

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-8216-2019

Date of Decision: 28.3.2019

Rajwinder Kaur Thukral and others

...Petitioners

Versus

The Authorized Officer, State Bank of India, Panchkula and others

...Respondents

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

PRESENT: Mr. RPS Ahluwalia, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ of mandamus directing respondent No.1 to decide their representation dated 27.9.2018 (Annexure P-15).

2. The petitioners had entered into sale agreements (Annexures P-2 to P-7, respectively) with respondent No.3 for purchasing flats at Mahaluxmi Homes, Wadhwa Nagar, Dhakoli, District SAS Nagar. Respondent No.3 had categorically mentioned that the said flats were free from all sorts of encumbrances, including mortgage/loan in the sale agreements and also produced a copy of jamabandi dated 9.12.2014 (Annexure P-1) showing no encumbrances thereon. The petitioners were handed over physical possession of their respective flats by respondents No.3 and 7. They are residing in their respective flats. When respondent

agreements, the petitioners insisted for return of their earnest money. Respondent No.3 issued cheques (Annexure P-8 Colly) from her another account in the name of her proprietor firm towards returning of earnest money. On presentation of the said cheques in the respective banks, the same were returned unpaid with the remarks 'Funds Insufficient'. However, on the request of respondent No.3 for execution of sale deeds in favour of the petitioners, the date was extended upto 10.10.2018. Respondent No.3 moved an application before the PSPCL, Zirakpur for disconnecting the electricity of four flats where families of the petitioners were residing and were paying the bills regularly. The petitioners deposited the security amount for transfer of the said electricity connections in their names. The PSPCL had accepted the security amount for transferring the said power connections in the names of the petitioners as is clear from the receipts (Annexure P-9 Colly). On 25.7.2018, the officials of the Revenue Department and the officers of respondent No.1 along with the police officials came to get the possession of the flats of the petitioners and asked the petitioners to hand over the physical possession of the flats in compliance with the order dated 1.6.2018 (Annexure P-11) passed by the Additional District Magistrate, SAS Nagar. They also supplied a copy of the possession notice published in the newspaper Hindustan Times dated 11.5.2017 (Annexure P-10). The land upon which the flats had been constructed was equitably mortgaged with the State Bank of India in loan account of M/s Suhana International-respondent No.2 by respondent No.3 who stood as guarantor for the said loan facility with respondent No.1. The said account had become NPA and as per the possession notice, an amount of ₹ 1,32,34,656/- was due as on 31.12.2016. Further, another property

owned by respondents No.4 and 5 was also mortgaged with respondent No.1 against the same loan facility and respondent No.3 had concealed the said fact from the petitioners at the time of entering into agreement to sell. The petitioners filed complaints dated 26.7.2018 (Annexure P-12 Colly) before the Senior Superintendent of Police, District SAS Nagar. The petitioners were never served upon the notices under Sections 13(2) and 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. As per the latest jamabandi for the year 2014-15 (Annexure P-13) obtained by the petitioners in respect of the aforesaid property, the same is mortgaged with State Bank of Patiala (now State Bank of India), Sector 5, Panchkula for ₹ 1,25,00,000/- vide rapat No.10 dated 7.9.2015. On the stipulated date, respondent No.3 failed to execute the sale deed in favour of the petitioners and the petitioners were present in the office of Sub-Registrar, Zirakpur with balance sale consideration as is clear from the affidavit of petitioner No.1 dated 11.10.2018 (Annexure P-14) duly attested by Naib Tehsildar. Accordingly, the petitioners moved a representation dated 27.9.2018 (Annexure P-15) to respondent No.1 for recalling the order of the District Magistrate, SAS Nagar and to release the sale deeds of the immovable property, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioners have sent a representation dated 27.9.2018 (Annexure P-15) to respondent No.1, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the

case, we dispose of the present petition by directing respondent No.1 to take a decision on the representation dated 27.9.2018 (Annexure P-15), 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 28, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No