IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 14889 of 2018
Decided on : 16.01.2019

Sandeep Dodhaan and others

. . . Petitioner(s)

Versus

Canara Bank and others

. . . Respondent(s)

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

PRESENT: Mr. Deepak Vashishth, Advocate
for the petitioner(s) (in CWP Nos. 14889 & 29956 of 2018).

Mr. R.S. Randhawa, Advocate
for the petitioner(s) (in CWP No. 16979 of 2018).

Mr. Rakesh Gupta, Advocate
for respondent No.1 (in CWP No. 14889 of 2018).

Mr. V.K. Sachdeva, Advocate
for respondent No.2 (in CWP No. 16979 of 2018).

Ms. Mamta Singla Talwar, DAG, Haryana.

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AJAY KUMAR MITTAL, J. (Oral)

This order shall dispose of Civil Writ Petitions No. 14889, 16979 & 29956 of 2018, as according to the learned counsel for the parties, the issue involved therein is identical. However, the facts are being extracted from CWP No. 14889 of 2018.

2. The petitioners are claiming themselves to be the purchasers of flats built by respondent No.2 for which they had availed the loan facilities from various Banks/Financial Institutions after no objection from the builder-respondent No.2, prior to the creation of the equitable mortgage on the said land. It was claimed by the petitioners that the possession of the flats has also been delivered to them.

3. Respondent No.2 for the purpose of availing the loan facilities from respondent No.1 – Bank on 26th September, 2013 mortgaged the land, on which the flats were being constructed. Earlier, the land in dispute had been mortgaged with

the Union Bank of India, who had issued NOC in 2010, in respect of the flats, which had been constructed over the disputed land and had been purchased by the petitioners. Accordingly, the flats are in possession of the present petitioners.

4. As per the averments made in the writ petition, respondent No.2 defaulted in payment of the term loan and accordingly, respondent No.1 had issued the demand notice in the name of respondent No.2 demanding back of ₹1,04,22,53,000/- along with interest and costs. Accordingly, respondent No.1 – Bank issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for brevity 'the Act') dated 20th February, 2017 to respondent No.2 requiring them to pay the outstanding amount as noticed therein, which was due as on 31st January, 2017 with future interest and incidental expenses and costs. It has been claimed that no such notice was served by respondent No.1 on the petitioners, though they were mandatorily required to be informed accordingly by way of some notice. Thereafter, notice under Section 13(4) of the Act was issued on 27th November, 2017 and the Bank had taken the symbolic possession of the flats of the petitioners, which were not mortgaged with respondent No.1 – Bank. The said action had prompted the petitioners to approach this Court by way of Civil Writ Petition under Articles 226/227 of the Constitution of India, impugning the notice dated 27th November, 2017 (Annexure P-10), issued by respondent No.1.

5. Learned counsel for the petitioners submitted that the petitioners had deposited the entire sale consideration which was payable to respondent No.2 and therefore, no amount is outstanding against the petitioners. The question of initiating the recovery proceedings under Section 13(4) of the Act against the petitioners was illegal and void.

6. Upon notice of motion having been issued, Mr. Rakesh Gupta,

Advocate, has put in appearance on behalf of respondent No.1 – Bank. However, no one has put in appearance on behalf of respondent No.2.

7. Learned counsel for the respondent-Bank(s) submitted that the flat owners in favour of whom the 'Deed of Conveyance' has already been executed, no action, has been initiated against them. It was claimed by the learned counsel for the Bank that action has been initiated against those, where no 'Deed of Conveyance' had been executed and amount of installments payable to respondent No.2-builder are outstanding. The learned counsel further candidly submitted that the petitioners can individually approach the Bank with a representation along with supporting documents to substantiate their claim that they had made the payments to the builder or deposited the installments with the Bank. All the cases shall be individually examined by the competent authority of the Bank and no action shall be initiated or taken against the flat owners till the individual representation filed by the petitioners is decided by the Bank. Learned counsel for respondent No.1 – Bank (in CWP Nos. 14889 & 29956 of 2018) and respondent No.2 – Bank (in CWP No. 16979 of 2018) prayed that a time bound direction be issued to the petitioners to file their respective representations.

8. After hearing learned counsel for the parties, perusing the averments made in the writ petition and without expressing any opinion on the merits of the controversy, we dispose of the present writ petition by permitting the petitioners to individually file their detail and comprehensive representations along with supporting documents/material to substantiate their claims regarding the payments made by them and clearing the outstanding dues by them to the respondent-bank within a period of three months from the date of receipt of certified copy of this order. It is, however, clarified that the respondent-Bank shall examine the representations on individual basis as stated by Sh. Rakesh Gupta and Sh. V.K.

Sachdeva, learned counsel representing the respondent-Banks before this Court and decide the same after affording an opportunity of personal hearing to the representationists and by passing a speaking order, in accordance with law. It is, further, clarified that till the representations filed by the petitioners are decided, no action for taking physical possession shall be initiated by the respondent-Bank.

9. Learned counsel for respondent No.1 – Bank submitted that permission be granted to sell the flats, which are not occupied or allotted to any of the petitioners or any other allottee. Needless to say that it shall be open for the respondent-Bank to take action in respect of those flats, which have not been allotted or are lying vacant, in accordance with law. It is also directed that any other person aggrieved in respect of these flats, other than the petitioners, may also approach the respondent-Bank along with the representation. The respondent-bank shall adopt the similar procedure while disposing of the said representation, which shall be taken by it on the aforesaid representations. The respondent-Bank shall make endeavour to decide the representations expeditiously in a time bound manner.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

January 16, 2019
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No