The 1st Respondent is liable in the capacity of promoter under Real Estate (Regulation and Development) Act, 2016 to register the Project under Section 3 of the Act. After taking possession under SARFAESAI Act, Union Bank of India hastily proceeded against the sale of plot and the 1st Complainant approached the Hon'ble High Court of Kerala by filing W.P(C) No. 34521 of 2017 and the Hon'ble High Court passed a judgement to hold that the interest of the home buyers is to be protected and amounts due to the home buyers are to be specified in the auction notice. By appeal the Division Bench of the Hon'ble High Court was pleased to confirm partly the above



judgement. The 3rd and 4th Complainants filed IBA 23/KOB/2019 against Dewa Projects before the Hon'ble National Company Law Tribunal, Kochi under Section 7 of the Insolvency and Bankruptcy Code, 2016. The Hon'ble National Company Law Tribunal, Kochi, vide order dated 13.09.2019, admitted the said application and initiated Corporate Insolvency Resolution Process against Dewa Projects Private Limited and an interim Resolution Professional was appointed. A liquidation has been ordered against Dewa Projects Private Limited, as per proviso to Section 14(4) of the Insolvency and Bankruptcy Code 2016. But no CIRP proceedings were initiated against M/s. Ansu Enterprises Private Ltd, who owns the land in Plot C5 wherein the half-constructed apartment building agreed to be sold to the Complainants are situated. It is submitted that the interim Resolution Professional/Resolution Professional appointed by the Honourable NCLT, Kochi, admitted an amount of INR 40,78,96,594.4 as the amounts due to the members of Dewa Investors Association. The Respondents have never disputed the admission of the claims of the 66 home buyers who are members of the 1st Complainant till date, neither has the consortium disputed or challenged the inclusion of the 66 home buyers into the Committee of Creditors of Dewa Projects Private Limited.

2. According to the Complaint, in violation of judgement passed by the Hon'ble High Court of Kerala in WP(C)



No. 34521/2917 and WP(C)No. 999/2018 the Union Bank of India issued a notice dated 18.02.2022 for selling Plot No. C5, showing the claims of the home buyers as not established. The said notice was challenged vide W.P.(C) No. 8054/2022, in which it was reiterated that the conditions specified in WA No 1041/2018 was affirmed and specified that as long as the direction of the Division Bench remains, the bank is bound to incorporate the condition in the sale notices. On 22-09-2022 a notice was published in the Mathrubhumi newspaper, the Respondents attempting to sell the plot C-5 falsely stating the facts. The claim made by the home buyer is falsely annotated as only Rs.24.75 Crores, while the admitted claim as attested by the Liquidator is Rs. 40.78 Crores. On 06-11-2022 a notice was published in the Hindu newspaper, the respondents again attempting to sell the plot C-5 falsely stating the facts. The claim made by the home buyer is falsely annotated as only Rs.33.50 Crores, while the admitted claim as attested by the Liquidator is Rs. 40.78 Crores. By these notices, the Respondents wilfully intending to harm the rights of the Complainants and other homebuyers and they apprehend that the entire amounts recovered would be appropriated by the financial institutions without any regard for the claim and interest of the homebuyers. In Union bank of India Vs. Rajasthan Real Estate Regulatory Authority & Others (2022) Live Law (SC) 17, it was held that the Real Estate Authority has jurisdiction to entertain complaints from home buyers to protect their rights against banks

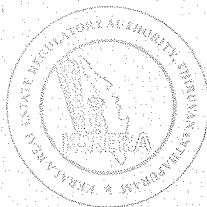


as secured creditor if the bank take recourse to any of the provisions contained in SARFAESI Act. Thus, the Complaint against the Union Bank of India and the Consortium is maintainable.

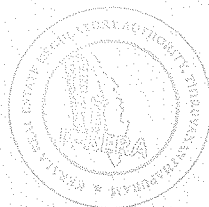
3. According to the Complaint, the Facts leading to the issuance of notices by the Consortium of banks are as follows: The Goshree Islands Development Authority (GIDA) invited bids for allotment of land developed by it and M/s Deva projects Pvt Ltd., and Ansu Enterprises Pvt. Ltd successfully bid for seven plots No. B, C3, C4, C5, D3, D4, and D5 having a total extent of 47 acres for INR 340 crores. M/s. Puravankara projects Ltd who was one of the bidders challenged the allotment of plots in favour of the union Bank of India. As per Judgement of the Hon'ble Supreme Court dated 02-02-2007, the allotment of certain plots in favour of M/s Deva projects Pvt Ltd., and Ansu Enterprises pvt. Ltd and others were cancelled, finally the plot No C5 was allotted to the partnership firm Ansu Enterprises Pvt. Ltd, which was later converted as Private Limited Company and C3 and C4 were allotted to M/s Hotel Venus International and plot No B was allotted to one Venugoplan Nair. A consortium of banks/financial institutions including the Union Bank of India sanctioned a loan of INR 477 crores financing and purchasing the total extent of 47 acres in the year 2005. It was submitted by the Union bank of India that an amount of INR 265.35 crores was disbursed against the sanctioned amount of INR 477 crores pursuant to a joint deed of



term loan agreement executed on 02-08-2005 between M/s Deva projects Pvt Ltd., Ansu Enterprises Pvt. Ltd, M/s Hotel Venus International and Venugoplan Nair on the one part herein after collectively called "Borrowers" and Union Bank of India, Federal Bank of India, Andhra Bank, Oriental Bank of Commerce, Indian Overseas Bank, Corporation Bank, and Punjab National Bank on the other part. The amount so disbursed were intended to be utilised for the purchase of plots from Goshree Islands Development Authority and development of the said plots. Certain members of the Consortium as Federal Bank, and Indian Overseas Bank later on transferred their loan to M/s Edelweiss Asset Reconstruction Company and Central Bank of India and Vijaya Bank assigned their loan in favour of Asset Reconstruction Company India Ltd. As per the terms of the agreements between the Consortium and Borrowers, a separate designated escrow account was to be maintained with the Union Bank of India for the purpose of repayment of the principal and interest thereon. Various guarantee agreements were executed between the promoters of M/s Dewa Projects Private Limited and the Consortium of banks led by Union Bank of India. The promoters/M/s Dewa Projects also created mortgages in favour of the consortium. On 31.10.2005 a first Supplementary Joint Deed of Term Loan of Agreement was executed between the Borrowers on the First Part and the Consortium. Allahabad Bank and Indian Bank were included as members of the Consortium and the term

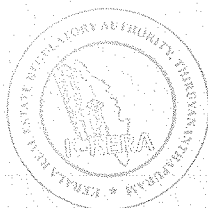


loan was enhanced to Rs. 366 crores and 68 lakhs and the first Supplementary Agreement for Guarantee was executed by K Venugopalan Nair, N Gopalakrishnan Nair, C N Rajan, M Jayachandran Nair and Vijayakumari Amma in favour of Union Bank of India consortium on 31.10.2005. First Supplementary Agreement of Guarantee No.2 was also executed on 31.05.2005 by Vinod Kumar, Vinil Kumar, C.P. Vikraman Nair, Vasanthakumari, Sobha, Sukumari Amma and Vinitha in favour of the Union Bank of India. On the same day memorandum of deposit of Title deeds was executed by K. Venugopalan Nair and Sobha Venugopalan Nair in favour of Union Bank of India Consortium in relation to 12 cents in Thirumala village, Thiruvananthapuram. Thereafter, an agreement was executed on 27.02.2006 between Union Bank of India and other consortium members. M/s Ansu Enterprises, M/s Hotel Venus International and Mr. K Venugopalan Nair have also executed an irrevocable Power of Attorney dated 13.07.2005 in favour of Dewa Projects Pvt Ltd to deal with the lands which M/s. Ansu Enterprises, M/s Hotel Venus International and K. Venugopalan Nair have purchased in auction. Ansu Enterprises owns the land in plot C5. Thereafter, a Joint Deed of Term Loan Agreement was executed between the Consortium, Dewa Projects Private Limited, Ansu Enterprises, M/s Hotel Venus International and K. Venugopalan Nair on 27.02.2006 whereby the term loan was again enhanced to INR 477 crores. On 27.03.2006, a Sale Deed was executed by GIDA in favour of M/s

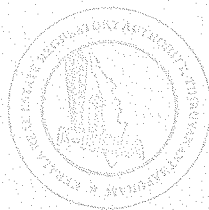


Ansu Enterprises, Hotel Venus International and Mr K Venugopalan Nair for plot C5 and C3. M/s Ansu Enterprises, M/s Hotel Venus International and Mr K. Venugopalan Nair also executed memorandums of deposit of title deed on 31.03.2006 in favour of the Consortium. The memorandums of deposit of title deed was executed in spite of the fact that they had executed irrevocable Power of Attorney in favour of Dewa projects to deal with the land purchased by M/s Ansu Enterprises, M/s Hotel Venus International and Mr K. Venugopalan Nair from GIDA auction. The consortium was well aware of the power of attorney executed by M/s Ansu Enterprises, M/s Hotel Venus International and Mr K. Venugopalan Nair, with the knowledge of the Consortium.

4. As per Complaint, a supplementary term loan agreement was executed between Dewa Projects and the Consortium of 13 banks on 21.03.2007 whereby the consortium agreed to sanction an additional facility of INR 62 crores for the purpose of funding of interest from 01-01-2007 to 31-03-2008. It is submitted that the above action is a clear case of fraud played by the consortium and M/s Ansu Enterprises, M/s Hotel Venus International and Mr K. Venugopalan Nair to ensure that the loans extended by the Consortium were not declared as non-performing asset. In spite of being fully aware of the fact of irrecoverable power of attorney and an irrecoverable sale agreement was executed in favour of the Dewa projects, the consortium sanctioned loan and the Complainant had already approached the Hon'ble



High Court of Kerala for appropriate action in this regard. It is submitted that Plot C5 was purchased by M/s Ansu Enterprises, while it was a partnership firm, later it was converted in to a Pvt Ltd Company and thereafter effected mutation in respect of plot C5 in the revenue record changing ownership of land from firm to Company and this transfer was with the knowledge of the Consortium and the said Company was not a signatory to any of the loan or security agreements and never insisted to be made a party. It is pursuant to this assignment and transfer of Plot C5, the project was launched and the members of Dewa Investors Association was tricked and defrauded into investing into the Project. The project was launched by Dewa Projects in January 2012 and it was advertised that home loans had been approved by the Union Bank of India and other banks. As per the understanding between the Consortium and Dewa Projects Private Limited, Ansu Enterprises Private Ltd, M/s Hotel Venus International and Mr K. Venugopalan Nair, certain Escrow Accounts were maintained. 101 apartments had been purchased by the members of the Dewa Investors Association and similarly situated individuals. The Dewa projects, M/s Ansu Enterprises, M/s Hotel Venus International and Mr K Venugopalan Nair committed default in repayment of loans and they were declared NPA by the members of the Consortium as early as 2006. The Consortium wilfully suppressed the material information that the accounts of Dewa Projects Private Limited, Ansu Enterprises Private Ltd, M/s Hotel Venus International and



Mr. K. Venugopalan Nair had become NPA from the public while being completely aware that the innocent home buyers will be defrauded into investing in the Project. Unaware of the financial position of Dewa etc., the members of association invested an amount of INR 35 Crores in to the project expecting to get apartment in return. It was submitted that both the Consortium and the Reserve Bank of India are liable for the inaction and gross negligence in publishing the details regarding the defaulters to the members of the general public by way of a public disclosure. Even though a separate designated escrow account was to be maintained for deposit of rent/sale receivables for the purpose of repayment of the principal and interest thereon, the Consortium permitted Dewa Projects Private Limited, Ansu Enterprises, M/s Hotel Venus International and Mr. K. Venugopalan Nair to divert the amounts paid by the members of Dewa Investors Association to various accounts. As per the order dated 02.12.2015, the Hon'ble High Court directed the Union Bank of India to conduct a separate valuation of properties and to proceed sale of the properties and Dewa Projects Private Limited was directed to get renewal of all approvals for carrying on the construction and obtain environmental clearance within a period of three months, failing which, the Consortium of banks could take over the property. The Hon'ble Debt Recovery Tribunal, Ernakulam on 23.09.2017 permitted Dewa Projects to deposit a sum of INR 308 Crores on or before 12.10.2017. As per the written statement on 22.09.2017 and



additional reply statement on 12.10.2017, filed by the Union Bank of India in SA No. 181 of 2017, an e-auction took place on 14.09.2017 for Plot Nos. C3 and C4. As per Section 18(b) of the Insolvency and Bankruptcy Code, 2016, it is the duty of the Interim Resolution Professional to receive and collate all the claims submitted by creditors. The admissions of the claims of Dewa Investors Association and their inclusion into the CoC was not disputed or challenged by the Union Bank of India or any other members of the Consortium banks. Mr. Vinod Padinhare Veetil was confirmed as the Resolution Professional by the CoC on 20.11.2019. The CIRP was to be completed as per the timelines prescribed under Insolvency and Bankruptcy Code, 2016, including the exclusions granted by the Hon'ble NCLT, Kochi on or before 19.04.2021. The liquidation process has commenced and claims filed by 66 including members of Dewa Investors Association filed its claims afresh and claims in tune of INR 40,78,96,594 has been admitted by the Liquidator of Dewa Projects Private Limited. On 18.02.2022, Union Bank of India Consortium published sale notice under Rule 8(6) and 9 of the Security Interest (Enforcement) Rules, 2012 for sale of Plot C5 and another property in the name of the Borrower and Guarantors to recover an amount of INR 878,30,39,753 as on 31.01.2022 vide an auction scheduled to be held on 10.03.2022. As per WP(C) No. 19773/2015, Consortium shall conduct a separate valuation of the



proper and proceed for sale of the property only after making extensive advertisements.

5. The reliefs sought by the Complainants are follows: (i) Declare that the 1st respondent is liable to register the Project under Proviso to Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 (ii) Issue show cause to the 1st respondent under Section 59(1) of Real Estate (Regulation and Development) Act, 2016 for non-registration of the incomplete Project. (iii) Declare that the Respondents are not liable to sell Plot C5 and the half-constructed apartment building agreed to be sold to the complainants to any third party pursuant to SARFAESI proceedings, unless the Project is registered with the Real Estate Regulatory Authority (RERA) under Section 3 of the Real Estate (Regulation and Development) Act, 2016. (iv) In the alternative, declare that the respondents are not liable to sell Plot C5 and the half-constructed apartment building agreed to be sold to the complainants, to any third party without an undertaking from the said third party that they will register the Project with the RERA under Section 3 of the Real Estate (Regulation and Development) Act, 2016 (v) Direct the respondents to not sell Plot C5 and the half-constructed apartment building agreed to be sold to the complainants to any third party without an undertaking from the said third party that they will register the Project with the RERA under Section 3 of the Real Estate (Regulation and Development) Act, 2016. (vi) Prohibit the respondents from selling the Plot C5



and the half-constructed apartment building agreed to be sold to the complainants to any third party pursuant to SARFAESI proceedings, unless the Project is registered with the RERA under Section 3 of the Real Estate (Regulation and Development) Act, 2016. (vii) Direct the 1st Respondent to conduct fresh auction of the properties with sale notice showing the exact amount due to the homebuyer. (viii) Direct the 1st respondent to deposit Rs. 40,23,86,337/- including interest thereon with the Liquidator to be disbursed to the complainant, before appropriating any amount, if auction is permitted to be conducted (ix) To issue such other appropriate order or direction which this Authority may deem fit and just under the circumstances of the case.

6. The Complainant had produced copies of judgement dated 20.03.2018 in WP (C) 34521 of 2017, judgement dated 03.01.2019 in WA 999 of 2018, order dated 13.09.2019 of the Hon'ble NCLT, Kochi in IBA 23/KOB/2019, order dated 25/11/21 in IA(IBC) 87/KOB/21 with list of claims admitted by the Liquidator, notice dated 14 February 2022 issued under Rule 8(6) and 9 of the Security Interest (Enforcement) Rules, 2002 by Union Bank, judgement dated 04.08.2022 in WP(C)8054/2022, sale notice dated 22.09.2022 by Union Bank, order dated 21-10-2022 in WP(C)33297/2022, notice dated 03.11.2022, published in the newspaper, 'The Hindu', agreement dated 27.02.2006 by Union Bank and other consortium Banks, irrevocable Power of Attorney dated 13.07.2005 registered as Document No. 541/2005/IV, Joint



Deed of Term Loan Agreement dated 27.02.2006, sale deed dated 27.03.2006 in favour of M/s. Ansu Enterprises, sale deed dated 27.03.2006 in favour of the Hotel Venus International, sale deed dated 27.03.2006 in favour of Mr. K. Venugopalan Nair, memorandum of deposit of title deed dated 31.03.2006 executed by M/s Ansu Enterprises, memorandum of deposit of title deed dated 31.03.2006 executed by M/s Hotel Venus International, memorandum of deposit of title deed dated 31.03.2006 executed by Mr. K. Venugopalan Nair, supplementary term loan agreement dated 21.03.2007, deed of partnership dated 17.02.2010 to deal with the land purchased in auction, articles of association of Ansu Enterprises Private Ltd, resolution dated 15.09.2010, application submitted by the Ansu Enterprises Private Ltd to the Village officer for effecting transfer of registry, Thandaper extract, tax receipt evidencing payment of tax in the name of M/s. Ansu Enterprises, details of the payments made in relation to the 101 apartments, judgement of the Hon'ble High Court dated 02.12.2015 in WP(C) 19773 of 2015, Judgement dated 30.03.2017 in R.P No. 939/2016, proceedings dated 23.09.2017 in S.A No. 181 of 2017, written statement dated 22.09.2017, additional written statement dated 12.10.2017, auction notice dated 19.08.2017, letter dated 19.02.2022 issued by the Liquidator of Dewa Projects Private Limited, minutes of the SCC meetings held on 16.09.2022 and the copy of payment receipts. I. A. No. 48/2023 was filed on 19-04-2023, by the Complainant to implead the members of the

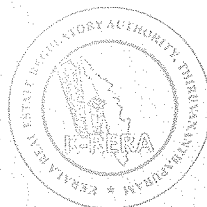


Consortium bank who are necessary parties and sought direction to implead them also as additional Respondents which was allowed and additional Respondents 5 to 10 were impleaded.

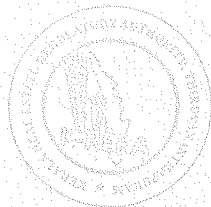
7. In the reply statement filed by the Respondents No. 1 and 2, they denied all averments and allegations contained in the complaint. On the Complainants' allegation that they were aggrieved by the proceeding initiated by the secured creditors to sell the mortgaged property (on which the promoter had undertaken to construct apartment building), the Respondents submitted that the secured creditors have first charge over the property by way of a mortgage created as early as on 30-03-2006. Hence the action of the secured creditors taken as early as in 2015 was in accordance with law and the attempt of the complainants was only to derail the recovery proceedings. The promoter, M/s Dewa Projects Private Ltd and other co-borrowers had defaulted on loans availed from a consortium of banks led by Union Bank of India. The lenders have initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in May 2015 to recover the unpaid loan amounts. The promoter, M/s Dewa Projects Private Ltd was under liquidation. The loan account of the promoters was the highest NPA in the State of Kerala with outstanding of more than Rs. 1,000 crores. The Home buyers did not initiate any action against the Promoter so far. No civil suit or arbitration proceedings were initiated for any grievance under their



respective contracts against the builder or the landowner. The claims of the homebuyers are hopelessly barred by limitation. Moreover, at the time of entering into purchase agreements, no NOC was taken from the banks. It was submitted that the above Complaint was not maintainable either in law or on facts. The Hon'ble Supreme Court in Union Bank of India vs. Rajasthan Real Estate Regulatory Authority and others has held that Real Estate (Regulation and Development) Act, 2016 would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest had been created by mortgaging the property prior to the introduction of the Real Estate (Regulation and Development) Act, 2016. In the instant case, security interest was created on the subject matter property in 2006, which is much prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016. If the Complainants are aggrieved by the recovery measures initiated by the Consortium, they can approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. M/s Dewa projects and 3 others approached the consortium for financial assistance for the purpose of acquisition and development of GIDA and for constructing commercial complexes and apartments. Originally Rs. 265.35 Crores was sanctioned and loan documents were executed on 02-08-2005, the borrowers emerged as successful bidders for four lots of properties auctioned by GIDA. The 4th Respondent emerged as successful bidder for plot C5 of GIDA,



which is the subject matter of property herein. Thereafter, the loan amount was enhanced to Rs. 366.68 crores on 31-10-2005 and the loan amount was finally enhanced to Rs. 477 crores on 27-02-2006. The agreements specifically state that the Consortium will have the first charge over the plot C5 along with the building to be constructed by the borrowers, among other properties. The title deeds obtained by the borrowers from GIDA were deposited with the Consortium on 30-03-2006 for the purpose of creating an equitable mortgage under Transfer of Property Act, 1882 and by virtue of provisions of loan agreements and Transfer of Property Act, 1882 the charge of Consortium also extends to the building structure constructed on the land. As per decision of the Hon'ble Supreme Court in 2017 (6) SC page 4 it is settled position that the building constructed after mortgage forms part of the secured asset. At some point of time, the promoters entered in to agreement with certain homebuyers to construct and sell residential apartment on plot C5 which was in the name of the 4th Respondent, the said property was already charged with the consortium and the Complainants have admitted that they were aware of the existence of loans availed by the promoters. The Complainants failed to carry out due diligence or inspect the original title deeds at the time of entering in to agreements and that sale agreement was never registered. The loan account became NPA and the consortium was forced to issue notice under SARFAESI Act on 02-05-2015 demanding Rs. 514,64,79,707.86/- as on 31-03-2015 along with

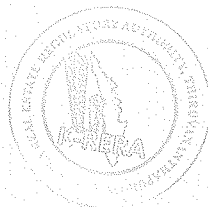


future interest. The borrowers filed WP(C) against the recovery steps, the Consortium attempted to take possession of the primary securities with the order of the CJM Court Ernakulam and borrowers and the homebuyers filed WP(C)s and the same were disposed by a common judgement dated 02-12-2015 wherein it was held that the sale being held by the Consortium, most of which are public sector banks cannot be interdicted. However, on the basis of an undertaking by the banks it was agreed that the possession of plot C5 would not be taken for the time being, and on Review petition, the Hon'ble High Court of Kerala permitted the Consortium to take possession of plot C5 and the physical possession of the said plot was taken on 03-11-2017. The plot C5 was brought for sale for first time on 14-09-2017 and the homebuyers challenged by filing WP(C) and obtained judgement dated 20-03-2018 declaring that the action purchaser would have to clear the liability of homebuyers, the same was challenged in WA and by Judgement dated 20-03-2018 vacated the portion of Judgment of Single Bench that the action purchaser would have to clear the liability of homebuyers, instead, the Court directed the banks to specify in the auction notice the details of claim made by the homebuyers though they are not established. Though the Complainants have agitated multiple times before the Hon'ble High Court of Kerala, and apart from the direction to show the claims to the tune of Rs. 33.5 crores in the sale notice under SARFAESI Act, there was no other condition imposed on the 1st



Respondent and the direction was complied with in every sale notice. The claims of Complainants are time barred and they have failed to get any claim against the land owners. The Judgement in WA No 999/2018 is final and binding, there is no provision to specify in the sale notice the claim of homebuyers against Dewa projects Pvt Ltd as accepted by the Liquidator. With respect the relief claimed by the Complainant to deposit the claim amount of Rs. 40.23 crores with the Liquidator, it was submitted that the relief cannot be granted since there is no provision under the Real Estate (Regulation and Development) Act, 2016 to grant such a relief. The Hon'ble Supreme Court in Chitra Sharma and Others Vs Union Bank of India held that no Directions for preferential treatments could be given in such cases. Since recovery measures are being undertaken under SARFAESI Act only the Debt recovery Tribunal has jurisdiction.

8. The Respondents 1 and 2 also submitted that the real estate project was abandoned by the promoter in 2013 and gone into liquidation at the instance of 3rd and 4th Complainants hence it is impossible to register the project, now with contractual interest, the amount due to the Consortium has risen to more than 1000 crores. The 1st Respondent is not a promoter as alleged, only an authorized officer under SARFAESI Act. The claim of homebuyers against Dewa project is inclusive of interest, the principal claim being Rs. 24,75,67,192/- The direction of the Hon'ble High Court was to specify the claim of Rs.33.5 in the sale



notice, unless and until the Hon'ble High Court direction is changed either in a review petition or in appeal the Consortium cannot show it otherwise. The Respondents had denied the allegation that the reconstitution of the 4th Respondent from Ansu Enterprises a partnership firm, to Ansu Enterprises Private Ltd was carried out to avoid any encumbrances from being shown. It was submitted that no encumbrances were shown in the State of Kerala for equitable mortgage of property. One cannot insist to be bonafide a purchaser on the basis of the non-recording of the factum of EM in revenue records (2007(6) SCC186). The Respondents also denied the allegation that the Consortium deliberately attempted to hide the details of NPA. No appropriation of payment made by homebuyers was directly done by the Consortium. Moreover, the Consortium had the right to charge contractual interest on the outstanding amount whether it is an NPA or not. O.A filed by the consortium against the borrowers is pending and home buyers cannot agitate the matters pending before the Debts Recovery Tribunal. It was also submitted that the liquidator of Deva projects Private limited had only recognized principal amount of Rs. 24.75 crores and not Rs. 25 crores. It was denied that the bank account maintained with the Canara Bank was the designated account for routing payments received from home buyers, Canara Bank was not even a member of the consortium, the amount was therefore diverted by the promoters without the knowledge of the consortium. It was denied that the sale of

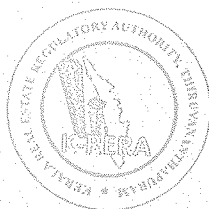


properties was carried out in collusion by the Consortium banks. The properties were brought to sale multiple times and finally sold in the 6th sale and the issue of undervaluation was also considered by the Debts Recovery Tribunal and the sale was upheld. It was denied that the judgment of the single bench of the High Court was upheld by the Division Bench. In fact, the court vacated the portion of the judgment of the single bench which held that the Auction purchaser would have to clear the liability of the home buyers. Instead, the court directed the bank to specify in the auction notice the details of the claim made by the home buyers though they were not established. It was submitted that the 1st Respondent had been strictly complying with the direction of the Division Bench of the High Court to show the claim amount of Rs. 33.5 crores. Therefore, the relief sought in the Complainant cannot be granted.

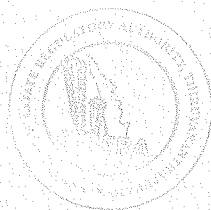
9. In the additional affidavit filed on 05-07-2023 the Respondents 1 and 2 further submitted that on account of failure to establish fraud or collusion in respect of financial transaction and creation of mortgage, the Complainants produced the Reserve Bank of India Report which is pending before the Hon'ble High Court of Kerala and the Authority cannot adjudicate on the report which can only be done by the High Court. The Reserve bank had nowhere stated that there is fraud or collusion on the part of the lenders. The allegation of fraud and collusion had been raised for the first time by the Complainants. The claim of alleging fraud or collusion is barred by limitation, suit for



establishing fraud should have been filed within 3 years from the date of knowledge of the fraud. The report of RBI was filed in July 2016 and no suit or application has been filed within the prescribed time, hence claim is barred by limitation. It was further submitted that the powers of the Authority are limited to any violation of Act, 2016 and adjudication of whether a financial transaction or mortgage was fraudulent or collusive can only be entertained by a Civil Court or Debt Recovery Tribunal. The loan and mortgage in question was created in 2006 much prior to the introduction of the Real Estate (Regulation and Development) Act, 2016. It was a project loan directly given to the builder for development, there was no housing loan, at the time of loan transaction there was no allottees in the picture. The allottees subsequently entered in to agreement for purchasing flats over which there was first charge for the banks and none of the allottees had made any payment to the banks. Therefore, the allegation of fraud has no leg to stand. An association cannot maintain a complaint on behalf of allottees before the Authority. Not a single agreement for sale or construction had been produced before the Authority to prove that they were allottees. The Liquidator can only be assumed to have admitted claims of 66 home buyers as against the builder company, whereas the subject matter property against which the Respondents had proceeded belongs to a different Company. The Complainants attempting to mislead the Authority in to assuming that the allottees have spent Rs. 40,78,96,594.4/- in fact the actual amount

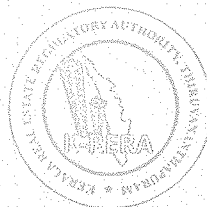


is 25,75,67,192/- The banks do not have any right of ownership over the property, their only right as per mortgage created is to realize the outstanding amount by proceeding against the mortgaged property. It will be the auction purchaser to decide whether he desires to continue with the project or not, and in the circumstances the bank cannot be directed to register the project. The Hon'ble Supreme Court in Union Bank of India vs. Rajasthan Real Estate Regulatory Authority and others (S.L.A(C) Nos. 1861-1871/2022) had held that RERA Act would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest had been created by mortgaging the property prior to the introduction of the Act. With regard to the allegation that the banks had fraudulently refrained from publishing details of default it was submitted that there was no practice of any bank publishing details of default for any NPA. With regard to the publication of advertisements by the builder, it was submitted that the Union Bank of India was not aware of the publication made by the builder and did not approve the publication of advertisements. The Complainants ought to have approached the banks to verify the ground reality of the project. It was stoutly denied the allegation that the Consortium of lenders engaged fraudulent transaction to misappropriate money. With regard to the RBI report, it was submitted that the consequence of failure to abide by the RBI directions is prosecution or penalty and it does not have any adverse effect on the mortgage created or loan.

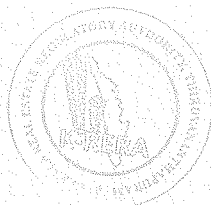


The Hon'ble Supreme Court in the Judgement in 1997(10) SCC 488 held that the non-compliance of directions of RBI may result in prosecution or levy of penalty but it shall not invalidate any contract between the bank and third party. The Hon'ble Supreme Court in the Judgement in 2006(5) SCC 302 held that there are risks inherent in the banking business. One cannot jump to the conclusion that only because of some of the debts become bad, there is lack of proper management of the bank.

10. In the affidavits filed on 12-04-2023 and 05-07-23 the Complainants had produced copies of list of home buyers admitted by the liquidator of Dewa project, advertisement of the project in print media, scrutiny report/ observation made by RBI in the conduct of account of Dewa projects, agreement for sale executed on 21-08-2013 with Respondents 3 and 4, agreement for construction executed on 21-08-2013 with Respondents 3 and 4. In the affidavit the Complainant had stated that after initiation of CIRP proceedings at the behest at the 3rd and 4th Complainant against the 1st Respondent, the interim resolution professional appointed by the Hon'ble NCLT Kochi admitted an amount of Rs. 40,78,96,594.4/- as the amount due to the members of the 1st Complainant. The Respondent had never disputed the claims of 66 home buyers who are members of the 1st Respondent nor the consortium disputed the inclusion of 66 home buyers into the CoC of Dewa Projects. It was also stated that Ansu Enterprises Pvt Ltd is a wholly owned subsidiary of the Dewa Projects and executed



an irrevocable Power of Attorney dated 13.07.2005 to Dewa Projects Pvt Ltd. Dewa and Ansu had entered into agreements for sale and construction with the home buyers. The project was financed by the consortium by leading banker Union Bank of India and project had not been completed it had become mandatorily a registerable project. As an incomplete project the Respondent, Financial Institution who had taken possession of the project were promoters and bound to register the project under Section 3(1) of the Real Estate (Regulation and Development) Act, 2016. Even though the loans were declared as NPAs, the banks did not up stain from lending more money and permitted to disburse further loans. This is an action of fraud committed by the banks or part of the Consortium. The Consortium also did not take any steps to initiate securitization proceedings until 2015, even though the accounts were declared an NPA as early as 2006. The Consortium of banks fraudulently refrained from publishing any details of the default, and wilfully concealing material information from the public and prospective buyers with an intent to misappropriate the payments made by the innocent homebuyers. This was despite the fact that according to Article XIII, Clause 13.1 of the Joint Deed of Term Loan Agreement, in the event of default in repayment of the principal of the loan amount or the interest, the Consortium shall have unqualified right to disclose or publish the details of the defaulters, the name of the borrowers and of its directors as defaulters. Instead of publishing information about the defaulters,



a full-page advertisement was issued in newspapers stating that the loans were approved by the Union Bank of India to mislead the prospective home buyers and Union Bank of India issued no clarification against the publication which shows that the Consortium was consistently engaging in fraudulent transactions.

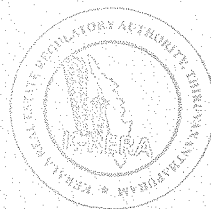
11. The Complainants herein approached High Court of Kerala by filing the WP(C)14289/2014 seeking for a vigilance enquiry into the fraudulent conduct of Consortium. The Hon'ble High Court, vide order dated 08.04.2016, directed the RBI to scrutinise the transaction between the banks and Dewa Projects Pvt Ltd and file a report. The Scrutiny report was filed on 23.07.2014 stating the grave short false on the part of the Consortium of Banks. A copy of report was also produced. The Complainant had detailed the instances of fraud on the part of Consortium Banks which includes that the loans were sanctioned without any independent examination of relevant documents, loans were dispersed despite non-achievement of financial closure, loans were dispersed in spite of deficiency pointed out by the auditors concerning record keeping, manner of payment of steel and other construction material etc. The banks did not ensure end use of fund, no monitoring and appraisal of the account was done by the bank independently, poor progress in implementation of project was deliberately over looked by inefficient monitoring of the project, audit revealed that out of term loan disbursed 12.7 crore was utilized for interest payment which is impermissible, banks



turned a blind eye towards non-routing of transactions through escrow accounts maintained at the Union Bank of India as was mandatory, also that no system for obtaining receipts from beneficiary payments expenses incurred for miscellaneous purposes etc was in place with borrower, deviation from bank policy guidelines were allowed to the borrower, there were persisting the irregularities concerning end use of funds against which the banks turned a blind eye, sanctioned margin at 20% instead of normal 25%, concessional interest is sanctioned at 9% instead of actual applicable BPLR + 3% and concessionary rate of commission at 1% was charged on letter of guarantee as against the normal commission of 3%, approved deviation in exposure ceiling fixed for the infrastructure sector at 20%. Although account was classified as NPA by the bank with effect from 31.12.2006 SARFAESI Action was initiated by the Consortium Banks on 2nd May, 2015 and possession taken on 18th July 2015. One of the member banks did not maintain accountability in the account acting collusively and fraudulently, the bank did not hold its own record receipt and development of funds. In some instances, loans were sanctioned without copies of relevant documents, without obtaining credit opinion of associate firms except one, without any independent rating being given by the banks, without conducting economy viability studies, on the personal guarantee of one of the directors despite him being part of decision making, despite the borrower having not obtained clearance certificate from the



Coastal Regulation Zone, banks did not ensure that the exemption from the State Govt for land holding beyond 15 acres was obtained, before obtaining clearance from the Revenue Dept of Govt of Kerala, Key man insurance not obtained, valuation report not obtained, periodical review by CRMD not carried out, technical viability study of project not conducted. As far as one-member bank is concerned, the promoters were mandated to have completed at least 3 projects to obtain loan as per the scheme but loans were sanctioned without completion of 3 projects, loans were sanctioned even though the project cost was 597.2 crores although the scheme was meant for projects that cost under 50 crores, repayment term was 7 years as against the stipulated maximum period of 3 years. The Complainant had also extracted a portion from the report as follows: *“The project was a real estate project; all statutory regulations like land ceiling limits under the local state ceiling Acts should have been taken into consideration at the time of sanction of the loan. The project, as identified by some of the lenders, was not an infrastructure project. Consensus among the consortium members of the above aspect and also project getting in legal tangles under the land ceiling Acts, timely submission of BG to GIDA etc, were not thoroughly discussed by the consortium before sanction and disbursement of the loan. The above litigations much before the start of the project should have prompted the consortium banks to proceed with caution. A complaint was received on 30.01.2014 from Shri C N Rajan, who*



is one of the shareholders alleging serious irregularities and misuse of term loan funds released to the company. The complainant has enclosed documents downloaded from the website of "Special Inspector General of Iraq Rehabilitation" a wing of the U.S Army. A document "Suspensions and Debarments" mention Dewa Projects Private Limited from India and its other associate companies with names "Al Ghannam and Nair General Trading and Construction Company, Kuwait, Zenith Enterprises, Kuwait and Dewa Europe as debarred by the United States Justice Department for 10 years from 17.08.2008 for bribing US Army officers for securing contracts during the US Iraq war. The names of K Venugopalan Nair and Vasantha Nair also appear as individual names debarred. The complaint alleging that K Venugopalan Nair is not the duly re-elected CMD from 12.04.2008 and a FIR had been registered against him and requested banks to withhold the permission for the sale of the pledged property. The above complaint addresses to all the consortium banks were not discussed by the member banks in any of the meetings as observed from the minutes and information relating to the meeting." In these circumstances, the Complainants requested to hold that the promoters and consortium banks have committed fraudulent and collusive transactions and hence the project would within the purview of RERA.

12. The Documents produced by the Complainants are marked as **Exhibit A1 to A37** and those



produced by the Respondents are marked as **Exhibit B1 to B5**. The copy of judgement dated 20.03.2018 in W.P (C) 34521 of 2017 is produced and marked as **Exhibit A1**. The copy of judgement dated 03.01.2019 in WA 999 of 2018 is produced and marked as **Exhibit A2**. The copy of order dated 13.09.2019 of the Hon'ble NCLT, Kochi in IBA 23/KOB/2019 is produced and marked as **Exhibit A3**. The copy of order dated 25/11/21 in IA(IBC) 87/KOB/21 is produced and marked as **Exhibit A3(a)**. The copy of list of claims admitted by the Liquidator is produced and marked as **Exhibit A4**. The copy of Notice dated 14 February 2022 issued under Rule 8(6) and 9 of the (Security Interest Enforcement) Rules, 2002, by Union Bank is produced and marked as **Exhibit A5**. The copy of judgement dated 04.08.2022 in W.P(C)8054/2022 is produced and marked as **Exhibit A6**. The copy of sale notice dated 22.09.2022 by Union Bank is produced and marked as **Exhibit A7**. The copy of notice dated 03.11.2022, published in the newspaper, The Hindu is produced and marked as **Exhibit A8**. The copy of agreement dated 27.02.2006 by Union Bank and other consortium Banks is produced and marked as **Exhibit A9**. The copy of irrevocable Power of Attorney dated 13.07.2005 executed by Ansu Enterprises wholly owned subsidiary of Dewa Project, to the Dewa project Pvt Ltd, registered as Document No. 541/2005/IV is produced and marked as **Exhibit A10**. The copy of Joint Deed of Term Loan Agreement dated 27.02.2006 is produced and marked as **Exhibit A11**. The copy of sale deed dated 27.03.2006 in favour of M/s.



Ansu Enterprises is produced and marked as **Exhibit A11(a)**. The copy of sale deed dated 27.03.2006 in favour of the Hotel Venus International is produced and marked as **Exhibit A12**. The copy of sale deed dated 27.03.2006 in favour of Mr. K. Venugopalan Nair is produced and marked as **Exhibit 12(a)**. The copy of memorandum of deposit of title deed dated 31.03.2006 executed by M/s Ansu Enterprises is produced and marked as **Exhibit 13**. The copy of memorandum of deposit of title deed dated 31.03.2006 executed by M/s Hotel Venus International is produced and marked as **Exhibit 14**. The copy of memorandum of deposit of title deed dated 31.03.2006 executed by Mr. K. Venugopalan Nair is produced and marked as **Exhibit 15**. The copy of supplementary term loan agreement dated 21.03.2007 is produced and marked as **Exhibit 16**. The copy of deed of partnership dated 17.02.2010 (some pages missing) admitting 5 more partners is produced and marked as **Exhibit 17**. The copy of articles of association of Ansu Enterprises Private Ltd is produced and marked as **Exhibit 18**. The copy of resolution dated 15.09.2010 is produced and marked as **Exhibit 19**. The copy of application submitted by the Ansu Enterprises Private Ltd to the Village officer for effecting transfer of registry is produced and marked as **Exhibit 20**. The copy of Thandapper extract No 18875 is produced and marked as **Exhibit 21**. The copy of tax receipt evidencing payment of tax in the name of M/s. Ansu Enterprises is produced and marked as **Exhibit 22**. The copy of details of the payments made in relation to the 101



apartments is produced and marked as **Exhibit 23**. The copy of judgement of the Hon'ble High Court of Kerala dated 02.12.2015 in WP(C) 19773 of 2015 is produced and marked as **Exhibit 24**. The copy of Judgement dated 30.03.2017 in R.P No. 939/2016 is produced and marked as **Exhibit 25**. The copy of proceedings dated 23.09.2017 in S.A No. 181 of 2017 is produced and marked as **Exhibit 26**. The copy of written statement dated 22.09.2017 in S.A No. 181 of 2017 by Union Bank of India is produced and marked as **Exhibit 27**. The copy of additional written statement dated 12.10.2017 in S.A No. 181 of 2017 by Union Bank of India is produced and marked as **Exhibit 28**. The copy of auction notice dated 19.08.2017 is produced and marked as **Exhibit 29**. The copy of letter dated 19.02.2022 issued by the Liquidator of Dewa Projects Private Limited is produced and marked as **Exhibit 30**. The copy of minutes of the SCC meetings held on 16.09.2022 is produced and marked as **Exhibit 31**. The copy of claims of Home buyers admitted by the liquidator of Dewa Project is produced and marked as **Exhibit 32**. The copy of advertisement in media is produced and marked as **Exhibit 33**. The copy of scrutiny report, observation made by RBI in the conduct of account of Dewa projects is produced and marked as **Exhibit 34**. The copy of agreement for sale executed on 21-08-2013 with Respondents 3 and 4 is produced and marked as **Exhibit 35**. As per Exhibit 35, the Complainant No. 3 & 4 /Purchaser under takes to pay total amount of Rs. 83,45,581/- to the Respondent/ Developer (value of

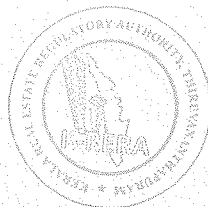


construction Rs.70,98,979/- and Rs. 12,24,602/- value of undivided share of land). The Respondents No. 3 & 4/Vendors declared that it has perfect, lawful, absolute marketable and alienable right and title to the A Schedule property subject to the charge created in favour of the Consortium of 13 banks led by Union Bank of India for the purpose of completion of the project and that the member banks had under taken to release charge over the A Schedule property in pieces proportionate to the undivided shares sold by the vendor to the prospective purchasers for the construction of apartments, as and when the full payments towards price are made over by the prospective purchasers to the vendor. The copy of agreement for construction executed on 21-08-2013 with Respondents 3 and 4 is produced and marked as **Exhibit 36**. As per Exhibit A36, the Respondents 3 and 4 agreed to construct the apartment within 36 months from the date of agreement and also the common amenities and facilities. The copies of payment receipts produced are marked as **Exhibit A37 series**. The True copy of the order of the Hon'ble Supreme Court in Union Bank of India vs. Rajasthan Real Estate Regulatory Authority and others (S.L.A(C) Nos. 1861-1871/2022) produced by the Respondent 1 and 2 is produced and marked as **Exhibit B1**. In Exhibit B1, the Hon'ble Supreme Court has endorsed the views of the High Court subject to clarification that para 36(v) shall be applicable in case where proceedings before the RERA are initiated by home buyers to protect their rights. The High Court held that Real Estate



(Regulation and Development) Act, 2016 would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest had been created by mortgaging the property prior to the introduction of the Act, 2016 unless and until it was found that the creation of such mortgage or such transaction is fraudulent or collusive. It was also held that RERA had the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act. The copy of joint deed of Term Loan Agreement dated 02-08-2005 is produced and marked as **Exhibit B2**. The copy of joint deed of Term Loan Agreement dated 31-10-2005 produced is produced and marked as **Exhibit B3**. The copy of joint deed of Term Loan Agreement dated 27-02-2006 produced is produced and marked as **Exhibit B4**. True copy of memorandum of Title Deed in respect of plot No C5 dated 31-03-2006 produced is produced and marked as **Exhibit B5**.

13. All the parties were heard in detail on the issue of maintainability of the complaint with regard to the question whether the Project will come under the purview of the Real Estate (Regulation & Development) Act 2016 [herein after referred to as 'the Act 2016'] and registerable under the proviso to Section 3 of the Act 2016. On the basis of the multiple hearings of the parties aforementioned and examination of the documents



produced by either side, the Authority decided to pass the order as follows:

14. The main reliefs sought by the Complainants who are the Association of allottees and 2 allottees of the project in question is for a direction to register the project before this Authority as per Section 3 of the Act 2016 by the 1st Respondent who is the Assistant General Manager and Authorized Officer of the Union Bank of India Consortium or to direct the Respondents not to sell Plot C5 and the half-constructed apartment building agreed to be sold to the complainants, to any third party without an undertaking from the said third party that they will register the Project under Section 3 of the Act, 2016. With respect to initial contention of the Respondents No. 1&2 as to the competency of the Association of allottees to file complaints, it is worthwhile to reproduce Section 31 (1) of the Act, 2016 which is as follows: “ *Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be*” Explanation of Section 31 of the Act 2016: “*for the purpose of this section, “person” shall include the Association of allottees or any voluntary association registered under any law for the time being in force.*” Hence, it is



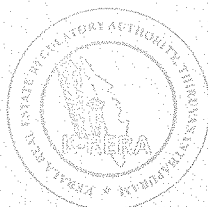
clear that the Association is competent to file Complaints on behalf of its members/ allottees of the project.

15. With respect to the reliefs sought by the Complainants and the contentions raised by either side, the points to be decided herewith are as follows:

1) Whether the project in question named “Dewa Pier -20” comes under the fold of the Act 2016 and required to be registered as per Section 3 of the Act 2016 or not?

2) Whether the Respondents No. 1 is liable to register the project in question as per Section 3 of the Act 2016 and whether they can be considered as ‘Promoters’ of the project as per the provisions of the Act 2016?

16. **Point No. 1:** It is to be noted that admittedly, a real estate project named “Dewa Pier-20” was launched in January 2012 which was located in Plot No. C5, the property owned by the Respondent No. 4 (hereinafter referred to as R4) and promoted by Respondent No. 3 (hereinafter referred to as R3). Here, R4 is a subsidiary company of R3, the original promoter company. R3 is under liquidation as per the order of the NCLT and the Liquidator has appeared before us on behalf of R3. Even though notices have been sent by this Authority to R4, they were returned unserved and after completing the substituted service, R4 has been set ex-parte. Anyhow, the parties appeared before us including the 1st Respondent who has taken possession of the properties as per the



SARFAESAI Act admitted that the said project remains still incomplete and it consists of only a partly constructed building structure and nobody has disputed the fact that there is an incomplete real estate project which has not obtained any Occupancy Certificate from the local authority so far. The provision under Section 3(1) deals with mandatory registration of new projects after commencement of the Act, 2016 and the Proviso to Section 3 specifies about the requirement of registration of ongoing projects as on the date of commencement of the Act 2016. The Proviso to Section 3 of the Act 2016 stipulates as follows:

“The projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.”

In view of the above provisions and on the basis of the hearing of the parties to the complaint above and on perusal of the documents placed on record, it has been found that the project in question was an ongoing real estate project as on the date of commencement of the Act 2016 which was required to be registered within three months from the date of commencement of the Act 2016 as per the aforementioned provision of the law. Going by the mandate of the 1st proviso, projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, are bound to apply for registration. Moreover, the Hon’ble



Supreme Court in its judgment dated 11/11/2021, in M/s Newtech Promoters & Developers Pvt Ltd. Vs State of UP & another, has reiterated the fact that the Real Estate Projects that are not completed and for which the Occupancy Certificate/Development Certificate has not been issued on the date of commencement of Real Estate (Regulation & Development) Act, 2016, shall be registered under Section 3 of the Real Estate (Regulation & Development) Act, 2016, and such projects will come under the purview of the Act, 2016. The relevant portion of the abovesaid judgment is extracted hereunder:

“Para 40. Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, ex facie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act, is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not of "completion certificate". In this context, learned counsel- submits that the said proviso ought to be read with Section 3 (2) (b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3 (2) need not be registered under the Act and, therefore, the intent of

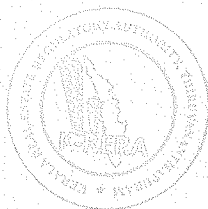


the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act.

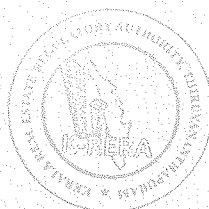
Para 47: The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project are done in an efficient and transparent manner so that the interest of consumers in the real-estate sector is protected by all means and Sections 13, 18 (1) and 19 (4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees, In the given circumstances if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act/ even on facts of this case.”

Hence, it is found that the project in question is an ongoing real estate project which squarely comes under the ambit of the Act 2016 and requires to be registered as per Section 3 of the Act 2016. Point No. 1 is answered accordingly.

17. Point No. 2: According to the Complainants, the original promoter of the project in question, Dewa Projects Private Limited/ R3 herein and R4/ the owner of the project land, M/s Ansu Enterprises Private Limited, along with their associates



had availed various financial facilities from a consortium of banks, R1 herein and due to the default of loans availed, proceedings were initiated by R2, Union Bank of India, the head of the Consortium, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') and various properties of the borrowers were sold and an amount of INR 306,90,00,000 has already been recovered by R1, Union Bank of India against a claim of INR 514,64,79,707.86 but no amounts have been paid or returned to the allottees, the members of the Complainant No. 1 till date. The learned counsel appeared for the Complainant submitted that the R2/Union Bank of India had initiated proceedings and proposed to sell the incomplete apartment building and land without obtaining registration under Act, 2016. The Counsel argued that R1 is liable to register the Project under Section 3 of the Act 2016 in capacity of the Promoter. Here, R3 firm which was the original Promoter of the project is under Liquidation and the Liquidator, Adv. Vinod appeared before this Authority on receipt of the notice issued to R3. The R4/Land owner company is admittedly a subsidiary company of R3/Promoter Company. Anyhow, notices issued by this Authority to R4 were returned unserved and then after completing the substituted service, R4 has been set ex parte in these proceedings as already stated above. According to the Counsel for the Complainants, liquidation has been ordered only against Dewa Projects Private Limited, R3



herein, as per proviso to Section 14(4) of the Insolvency and Bankruptcy Code 2016 but no CIRP proceedings were initiated against R4/M/s. Ansu Enterprises Private Ltd, who owns the land in Plot C5 wherein the half-constructed apartment building agreed to be sold to the Complainants are situated. According to the learned counsel for the Complainants, the Resolution Professional appointed earlier by the Honourable NCLT, Kochi, admitted an amount of INR 40,78,96,594.4 as the amount due to the members of Dewa Investors Association and the Respondents including the Consortium never disputed the admission of the claims of these 66 home buyers who are members of the 1st Complainant into the CoC of R3/Dewa Projects Private Limited.

18. The learned counsel of the Complainants contended that after taking possession under SARFAESAI Act, R2/Union Bank of India hastily proceeded against the sale of plot and then the 1st Complainant approached the Honourable High Court and obtained a judgement holding that the interest of the home buyers is to be protected and amounts due to the home buyers are to be specified in the auction notice and thereafter in the appeal also the Division Bench of the Honourable High Court confirmed partly the above judgement. The learned counsel for the Complainants submitted that the Respondents/Banks herein firstly through a notice published in the Mathrubhumi newspaper on 22-09-2022, attempted to sell the plot C-5, the project land falsely



stating the claim made by the home buyer as only Rs.24.75 Crores, and through another notice in the Hindu newspaper on 06-11-2022 showing the claim made by the home buyers as only Rs.33.50 Crores, whereas the admitted claim as attested by the Liquidator is Rs. 40.78 Crores. According to the Complainants, the Respondents/Banks are wilfully intending to harm the rights of the Complainants and other homebuyers and hence they are apprehending that the entire amounts recovered would be appropriated by the financial institutions without any regard for the claim and interest of the homebuyers.

19. The counsel for the Complainants invited our attention to the judgement of the Hon'ble Supreme Court of India passed in Union bank of India Vs. Rajasthan Real Estate Regulatory & Ors (2022) Live Law (SC) 17, in which it was held that the Real Estate Authority has jurisdiction to entertain complaints from home buyers to protect their rights against banks as secured creditor, if the bank take recourse to any of the provisions contained in SARFAESI Act. The Counsel for the Complainant argued that the project in question has not been completed as on 01.05.2017 and hence it liable to be mandatorily registerable under RERA and the Respondent No.1/ Financial Institutions who had taken possession of the project stepped into the shoes of the promoter and they are bound to register the project under Section 3 of the Act, 2016 as held by the Hon'ble Supreme



Court in Union bank of India Vs. Rajasthan Real Estate Regulatory & Ors (2022) Live Law (SC) 17 dated 14-02-2022. The copy of said judgement is produced by the Counsel for the Complainants. The relevant portion of the judgement is extracted below:

“We are in complete agreement with the view taken by the High Court by which the High Court has ultimately concluded in para 36, as under –

“36. Our conclusions can thus be summarized as under: -

(iii) As held by the Supreme Court in the case of Bikram Chatterji (supra) in the event of conflict between RERA and SARFAESI Act the provisions contained in RERA would prevail.

(iv) RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest has been created by mortgaging the property prior to the introduction of the Act unless and until it is found that the creation of such mortgage or such transaction is fraudulent or collusive.

(v) RERA authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act.”



20. The Complainant's counsel also submitted before us that the rationale for such a finding was also explained in the abovesaid judgement of the Hon'ble High Court of Rajasthan in the case of Union Bank of India (2022) 1 RLW. The relevant portion of said judgement in this context is reproduced hereinbelow:

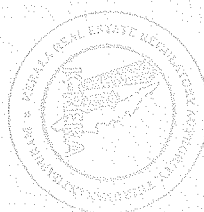
“35.In other words, the moment the bank takes recourse to any of the measures under sub-section (4) of Section 13, it triggers statutory assignment of right of the borrower in the secured creditor. Till this stage arises, the bank or financial institutions in whose favor secured interest may have been created may not be in isolation in absence of the borrower be amenable to the jurisdiction of RERA. However, the moment the bank or the financial institution takes recourse to any of the measures available in sub-section (4) of Section 13 of the SARFAESA Act, RERA authority would have jurisdiction to entertain the complaint filed by an aggrieved person”.

21. As mentioned above, the Hon'ble Supreme Court, in Union Bank of India vs. Rajasthan Real Estate Regulatory Authority and others, has endorsed the views of the Rajasthan High Court, subject to clarification that para 36(v), which has been reproduced hereinabove, shall be applicable where proceedings before the Authority are initiated by home buyers to protect their rights. Nevertheless, it has been noticed that, the Hon'ble Rajasthan High Court held that Act, 2016 would not apply



in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest had been created by mortgaging the property prior to the introduction of the Act, 2016 unless and until it was found that the creation of such mortgage or such transaction is fraudulent or collusive. It was also specified therein that the Authority has jurisdiction to entertain the complaint by an aggrieved person against the bank as a secured creditor, if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act.

22. The learned counsel appeared for the Respondents No. 1&2 contended that the R3/promoter, M/s Dewa Projects Private Ltd and other co-borrowers had defaulted on loans availed from the consortium of banks led by R2/Union Bank of India and so the secured creditors have first charge over the property by way of a mortgage created as early as on 30-03-2006 and they initiated proceedings under the SARFAESI Act in May 2015 to recover the unpaid loan amounts which is in accordance with law and the attempt of the complainants is only to disrupt the recovery proceedings. He submitted that the loan account of the promoters was the highest NPA in the State of Kerala with outstanding of more than Rs. 1,000 crores and the R3/promoters are under liquidation. The learned counsel for R1 &2 submitted that the Complainants/allottees did not initiate any action against the original Promoter so far and no civil suit or arbitration



proceedings were initiated for any grievance against the Promoter or the landowner and their claims are hopelessly barred by limitation. He alleged that at the time of entering into purchase agreements, no NOC was taken from the banks by these allottees. The counsel for R1&2 also relied on the aforementioned judgement of the Hon'ble Supreme Court in Union Bank of India vs. Rajasthan Real Estate Regulatory Authority and others stating that according to the said judgement, "*the Act, 2016 would not apply in relation to the transaction between the borrower and the banks and financial institutions, in cases where security interest had been created by mortgaging the property prior to the introduction of the Act, 2016*" whereas in the instant case, security interest was created on the subject matter property in 2006, which is much prior to the coming into force of the Act, 2016. He also argued that if the Complainants are aggrieved by the recovery measures initiated by the Consortium, they can approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. The Respondents agreed that the R3 and others approached the Members of R1/consortium for financial assistance for the purpose of acquisition and development of the property by constructing commercial complexes and apartments.

23. According to the learned counsel for R1&2, the borrowers emerged as successful bidders for four lots of properties auctioned by GIDA and R4 emerged as successful bidder for plot

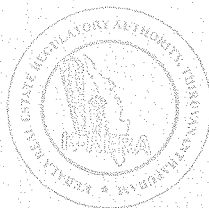


C5 the project land herein and the Banks originally sanctioned a loan of Rs. 265.35 Crores and loan documents were executed on 02-08-2005. The Respondents admit that the loan amount was subsequently enhanced by them to Rs. 366.68 crores on 31-10-2005 and again enhanced to Rs. 477 crores on 27-02-2006 and the agreements specifies that the Consortium will have the first charge over the plot C5 along with the building to be constructed by the borrowers, among other properties. The counsel for the R1 &2 argued that the title deeds were deposited with the Consortium on 30-03-2006 for the purpose of creating an equitable mortgage under Transfer of Property Act, 1882 and by virtue of provisions of loan agreements and TP Act, the charge of Consortium also extends to the building structure constructed on the land and as per decision of the Hon'ble Supreme Court in 2017 (6) SC page 4 it is settled position that the building constructed after mortgage forms part of the secured asset. The counsel for R1 &2 raised contention that in the agreement executed between the Promoter and Complainants/allottees it was specified that said property was already charged with the consortium and the Complainants were aware of the existence of loans availed by the promoters but the Complainants failed to carry out any due diligence or inspect the original title deeds at the time of entering in to agreements and that sale agreements were not registered. According to R1&2, the loan account became NPA and they were forced to issue notice under SARFAESI Act on 02-05-2015 demanding Rs. 514,64,79,707.86/-



as on 31-03-2015 along with future interest from the borrowers. The Counsel for R1&2 pointed out that the Complainants have failed to get any claim against the R4/land owners and as recovery measures are being undertaken under SARFAESI Act, only the Debt recovery Tribunal has jurisdiction to entertain the matter.

24. The Counsel for R1&2 submitted further that the Division Bench of the Hon'ble High Court of Kerala vacated the portion of the judgment of the single bench which held that the Auction purchaser would have to clear the liability of the home buyers and directed the bank to specify in the auction notice the details of the claim made by the home buyers though they were not established. According to him, the claim of homebuyers against R3 is inclusive of interest, the principal claim being Rs. 24,75,67,192/- and the direction of the Hon'ble High Court was to specify the claim of Rs.33.5 in the sale notice and the Consortium cannot show it otherwise unless and until the above direction of the High court is changed either in a review petition or in appeal. Another contention raised by R1 &2 is that the real estate project was abandoned by the promoter in 2013 and gone into liquidation at the instance of 3rd and 4th Complainants hence it is impossible to register the project, now with contractual interest, the amount due to the Consortium has risen to more than 1000 crores.



25. In reply, the learned Counsel for the Complainants argued that even after declaring the loans as NPAs, the banks continued to sanction more amounts and permitted to make them live by disbursing further loans to meet interest payments and the consortium also did not take any steps to initiate securitization proceedings until 2015, even though the accounts were declared an NPA as early as in 2006 which was in violation of the directions the RBI under Master Circular on Willful Defaulters DBR No. CID.BC.22/20.16.003/2015-16 dated July 1, 2015 and prudential banking norms and these actions of R1 & 2 show that creation of mortgage and entire transactions were fraudulent and collusive. The counsel for the Complainants raised serious allegations against the consortium/R1 specifying that as per Article XIII, Clause 13.1 of the Joint Deed of Term Loan Agreement, marked as Exhibit A11 herein, in the event of default in repayment of the principal of the loan amount or the interest, the Consortium shall have unqualified right to disclose or publish the details of the defaulters, the name of the borrowers and its directors as defaulters. But here, instead of publishing information about the defaulters, a full-page advertisement was issued in newspapers stating that the loans were approved by the R2/Union Bank of India to mislead the prospective home buyers and the Union Bank of India issued no clarification against the publication which also shows that the Consortium had been consistently involving in fraudulent transactions. The Counsel for the Complainants

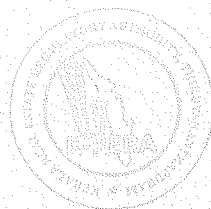


produced copy of the Report submitted by by the Reserve Bank of India, before the Hon'ble High Court. According to him, the said report marked as Exhibit A34, submitted by the RBI specifies the instances of the fraud/ collusion committed by consortium financial institutions. He sturdily argued that R1/ Consortium of banks fraudulently refrained from publishing any details of the default and willfully concealed material information from the public and prospective buyers with an intent to misappropriate the payments made by the innocent homebuyers and a full-page advertisement was issued in newspapers stating that the loans are approved by R2/Union Bank of India to actively mislead prospective homebuyers and the Union Bank of India issued no clarification to the contrary, nor was any action taken by the Union Bank of India against the publication or for revocation of such misleading advertisements which was in violation of Article XIII, Clause 13.1 of the Exhibit A11/Joint Deed of Term Loan Agreement. According to the counsel for the Complainants, had it been declared by the Bank that the project became NPA, the home buyers would not have paid amounts to purchase the apartments there and instead of declaring the account as NPA, further amounts were lent to the promoters in violation of the norms laid down by the RBI, with intent to defraud prospective homebuyers. After repeated oral enquiries in the prospective banks, the Complainants were not informed of the status of NPAs and in the wake of Section 12, it was evident that the actions of the respondents constitute



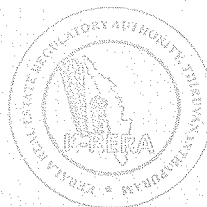
fraudulent, collusive and illegal transactions with the sole intention of extorting money from the allottees and hence the allottees are entitled to get returned the entire investments along with interest by the banks which had now stepped into the shoes of the promoters.

26. With respect to the contention of the Counsel for R1&R2 that the powers of the Authority are limited to violation of Act, 2016 and the above Complaint can be entertained only by a Civil Court or Debt Recovery Tribunal, it is to be clarified that this Authority, as mentioned above, hereby considers the issue with respect to registration of the project in question, under Section 3 of the Act 2016 which is one of the main functions bestowed upon this Authority as specified under Section 34 of the Act 2016 and when it comes to our notice, we have to look in to the matter as to whether any violation of section 3 of the Act 2016 occurred and who is responsible for the violation of such a mandatory provision of law so as to protect the interest of the allottees in such a project. As far as the argument raised on behalf of R1 &R2 that the loan and mortgage in question was created in 2006 much prior to the introduction of the Act, 2016 and hence the above complaint is not maintainable before this Authority, we would refer again the judgement of the Hon'ble Supreme court (supra) in which it was confirmed that "RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest has been created by



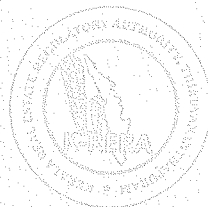
mortgaging the property prior to the introduction of the Act unless and until it is found that the creation of such mortgage or such transaction is fraudulent or collusive.” Hence, it is clear that in case such creation of mortgage or such transactions are found fraudulent or collusive, the Act 2016 becomes applicable. Here, it has been established beyond doubt that the project in question is an ongoing real estate project required to be registered under Section 3 of the Act 2016. As mentioned above, the original promoter R3 is under Liquidation and R1 &2 have taken over possession of the project in the aforementioned circumstances. R4/land owner is set ex-parte.

27. In these circumstances, the remaining questions to be answered herewith so as to come into a conclusion with respect to the Point No. 2 above are 1) “Whether the transactions concerned between the lenders/R1 & R2 and the borrowers were fraudulent or collusive and 2) Whether R1&R2 herein are liable to register the project in question as per Section 3 of the Act, 2016 as claimed by the Complainants herein?” However, the documents placed on record reveal that the creation of mortgage was prior to induction of the Act 2016 and before execution of agreements between the original promoter and the members of the 1st Complainant Association. The copy of agreement for sale executed on 21-08-2013 between R4 and Complainants No. 3&4 is marked as **Exhibit A35** and the copy of agreement for construction



executed on 21-08-2013 between R3 and Complainants No. 3&4 is marked as **Exhibit A36**. Anyhow, it is to be noted that on behalf of R4 in Exhibit A35 and on behalf of R3 in Exhibit A36, the same person, K. Venugopalan Nair executed the agreements respectively as 'Vendor' and 'Developer'.

28. In page 4 of Exhibit A35, it is seen stated that *"the Purchaser has examined the title deeds relating to A schedule property and has satisfied himself of the absolute marketable title thereto of the Vendor."* But in Clause 5 of page 6, it is specified as follows: *"The Vendor assures and declares that it has perfect, lawful, absolute, marketable and alienable right and title to A Schedule property (subject to the charge created in favour of the Consortium of 13 banks led by Union Bank of India for the purpose of completion of this project) and is hence entitled to convey, grant and sell the undivided share described in B schedule property unto the Purchaser with the right of ownership and that subsequent to execution of deed of conveyance with respect to B schedule property, the same shall remain unto the Purchaser and he shall be entitled to peacefully and fully enjoy the same and be entitled to receive profits therefrom without any question, hindrance or interruption by the Vendor or any person whomsoever claiming through or under them.* But in the last part of same Clause No. 5 it is undertaken by the Vendor as follows: *"The Vendor hereby undertakes and declares that the member banks of the Consortium of Banks as referred to above, have undertaken to release the*



charge over A schedule property in pieces proportionate to the undivided shares sold by the Vendor to the prospective purchasers thereof for the purpose of construction of apartments in the aforementioned residential complex to be constructed in the A schedule property as and when the full payments towards the prices of such extents of undivided shares as made over by the prospective purchasers to the Vendor, to be deposited in a designated account.”

Again Clause 6 states as follows: “The Vendor does hereby assure the Purchaser and affirm that the title to the property hereunder agreed to be conveyed shall be free from any encumbrance, charge, lien or deficiency or any manner at the time of execution of the sale deed with respect to the B schedule property.” On perusal of clauses of abovementioned Exhibit A35 agreement for sale, though it was disclosed about the charge over the project land, it was undertaken and assured by the Vendor, R4 herein, it will be released in pieces proportionate to the undivided shares of the Purchasers as and when full payments towards the prices of such extent of undivided shares deposited in a designated account. Moreover, R4/Vendor therein was making assurances through the following clauses that the project property shall be free from any encumbrances, charge, lien, etc. at the time of execution of sale deed. Hence, we cannot appreciate the arguments from the part of the learned Counsel for R1 &2 that the members of the 1st Complainant were well aware of the charge over the project land and principle of ‘Caveat Emptor’ is applicable as the complainants/allottees had knowingly entered



into agreements with the Promoter and proper due diligence was not done by the Complainants/allottees before executing the agreements. Anyhow, admittedly, there was no housing loan taken by the complainants/allottees from R1 &2 and no evidence to the contrary are placed on record such as any Tripartite agreements between the Promoter, allottee and the Bank. As per the above shown clause in the Exhibit A35 agreement for sale, the amounts of consideration paid by the allottees would have been deposited in a separate designated account. Exhibit A37 series are receipts of payments of Complainants No. 3&4 to R3.

29. On a close examination of **Exhibit A34**, Report of RBI submitted before the Hon'ble High Court, it has been found reported in detail separately, the observations with respect to the transactions done by each member bank of R1 Consortium including R2/Union Bank of India, under various heads. As the observation on Union Bank of India (lead Bank), it is reported under the head 'Sanction/disbursement of loan with respect to RBI guidelines', that "*at the time of sanction, financial closure had not been achieved as financial limits/disbursement with other banks had not been ensured. The Promoters were new to the bank and their financial credentials were not known. Dun and Brad Street Credit Report on one of its group companies, viz. Al Ghannam and Nair General Trading and Construction Company was also average. Further, at the time of sanction of the loan by the Bank, the matter regarding allotment of land was pending with the High*



court of Kerala.” Under the head ‘end use of funds’ it is observed that *record keeping of the borrowing company was lax. Example (a) making direct payment to the suppliers of materials without routing through bank accounts (b) not maintaining proper inventory of materials received connected to the accounts (c) the companies practice of payment of bills for purchase of materials was not proper. The borrower paid interest from the proceeds of Term Loan. The auditors also mentioned a few irregularities noted by the company’s statutory auditor such as (a) loans disbursed PNB were not routed through the escrow account with UBI (b) unsecured loan availed were not routed through the escrow account maintained through the UBI and these were accounted as receipts from Mrs. Shobha Venugopalan Nair in the books of the company.*’ It is also reported that while restructuring the account in 2006, the bank had not adhered to then prevailing RBI instructions of making provisions or write off the sacrifice to keep the account in standard category. The bank classified the account as NPA in December 2008 as advised by RBI in its annual financial inception. Subsequently, the bank made attempts to restructure the account but could not do the same due to lack of consensus of the consortium of banks. The loans were sanctioned to new promoters despite the dispute regarding the land pending in High Court and disbursement was made despite of non-achievement of the financial closure. A few deficiencies were also pointed out by the auditors regarding records keeping and manner of payment of construction



materials, not routing the entire funds through escrow account maintained by UPI, etc. It was also observed that the bank made efforts to restructure the account many numbers of times despite existence of such deficiencies. It is also stated that the documents with respect to KYC norms of the directors of the company did not have any evidence of having verified from the originals.

30. We think it is appropriate to mention a gist of the observations made by RBI in the **Exhibit A34** report, with respect to each of the member banks of R1 consortium herein: -

(i) SIDBI – The bank did not ensure the end use of funds and they did not examine the relevant documents independently. The banks solely dependent on the consortium leader and had not appraised/monitored the account independently. It had not conducted independent market enquiries regarding the credentials of the promoters.

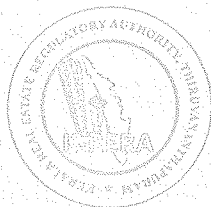
(ii) Oriental Bank of Commerce – The monitoring of the project was not effective which otherwise would have drawn attention towards poor progress in the implementation of the project. Timely intervention by consortium member banks could have avoided time and cost overrun and initiation of timely recovery measures, once stress was identified. There were cash withdrawals amounting to more than 1 crore in the month of April 2008. The bank had not filed any STR/CTR for the account.



(iii) Allahabad Bank – The financial credentials of the borrowers were not available; the bank had not ensured full tie-up of equity at the time of sanction and Deviations from bank's policy guidelines were allowed to the borrower. The bank declared the account as NPA on March 31st 2010 and again upgraded to standard on January 28, 2011. It was observed that the account should have been declared NPA with effect from 30.09.2007 in terms of the master circular. The auditor commented that the payment of interest and other expenses was done by the borrower from the term loan sanctioned by the bank and it should have been met from the own source of the borrower. The borrower has no system of obtaining receipts from beneficiaries of payments and other expenses like air travel etc. non-routing of transactions through consortium bank were observed. The company had not taken any step regarding persisting irregularities as end use of funds pointed out by the auditor.

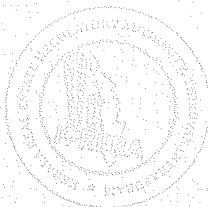
(iv) Indian Overseas Bank – Term Loans were used for payment of interest, documents evidencing end use of funds were not available, verification of documents at the time of sanction of loans was not evidenced. Account was classified as NPA w.e.f from December 31st, 2006.

(v) Punjab National Bank – Account turned NPA on 31.03.2014 due to non-completion of the project. Staff accountability was not examined in the account and the bank did not call on its record, the periodical report from the borrower duly



certified by Chartered Accountant regarding receipts and deployment of funds.

(vi) Indian Bank – Original Loan Application and sanctioned letter were not available at the Bank, Promoter had no track record on similar project, Economic viability study not carried out. One of the directors did not have any personal guarantee despite being part of decision making. An irrevocable registered agreement was not executed in the name of the borrower in violation of the terms and conditions of the loan sanctioned. No undertaking taken from the borrower regarding usage of funds for pure constructional activities. CRZ clearance was not taken by the borrower. Copies of original documents with lead bank not obtained. The account was classified as NPA with effect from 02.05.2007. No internal rating was given, bank relied on lead bank. No details of the margin requirement available. Bank did not ensure that exemption from state government for land holding beyond 15 acres was obtained. Loans sanctioned before clearance from Revenue Department is received. Legal opinion from legal department not obtained, Keyman insurance not obtained, valuation report not obtained, periodical review by CRMP not carried out, insurance of assets in favour of the bank not obtained, with respect to KYC norms, Power of Attorney/Memorandum/Article of Association were not on Banks record, risk categorisation not proper, due diligence on risk profile not documented, KYC documents not periodically updated, PAN



of directors not obtained and address proof of one of the Directors not obtained.

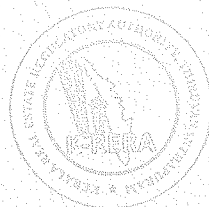
(vii) Federal Bank – Technical viability study of the project was not conducted by the bank before sanctioning of the loan. No record evidencing that the payments made towards expenses incurred for construction of the apartments were based on the progress made on construction. Certificate from the Chartered Accountant of the Company ensuring end use of funds was not obtained. Account was classified as NPA only with effect from 30.09.2008. The condition to obtain a credit report of the Director of the borrowing company and other flag ship firms was not complied with before disbursement of the loans. Audited financials of the company were not available in the records.

(viii) Dena bank – The Bank had deviated from their policy guidelines viz; promoters had not completed three projects as per the scheme, project cost was 597.2 crores against the stipulated maximum project cost of 50 crores under the scheme, prepayment period was 7 years including the moratorium period against the stipulated maximum period of 3 years. Total debt equity ratio and long-term debt equity ratio was 3.96 against the stipulated level of 3:1 and 1.50:1 respectively. Collateral security at 7.12% against the minimum level of 25% under the scheme. Promoters margin was 20% against the stipulated minimum level of 33%. Credit rating score was at 67 marks against the minimum marks of 74 new projects. The banks had not used



end use of funds required under para 2 of the RBI circular dated 14.01.2007. The bank tried to avoid the account to slip to NPA category by frequent re-scheduling/ restructuring and providing FITLs in the account which amounts to evergreening of the account. No independent/market enquiries regarding the credential of the promoter were conducted.

(ix) Vijaya Bank – The deviations reported as (a) the unit had to be in existence for more than 5 years and turn over wise the applicant should be progressive and profit making (b) Collateral of immovable property offered was only 7% of the loan amount as against to the applicable margin amount of 20% of the credit limit sought. Copy of due diligence report of the Directors not found in banks records. The company credentials were not known. No record found on sharing of information among consortium member banks in respect of the account. There was no record found on periodic meetings of consortium member banks held in respect of monitoring of account. There was no record found on periodic unit visits being done by consortium member banks. Despite the appearance of the names of promoters and directors of the company in RBI defaulters list as on 31.03.2012, the Consortium had accepted the proposals for restructuring in January 2013. Despite the borrower defaulted in servicing of the interest on term loans on time, the consortium arrangement had accepted the restructure proposal four times since first sanction of the loan in 2005 till January 2013.

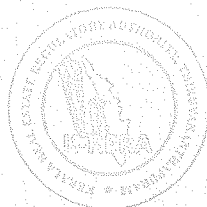


(x) Central Bank of India - Despite the account remained as NPA since September 2009 the bank had participated in the restructuring along with other consortium members and further sanctioned fresh term loans. The bank could not produce end use certificates for any of the term loans sanctioned. The bank had not taken copies of documents from the lead bank for its records. The CBS had downgraded the account on the basis of recovery but the bank had opened a new customer ID and disbursed new term loan as part of restructuring when the existing term loan was doubtful. The bank stated that it could not trace the KYC documents as the account was transferred from Trivandrum to Kochi, however the CBS record showed that the bank had opened three different customer IDs with two different addresses.

(xi) Corporation Bank: Exposure to commercial real estate ventures was assumed without instituting the requisite policy frame work mandated by regulatory guidelines. The sanction process was not satisfactory as violation of regulatory guidelines and suppression and downplaying of adverse features of the proposals were observed. All appraisal notes for sanctions and restructuring did not have any discussions on the purpose of acquiring the vast tract of land in prime location and its use by the company or its promoters which was ample evidence of the speculative intent in its acquisition. The Bank had failed to put in place a Board-mandated policy for exposures to commercial real estate structure delineating sector wise category wise exposure



limit, collaterals acceptable, margins to be maintained, levels and authorities for sanction. It also failed to institute a suitable risk management system for containing risks inherent in the sector and a monitoring mechanism to ensure compliance with the laid down policy by the field level functionaries. The bank also failed to comply with the regulatory guidelines issued by RBI on 29/06/2005. There was prima facie evidence of diversion of funds facilitated by the bank, evidence of unauthorised and impermissible deployment of substantial portion of funds required for the project in stock market was noticed. Advance receipts from prospective buyers were neither properly accounted nor were applied in reduction of bank loans although that was mandatory as per the most important terms of sanction. Adequate post disbursement monitoring and supervision was not ensured. Compliance with prudential IRAC Norms was not strictly followed. The borrowers accounts were classified under standard assets, disregarding the observations during RBI-AFI mandating their down gradation. The loan accounts were restructured four times on 18/11/2006, 26/04/2008, 27/03/2009 and 25/08/2012. Benefits of restructuring were extended to the borrower in circumstances which afforded no reasonable grounds for assuming the projects to be capable of attaining financial viability in reasonable period. Fresh fund-based limits were sanctioned and disbursed as part of restructuring process without ensuring full funds tie-up, financial closure of cost overrun, increasing the

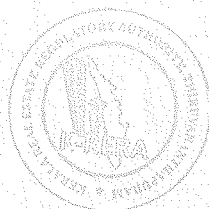


banks' exposure without any addition to the economic value of the venture etc. Compliance with KYC Norms was deficient. Background verification of the borrower company, its associates and beneficial owners was not carried out despite its importance on account of the fact that they were all persons of Indian origin settled abroad. The accounts of the borrowers were not subjected to close monitoring even during the first three months as per the RBI guidelines dated 04/05/1995. The process of identification of suspicious transactions was not initiated in any of the borrowers account as per the RBI circular dated 29/11/2004.

(xii) Andhra Bank: The borrower company was incorporated on 12/04/2005 just before the sanction of the loan and past experience of Company and Directors in the field of construction and development of land was not taken into account or studied before sanction as against the instructions of DBOD.DIR (Housing) dated 01/07/2005 of MC on Housing Finance. The company was given a credit rating of "A" even though the unit was new and no audited balance sheet was available. The litigations pending before the start of the project should have prompted the consortium banks to proceed ahead with caution. A Complaint was received on 30/01/2014 from one C.N Rajan, who is one of the shareholders alleging serious irregularities and misuse of Term loan funds released to the company. The Complainant enclosed documents downloaded from the website of "Special Inspector General of Iraq Rehabilitation" a wing of the



US Army and a document showing the borrower companies as debarred by the United States Justice Department for ten years from 17/08/2008 for bribing US Army officers for securing contracts during the US Iraq war. The names of K Venugopalan Nair and Vasantha Nair also appear as individual names "debarred". The Complainant also alleged that K Venugopalan Nair is not the newly re-elected CMD from 12/04/2008 and a FIR had been registered against him and requested the banks to withhold the permission for the sale of the pledged property. The above Complaint addressed to all the Consortium banks which was not discussed by the member banks in any of the meetings as observed from the minutes and information relating to the meetings. The KYC details were not attested and verified with originals. Account opening form was incomplete with respect to information on credit facilities availed from other banks. Customer due diligence form for the director was incomplete as occupation, educational qualifications, PAN details were not filled up. Risk categorisation was not carried out and threshold limit was not set for the account. The Applicants status was mentioned as NRI whereas no KYC relating to this status was obtained while opening the current account. KYC documents of other guarantors, shareholders of the company and other property owners was not found in the records. No CIBIL reports / Credit ratings were obtained for the borrowers, guarantors and other property owners.



31. From the above, it can be seen that RBI has found out serious violations of its guidelines and circulars committed by all the members banks of R1 Consortium and irregularities all through the transactions with the borrowers including several attempts of these banks to make the account of the borrower evergreen/live by restructuring the loan and disbursing fresh terms loans, even after turning it into NPA much earlier without giving any attention to the end use of the loans. It has been seriously noted the observations in respect of the Corporation Bank that *“there was prima facie evidence of diversion of funds facilitated by the bank, evidence of unauthorised and impermissible deployment of substantial portion of funds required for the project in stock market was noticed. Advance receipts from prospective buyers were neither properly accounted nor were applied in reduction of bank loans although that was mandatory as per the most important terms of sanction. Adequate post disbursement monitoring and supervision was not ensured. Compliance with prudential IRAC Norms was not strictly followed. The borrowers accounts were classified under standard assets disregarding the observations during RBI-AFI mandating their down gradation. The loan accounts were restructured four times on 18/11/2006, 26/04/2008, 27/03/2009 and 25/08/2012.”* Furthermore, the report also pointed out about a complaint from one of the shareholders of the borrower company/Promoter intimating all the banks that the associates of the said promoter



company and the Managing Director and directors were debarred by the United States Justice Department for ten years from 17/08/2008 for bribing US Army officers for securing contracts during the US Iraq war and the Managing Director K Venugopalan Nair is not the newly re-elected CMD from 12/04/2008 and a FIR had been registered against him and the said Complainant requested the banks to withhold the permission for the sale of the pledged property. But the above Complaint addressed to all the Consortium banks was not taken into consideration by any of the banks. It can be seen from the report that the loan was given restructured even after the above happenings in 2008. If these banks had done sincere efforts to make verifications about the financial status and credentials of the borrower company, end use of every amount disbursed to them, such a worst situation could have been avoided and public funds could have been protected. Surprisingly, it is seen from the report that the borrower was even permitted by the Banks to pay interest from a fresh term loan and such a huge amount was given to the borrowers without even obtaining a legal scrutiny report or making proper adherence to the KYC norms. The said report of RBI states repeatedly that the Banks made efforts to restructure the account many times despite existence of severe deficiencies.

32. As far as this Authority is concerned, such an eventuality that in case of default of payment of the loan and



interest by the borrowers/promoters the Bank that has advanced huge loans to the Promoters can declare the Real Estate Project as a Non-Performing Asset i.e. NPA and take over the same, has not been accounted for by the Act 2016. But undoubtedly, this can leave the Allottees in a lurch as developer will cease to be a Promoter within the meaning of the Act and the Banks are outside the purview/jurisdiction of the Authority, as happened in this case. Hence we have decided to intervene in this matter, as pointed out above.

33. The term "**Promoter**" is defined in **Section 2(zk)(i)** of the Act 2016 as under: -

"Promoter" means *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees*; The Legal Dictionaries have defined "assignment" as taking over any right, one has over an estate and "Assignment" of rights and liabilities under the law can be either by way of contract of the parties or by operation of law such as when a party dies or becomes bankrupt. The Haryana Real Estate Regulatory Authority ("HARERA") has explored this question in depth in the case of *Deepak Chowdhary vs PNB Housing Finance Ltd. & Ors., 2145 of 2020* wherein it was discussed at length whether a bank/financial institution could be treated as a Promoter under the definition of Section 2(zk) of the



Act. However, it was noted by the Ld. Authority that “the definition of the “Promoter” under the RERA Act includes “its assignees”. “Assignees” as defined in legal parlance is complete transfer of rights to receive benefits accruing to one party. It was observed that the lender caused the project to be constructed by giving a construction loan to develop the project which in turn would be sold and the receivables would be used to generate revenues with which the loan of the lender could be repaid. In return, the Promoter assigned its rights in the Project to consolidate its risk.

34. In a landmark judgement of V. Chandrasekar., and another Vs. The Administrative Officer and Other [Civil Appeals No. 5342,63,13 of 2012] the Hon’ble Supreme Court has held that “*The general rule of law is undoubtedly, that no one can transfer a better title than he himself possess; “Nemo dat quod non habet”* However, this Rule has certain exceptions and one of them is, that the transfer must be in good faith or value, and there must be no misrepresentation or fraud, which would render the transactions as void and also that the property is purchased after taking reasonable care to ascertain that the transferee has the requisite power to transfer the said land, and finally that the parties have acted in good faith, as is required under section 41 of the Transfer of property Act, 1882”.

35. In its judgement dated 14.12.2021 in Union Bank of India vs Rajasthan Real Estate Regulatory Authority,



passed in a similar case, which was upheld by the Hon'ble Supreme Court of India as referred above, the Hon'ble Rajasthan High Court observed in the following manner:

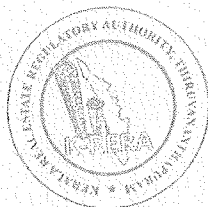
Para 30. "The term "assignee" has not been defined anywhere in the Act. We would therefore have to interpret the term as it is ordinarily understood in the legal parlance in the context of the provisions of RERA Act. The Advance Law Lexicon by P. Ramanatha Aiyar expands the term "assignee" as to grant,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

Para 31. With this background we may refer to a relevant provision under the SARFAESI Act. As is well known this Act defines the term "security agreement" to mean an agreement, instrument or any other document or arrangement under which security interest is created in favour of secured creditor. The term "secured asset" is defined as to mean the property in which security interest is created. The term "Secured creditor" has also been defined as to the institution in whose favour security interest



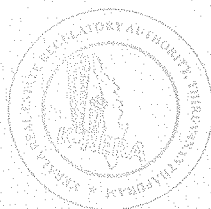
is created by any borrower for repayment of any financial assistance.

Para 32. Chapter III of the SARFAESI Act pertains to enforcement of security interest. Under said Chapter sub-section (1) of Section 13 provides that notwithstanding anything contained in Section 69 and Section 69A of the Transfer of Property Act, any security interest created in favour of the secured creditor may be enforced without the intervention of the Court or tribunal by such creditor in accordance with the provisions of the Act. Sub-section (2) of Section 13 envisages issuance of notice by the secured creditor to a borrower whose asset has been classified as non-performing asset. Such notice would require the borrower to discharge the liability in full failing which the secured creditor would be entitled to exercise or any of the rights under sub-section (4). In sub-section (3) of Section 13 the notice referred to in sub-section (2) has to contain details of amount payable by the borrower and the secured asset intended to be enforced in the event of non-payment of secured debts by the borrower. Sub-section (3) of Section 13 envisages disposal of the objections by the borrower if raised in response to the notice under sub-section (2). Sub-section (4) of Section 13 which is of importance to us reads as under:- "(4) in case of the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:- (a) take possession of the secured assets



of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset: Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: Provided further that where the management of whole, of the business or part of the business is severable, the security creditor shall take over the management of such business of the borrower which is relatable to the security or the debt; (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor; (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

Para 33. In terms of SARFAESI Act and particularly Section 13, once a borrower is unable to repay the debt and the asset is classified as non-performing asset, it is open for the secured creditor to enforce the rights without intervention of the Court. After issuance of notice under Section 13(2) and disposing of the objections of (57 of 60) [CW-13688/2021] the borrower in terms of Section 13 (3A), a secured creditor could proceed to take steps



as envisaged in sub-section (4). These measures which a secured creditor can take include taking possession of the secured asset including right to transfer by way of lease, assignment or sale for realising the secured asset; to take over the management of business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; appoint any person to manage the secured assets the possession of which has been taken over by the secured creditor and require at any time any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower to pay the secured creditor so much of the money as is sufficient to pay secured debt.

Para 34. Clauses (a) to (c) of sub-section (4) are all in the nature of rights that a secured creditor can exercise which originally vest in the borrower. Clause (d) on the other hand, is in the nature of a garnishee enabling the secured creditor to recover the dues from a person other than the borrower who has acquired any of the secured assets and from whom any money is due or may become due to the borrower.

Para 35. Clauses (a), (b) and (c) of sub-section (4) of Section 13 vest power in the secured creditor to take all steps as the borrower himself could take in relation to the secured asset. Clause (d) goes a step further and enables the bank to recover its dues directly from a debtor or the borrower who has acquired any of the secured assets. For all purposes thus the secured creditor steps in the shoes



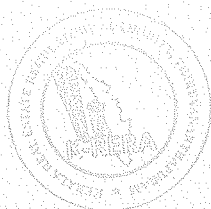
of the borrower in relation to the secured asset. This is thus a case of assignment of rights of the borrower in the secured creditor by operation of law. In other words, the moment the bank takes recourse to any of the measures under sub-section (4) of Section 13, it triggers statutory assignment of right of the borrower in the secured creditor. Till this stage arises the bank or financial institutions in whose favour secured interest may have been created may not be in isolation in absence of the borrower be amenable to the jurisdiction of RERA. However, the moment the bank or the financial institution takes recourse to any of the measures available in sub-section (4) of Section 13 of the SARFAESI Act, RERA authority would have jurisdiction to entertain the complaint filed by an aggrieved person.

36. In the similar perspective, in one of its landmark judgements passed in *Bikram Chatterjee vs. Union of India*, the Hon'ble Supreme Court made the following remarkable observations:

Para. 97:The Noida and Greater Noida Authorities and the Bankers have permitted diversion of funds of home-buyers and the possession of other assets by Amrapali Group. The buyers' money had been diverted, which was meant for construction on payment of dues of Authorities in case they were paid timely by the Amrapali Group to the Authorities and to the Banks substantively liability would have been cleared. But by their inaction and rather



conniving, the buyers were cheated by the Amrapali 222 Group. Authorities did not object when mortgages were effected in favour of Banks in violation of conditions. Bankers could not have violated conditions. Now, whatever complete/incomplete structures are there, the Authorities are claiming that buyers have no right and they have the first charge on the structure as they have to recover the amount, only thereafter if anything is left out, can be paid to the buyers. In case the submission is accepted, it would amount to playing further fraud upon the fraud. It was incumbent upon the Authorities as well as the Banks to prevent the fraud. Now, if Banks, as well as the Authorities, are permitted to recover the amount from the home-buyers' investment, in that case, it would be equally unjust and would be against the conscience of the law and nothing would be left for buyers not even a brick and the structures have come up by investing their money. Law never permits unjust gain based upon fraud. 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 huge money will be collected from home buyers by the builder, banks would act in connivance and the 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 223 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.

"Para 150: The banks have also failed to ensure that the money was used in the projects".

"Para 153: We have also found that non-payment of dues of the Noida and Greater Noida Authorities and the banks cannot come in the way of occupation of flats by home buyers as money of home buyers has been diverted due to the inaction of Officials of Noida/Greater Noida Authorities. They cannot sell the buildings or demolish them nor can enforce the charge against homebuyers/leased land/projects in the facts of the case. Similarly, the bank Cannot recover money from projects as it has not been invested in projects and Homebuyers' money has been diverted fraudulently, thus fraud cannot be perpetuated against them by selling the flats and depriving them of hard-earned money and saving of entire life. They cannot be cheated once over again by sale of the project raised by their funds."



37. With respect to the unfortunate felonious actions from the part of the financial institutions and other Authorities concerned, the Hon'ble Apex Court made remarks in para 141 of the above said judgement which we think appropriate to be reproduced herein below:

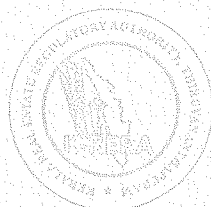
“.....It goes to indicate how at large-scale middle-class home buyers have been defrauded of their hard-earned money, taken away by the affluents and the officials in connivance with each other. Law has to book all of them. We are hopeful that law will spread its tentacular octave to catch all culprits responsible for such kind of fraud causing deprivation to home buyers. It is shocking and surprising that so many projects have remained incomplete. Several lakhs of home buyers have been cheated. As if there is no machinery of law left to take care of such situation and no fear left with the promoters/builders that such acts are not perceivable in a civilised society. Accountability is must on the part of everybody, every institution and in every activity. We fail to understand the standard of observance of the duties by public authorities has gone so down that such frauds take place openly, blatantly, and whatever legal rights exist only on papers and people can be cheated on such wide scale openly, brazenly and with the knowledge of all concerned. There is duty enjoined under the RERA, there has to be a Central Advisory Council as well as the role of the State Government is not ousted in order to protect against such frauds. We direct the Central Government and the State Government to take appropriate steps



on the time-bound basis to do the needful, all other such 260 cases where the projects have remained incomplete and home buyers have been cheated in an aforesaid manner, it should be ensured that they are provided houses. The home buyers cannot be made to suffer when we are governed by law and have protective machinery. Question is of will power to extend the clutches of law to do the needful. We hope and trust that hope and expectation of home buyers are not going to be belied.”

38. Here in this case before us, Exhibit A34 Report of RBI reveals that the transactions between R1/ Consortium of financial institutions and the R3/Promoter & its Associates were fraudulent and collusive and resultantly, the Complainants/allottees who invested huge amounts in the project are left in lurch. Hence, in view of facts and findings detailed in the foregoing paragraphs, we hold that the Respondent No. 1 is an assignee of Respondent No. 3 enjoying possession of the project property and accordingly Respondent No. 1 become the Promoter by operation of law for the limited purpose of mediating transfer of the project by virtue of falling under the definition of Promoter as an assignee. Point No. 2 is answered accordingly.

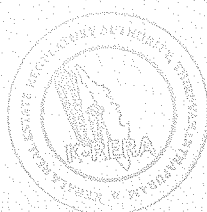
39. The Complainants produced copy of Auction Notice issued by the Respondent No. 1 for sale of the project which is marked as Exhibit A29. The project in question, being an ongoing real estate project falls under the ambit of the Act 2016, is mandatorily required to be registered as per Section 3 of the Act



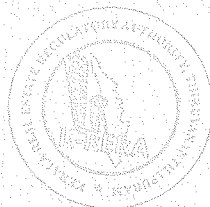
2016 as already held above. As the project is not yet registered, the project must be registered before this Authority and moreover, as the project is proposed to be auctioned to third party for which prior approval of the Authority and 2/3rd consent of the allottees is mandatorily required as per the provisions of Section 15 of the Act 2016. Section 15(1) Stipulates as follows:

15(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."

40. Hence, before seeking prior approval of this Authority to transfer the project to a third party, firstly the project shall get registered. However, it is now an undisputed fact that the Respondent No. 1 is entitled under Section 13(4) of SARFAESI Act to enforce its security for recovery of its dues. Yet, as per the provisions of the Act 2016, the interests of the allottees are to be protected and safeguarded by this Authority. Hence, in the interest of the allottees, it is to be ensured that the Respondent No. 1 shall make all necessary disclosures with respect to the outstanding liabilities in the real estate project and the incumbent promoter i.e; the incoming promoter who may buy the real estate project in such auction shall



have full and complete knowledge about all liabilities associated with the project and therefore an obligation is cast upon the Respondent No. 1 to make full and complete disclosure regarding the same in its auction notice. We hereby clarify that the Authority is in no way against the auction of the project by Respondent No. 1/Lenders. Nevertheless, it shall first submit application for registration of the project and submit all relevant documents before the Authority and undertake to satisfy the Authority to the extent that interest of all the allottees who have invested their hard-earned money shall not be jeopardized. Thereafter, at the time of transferring the project to a third party, being the Promoter as stated above, the Respondent No.1 shall take prior permission from the Authority as per the provisions of Section 15 of the Act 2016 and subsequently the Transferee shall become the Promoter with respect to all the obligations and liabilities towards the Complainant/allottees. As stated above, at present the Respondent No. 1 has become the Promoter by operation of law, by virtue of falling under the definition of promoter as “assignee”, for the limited purpose of mediating transfer of the project. After transfer of the project to a third party, Respondent No.1 can make necessary changes in the registration web portal by replacing with the details of the incumbent Promoter who will be responsible for the completion of the project and all the obligations under the Act 2016.



41. Based on the above factual as well as legal positions, this Authority by invoking Section 37 of the Act, 2016, directs as follows:

- 1) The Respondent No.1 shall register the project “DEWA PIER – 20” before this Authority as per Section 3 of the Act, 2016 within **one month** from the date of receipt of this order;
- 2) The Respondent No. 1 shall make full and complete disclosure of all the outstanding liabilities with respect to the Project in its Auction Notice;
- 3) At the time of transferring the project to a third party, being the Promoter as stated above, the Respondent No.1 shall take prior permission from the Authority as per the provisions of Section 15 of the Act 2016.

Case is posted to 21-12-2023 at 3 PM

Sd/-
Preetha P. Menon,
Member.

Sd/-
Sri. P. H. Kurian,
Chairman

True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX**Exhibits marked on the side of the Complainants**

Exhibit A1: The copy of judgement dated 20.03.2018 in WP(C)
No.34521 of 2017.

Exhibit A2: The copy of judgement dated 03.01.2019 in WA 999
of 2018,

Exhibit A3: The copy of order dated 13.09.2019 of the Hon'ble
NCLT, Kochi in IBA 23/KOB/2019,

Exhibit A3(a): The copy of order dated 25/11/21 in IA(IBC)
87/KOB/21

Exhibit A4: The copy of list of claims admitted by the Liquidator,

Exhibit A5: The copy of Notice dated 14 February 2022 issued
under Rule 8(6) and 9 of the Security Interest
(Enforcement) Rules, 2002 by Union Bank,

Exhibit A6: The copy of judgement dated 04.08.2022 in
W.P(C)8054/2022.

Exhibit A7: The copy of sale notice dated 22.09.2022 by Union
Bank.

Exhibit A8: The copy of notice dated 03.11.2022, published in the
newspaper, The Hindu,

Exhibit A9: The copy of agreement dated 27.02.2006 by Union
Bank and other consortium Banks

Exhibit A10. The copy of irrevocable Power of Attorney dated
13.07.200



Exhibit A11: The copy of Joint Deed of Term Loan Agreement
dated 27.02.2006

Exhibit A11(a): Copy of sale deed dated 27.03.2006 in favour of
M/s. Ansu Enterprises.

Exhibit A12: The copy of sale deed dated 27.03.2006 in favour of
the Hotel Venus International.

Exhibit A12(a): The copy of sale deed dated 27.03.2006 in favour
of Mr. K. Venugopalan Nair.

Exhibit A13: The copy of memorandum of deposit of title deed
dated 31.03.2006 executed by M/s Ansu Enterprises.

Exhibit A14: The copy of memorandum of deposit of title deed
Dated 31.03.2006 executed by M/s Hotel Venus
International.

Exhibit A15: The copy of memorandum of deposit of title deed
dated 31.03.2006 executed by
Mr. K. Venugopalan Nair.

Exhibit A16: The copy of supplementary term loan agreement dated
21.03.2007,

Exhibit A17: The copy of deed of partnership dated 17.02.2010
(some pages missing)

Exhibit A18: The copy of articles of association of Ansu
Enterprises Private Ltd,

Exhibit A19: The copy of resolution dated 15.09.2010,



- Exhibit A20: The copy of application submitted by the Ansu Enterprises Private Ltd to the Village officer for effecting transfer of registry.
- Exhibit A21: The copy of Thandapper extract No 18875.
- Exhibit A22: The copy of tax receipt evidencing payment of tax in the name of M/s. Ansu Enterprises.
- Exhibit A23: The copy of details of the payments made in relation to the 101 apartments.
- Exhibit A24: The copy of judgement of this Hon'ble High Court dated 02.12.2015 in WP(C) 19773 of 2015.
- Exhibit A25: The copy of Judgement dated 30.03.2017 in R.P No. 939/2016.
- Exhibit A26: The copy of proceedings dated 23.09.2017 in S.A No. 181 of 2017.
- Exhibit A27: The copy of written statement dated 22.09.2017 in S.A No. 181 of 2017.
- Exhibit A28: The copy of additional written statement dated 12.10.2017 in S.A No. 181 of 2017.
- Exhibit A29: The copy of auction notice dated 19.08.2017.
- Exhibit A30: The copy of letter dated 19.02.2022 issued by the Liquidator of Dewa Projects Private Limited.
- Exhibit A31: The copy of minutes of the SCC meetings held on 16.09.2022.
- Exhibit A32: The copy of list of home buyers admitted by the Liquidator of Dewa Project Pvt Ltd.



- Exhibit A33: The copy of advertisement in media.
- Exhibit A34: The copy of scrutiny report/ observation made by RBI
in the conduct of account of Dewa projects.
- Exhibit A35: The copy of agreement for sale executed on
21-08-2013 Respondents 3 and 4.
- Exhibit A36: The copy of agreement for construction executed on
21-08- 2013 with Respondents 3 and 4.
- Exhibit A37 series : The copies of payment receipts.

Exhibits marked on the side of the Respondents 1 and 2

- Exhibit B1- The True copy of the order of the Hon'ble
Supreme Court in Union Bank of India vs.
Rajasthan Real Estate Regulatory Authority
and others (S.L.A(C) Nos. 1861-1871/2022).
- Exhibit B2- The copy of joint deed of Term Loan
Agreement dated 02-08-2005.
- Exhibit B3- The copy of joint deed of Term Loan
Agreement dated 31-10-2005.
- Exhibit B4- The copy of joint deed of Term Loan
Agreement dated 27-02-2006.
- Exhibit B5- True copy of memorandum of Title Deed in
respect of plot No C5 dated 31-03-2006.

