IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21313 of 2018

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Asha Mishra Mother of Rakesh Kumar, wife of Deo Kishore Mishra Resident of of Saket Vihar Mitra Mandal Colony,West of D.11,Phulwari,Patna

... ... Petitioner/s

Versus

1. The Assistant General Manager, State Bank Of India, RACPC, 1st Floor Patna Main Branch Building, West Gandhi Maidan, Patna – 800 001.
2. The Assistant Chief Manager, State Bank of India, Secretariat Branch, Patna
3. Horizon Concept Pvt. Ltd. Residential Group Housing Called Iridia a Company having its registration Office at 8/13 Ist Floor,Jangpura,Extension,New Delhi-110014j and Corporate Office at B-181 Sector 2 Noida,201301 UP Representative and assigns through its authorized signatory Suninder Sandha

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Damodar Prasad Tiwary, Advocate
For the Respondent/s : Mr. Kaushlendra Kumar Sinha

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT
Date : 20-08-2025

1. The writ petition is filed for the following reliefs:

> “ I. That the respondents may be directed to hand over the residential flat bearing Unit no.1004 on tenth floor at Tower no Blue measuring about 1500 Sq.ft. Super Area (Approximately) in Iridia Sector 86 Noida Uttar Pradesh in complete and vacant possession to the petitioner.
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> II. That in the case of failure by the respondents to hand over the flat in favour of the petitioner a direction may be

issued by the Hon'ble Court to the Respondent to return the entire paid amount to the tune of Rs.28,99,308/- (Twenty eight lacs ninety nine thousand three hundred eight) with interest to the petitioner.

III. That order issued by the respondent no.1 dated 20.09.2018 contained in Annexure-9 may be quashed.

IV. That the petitioner prays for any other relief or reliefs as this Hon'ble may deem fit and proper."

2. Further by way of filing I.A. No. 1 of 2019 in the present Writ petition, the petitioner has prayed for following relief:

"for quashing the order dated 09.10.2019 passed by the Chief Manager State Bank of India, Patna in which it has been mentioned that son of the petitioner (Rakesh Kumar) has been asked to pay the full payment of outstanding amount of Rs.27,32,807/- the Bank failing which the Bank will institute appropriate legal proceeding against him for recovery of the amount with cost and the immovable properties mortgaged to the Bank will be brought to sell as per the law.”

3. The the case of the petitioner, in brief, is that the son of the petitioner, Mr. Rakesh Kumar, came to know about a residential housing project called *Iridia*, developed by Horizon Concept Pvt. Ltd., through an advertisement published in *The Times of India* on 23.03.2013. It is submitted that based on representations made by the Directors, employees of the builder and the project’s approval by the State Bank of India (SBI), Mr. Rakesh Kumar booked Flat No. 1004 on the 10th floor of Tower Blue, measuring approximately 1500 sq. ft., in Sector 86, Noida, U.P. It is further submitted that the Director and employees of the project made the following inducement to the petitioner's son which is noted below:

(A) The project is coming up at the land which is free hold property instead of leased hold property from Noida authority,

(B) All the approvals for the project have been taken from the concerned authority,

(C) The project has been approved by the various financial institution including the State Bank of India for finance and,

(D) They gave a copy of the letter dated 19.07.2013 issued by the State Bank of India to Horizan Buildcon Pvt. regarding clearance of the Project for finance.

4. The Learned counsel for the petitioner submitted that a Builder-Buyer Agreement was executed between Horizon Concept Pvt. Ltd. and Mr. Rakesh Kumar and, thereafter, State Bank of India sanctioned a home loan of Rs.50,00,000/- in his favour on 07.04.2014, and disbursement was made directly to the builder. It is further contended that Mr. Rakesh Kumar executed the Power of Attorney in favour of his mother namely, Asha Mishra to execute loan-related documents, as he went abroad for employment.

5. The Learned counsel for the petitioner submitted that the petitioner's son has paid the following amounts towards the flat:

(i) Rs.5,72,150/- as booking amount on 04.02.2014.

(ii) Rs.24,80,053/- towards the 1st to 5th installments.

(iii) Rs.4,19,255/- towards the 6th installment on 24.07.2014.

6. It is further submitted that later the Noida Authority stopped construction of the said project, stating that the land was notified for industrial development under the U.P. Industrial Area Development Act, 1976, and construction of residential units was illegal. As a result, no flat was delivered to the petitioner or her son, despite regular EMI payment of Rs.30,276/- being made to State Bank of India.

7. The Learned counsel for the petitioner vehemently submitted that the State Bank of India had duly approved the Iridia housing project and permitted the builder to use its name and logo for advertisement and for promotional purposes vide letter dated 06.03.2013. It is submitted that, acting in good faith and relying upon the due diligence allegedly conducted by the Bank, in relation to the land title and statutory approvals, the petitioner's

son booked a flat in the said project. Despite the project being stalled and construction remaining incomplete, the Bank issued a demand notice dated 20.09.2018 to the petitioner's son, calling upon him to make further payment.

8. The Learned counsel for the petitioner further submitted that the loan sanctioned by the State Bank of India was, in substance, a financial facility extended to the builder, and not a direct loan to the flat buyer. It was argued that the Bank ought to recover the disbursed loan amount from the builder and not from the petitioner or her son, who are merely flat buyers and bona fide consumers.

9. In support of the petitioner's case, reliance has been placed upon the judgment of the Hon'ble Supreme Court rendered in Writ Petition (Civil) No. 940 of 2017 (Bikram Chatterji & Ors. Vs. Union of India & Ors.).

10. Per contra, the Learned counsel for the respondent-State Bank of India brought to the notice of the Court, a judgment dated 18.02.2023

passed in OA Case No. 40 of 2021 (State Bank of India vs. Rakesh Kumar & Ors.), wherein the present petitioner was also arrayed as one of the defendants.

11. It was submitted on behalf of the Bank that an application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 was filed against the petitioner, her son, and the builder for recovery of dues amounting to Rs.32,99,398.98 as on 24.07.2020, along with pendente lite and future interest at the contractual rate from 25.07.2020, till the date of realization, with costs. The respondent-Bank further submitted that despite issuance of registered summons/notices and publication of notice in the newspaper, none of the defendants appeared before the Debts Recovery Tribunal (DRT), Patna. Sufficient time was granted by the Tribunal; however, in the absence of appearance by the defendants, the matter proceeded ex parte.

12. The relevant portion of the ex parte judgment passed by the DRT in OA Case No. 40 of

2021 is reproduced hereinbelow for better appreciation:

> "In the result, the application of the applicant bank is, allowed ex- parte and debt is determined with costs against the defendants. The defendants is hereby jointly and severally, ordered to pay the applicant bank it's debts amounting to Rs.32,99,398.98 alongwith pendente-lite and future interest @9.10% p.a. with compounded monthly rests from 1.10.2020 (The date of filing of this O.A.) till realization of the entire sum due and recoverable with costs.
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> It is made clear that any amount deposited by the defendants, be deducted in the claim amount, if not deducted.
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> Defendants are debarred from transferring, alienating encumbering or otherwise dealing with or disposing of the mortgaged or hypothecated or any other properties and assets without paying the

aforesaid adjudicated dues to the applicant bank to secure the ends of justice.

Let a certificate of recovery be drawn up forthwith and put up for signatures in terms of provisions contained in Section 19(22) of the Act to be issued, on the basis of the order of the Tribunal to the Recovery Officer. The Recovery Officer shall realize the amount as per the certificate in the manner and mode prescribed under the Act from the defendants, by sale of mortgaged/ hypothecated assets as well as other personal movable/immovable assets of the defendants.

Parties are directed to appear before the Recovery Officer, DRT, Patna on 30.3.2023. The order be communicated accordingly."

13. The Learned counsel for the respondent-Bank further submitted that the present matter is purely a civil dispute between the Bank and its customer, does not warrant

interference under Article 226 of the Constitution of India. It is further submitted that the petitioner is at liberty to avail appropriate remedies before the competent civil forum, including the appellate forum, under the Recovery of Debts and Bankruptcy Act.

14. Heard the Learned counsel for the petitioner as well as the Learned counsel for the State Bank of India and perused the records.

15. On perusal of the Writ petition as well as the order passed by the Debts Recovery Trinunal, Patna in OA Case No. 40 of 2021, it is evident that it is purely a civil dispute between the petitioner and the Bank and the private respondent No. 3. The petitioner has as an alternative remedy to challenge the orders before the DRAT, if she is aggrieved by the orders of the DRT.

16. The case relied upon by the Learned counsel for the petitioner i.e. Writ Petition (Civil) No. 940 of 2017 does not apply to the facts and circumstances of the present case.

17. In the case of **PHR Invent**

Educational Society v. UCO Bank and Others (Civil Appeal No. 4845 of 2024), their Lordships of the Apex Court have held as follows:

> *"Ordinarily the High Court would not entertain a petition u/Art. 226 if an effective remedy is available to the aggrieved person..."*

18. Likewise, in the matter of **Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. and Ors.,** reported in **(2024) 2 SCC 1**, their Lordships of the Apex Court have held as follows:-

> *"**97**. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act ..."*

19. In the case of **United Bank of India v. Satyawati Tondon and Ors.** reported in **(2010) 8 SCC 110**, their Lordships of the Apex Court have held as follows:-

> *"**43**. ... the High Court overlooked the settled law that the*

High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions …"

It is further held:-

"… the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

20. The Hon'ble Apex Court, in the aforesaid judgments, has categorically held that the High Courts cannot entertain a writ petition under Article 226 of the Constitution when an effective alternative remedy is available to the aggrieved person.

21. The writ petition is, accordingly, dismissed as not maintainable in light of the law laid down by the Hon'ble Supreme Court of India in the aforementioned judgments.

22. The petitioner may approach the appropriate forum in accordance with the law laid down by the Hon'ble Supreme Court of India as stated supra.

23. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.09.2025
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