

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-3057-2019

Date of Decision: 1.3.2019

Tata Capital Housing Finance Limited, Mumbai

...Petitioner

Versus

The Deputy Commissioner-cum-District Magistrate, Chandigarh

...Respondent

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Munish Thakur, Advocate for the petitioner.

Mr. Sanjiv Ghai, Addl. Govt. Pleader, UT, Chandigarh with  
Ms. Shubreet Kaur, Advocate for the respondent.

**AJAY KUMAR MITTAL, J.**

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of mandamus directing the respondent to take a decision on the application dated 19.11.2018 (Annexure P-13) moved under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “the SARFAESI Act”).

2. The petitioner is a Non-Banking Housing Finance Company having registration certificate dated 2.4.2009 (Annexure P-2) and has been declared to be a Financial Institution under the SARFAESI Act vide notification dated 18.12.2015 (Annexure P-3). One Shri Mohinder Singh vide applications dated 15.3.2016 (Annexure P-4 Colly) requested the

21-A, Chandigarh. Vide sanction letters dated 31.3.2016 (Annexure P-5 Colly), a sum of ₹ 62,60,000/- and ₹ 11,00,000/-, respectively were sanctioned in his favour against loan account Nos. 9624000 and 9624941. Two loan agreements dated 31.3.2016 (Annexure P-6 Colly) were executed between the petitioner and the borrowers at Chandigarh and an equitable mortgage was created against the property, i.e. House No.32, 2<sup>nd</sup> Floor, Sector 21-A, Chandigarh in favour of the petitioner by the borrowers as is clear from the ownership documents including the sale deed dated 9.5.2014 and transfer certificate dated 26.8.2015 (Annexure P-7 Colly). At the time of getting the mortgage executed in its favour, the petitioner vide letter dated 7.9.2016 (Annexure P-8) requested the Estate Officer, UT, Chandigarh to issue 'No Objection Certificate' for the transaction who vide reply stated that 'No Objection Certificate' is not required as the property was a 'Freehold property' and the owner was free to dispose of the property in any manner. However, the borrowers had defaulted in repayment of loan amount and the cheques issued by them started bouncing one after another and, therefore, their accounts were declared as Non-Performing Accounts (NPA) on 9.3.2018 as is clear from the NPA certificate dated 9.3.2018 (Annexure P-9). The notice dated 19.4.2018 (Annexure P-10) under Section 13(2) of the SARFAESI Act was issued to the borrowers through registered post and the same was also got published in two leading newspapers as is clear from the newspaper clippings dated 26.4.2018 (Annexure P-11 Colly). Since, the borrowers failed to make the loan amount in question, the petitioner took symbolic possession of the mortgaged property vide possession notice dated 27.6.2018 (Annexure P-12) under Section 13(4) of the SARFAESI Act. The possession notice was sent to the borrowers on

2.7.2018 by registered AD post and was also got duly published as is clear from the postal receipts (Annexure P-12). Thereafter, the petitioner filed an application dated 19.11.2018 (Annexure P-13) under Section 14 of the SARFAESI Act before the respondent for taking physical possession of the mortgaged property, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved an application dated 19.11.2018 (Annexure P-13) under Section 14 of the SARFAESI Act before the respondent, but no action has so far been taken thereon. However, learned counsel for the respondent has pointed out that the next date fixed is 7.3.2019.

4. After hearing learned counsel for the parties, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing the respondent to take a decision on the application dated 19.11.2018 (Annexure P-13), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the concerned parties within a period of one month from the date of receipt of the certified copy of the order.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**March 1, 2019**  
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**(MANJARI NEHRU KAUL)**  
**JUDGE**

**Whether Speaking/Reasoned**

**Yes/No**

**Whether Reportable**

**Yes/No**