

[2022 LiveLaw \(SC\) 171](#)

IN THE SUPREME COURT OF INDIA

M.R. SHAH; B.V. NAGARATHNA, JJ.

Petition for Special Leave to Appeal (C) Nos.1861-1871/2022; Date : 14-02-2022

UNION BANK OF INDIA

VERSUS

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY & ORS. ETC. ETC.

Real Estate (Regulation and Development) Act, 2016 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - 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 - This shall be applicable in a case where proceedings before the RERA authority are initiated by the home buyers to protect their rights.

Real Estate (Regulation and Development) Act, 2016 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - In the event of conflict between RERA and SARFAESI Act the provisions contained in RERA would prevail.

Real Estate (Regulation and Development) Act, 2016 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - 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 - This shall be applicable in a case where proceedings before the RERA authority are initiated by the home buyers to protect their rights.

Real Estate (Regulation and Development) Act, 2016 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - 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.

Real Estate (Regulation and Development) Act, 2016 - Rajasthan Real Estate Regulatory Authority Regulations, 2017- Regulation 9 - Regulation 9 of the Regulations of 2017 is not ultra vires the Act or is otherwise not invalid - The delegation of powers in the single member of RERA to decide complaints filed under the Act even otherwise flows from Section 81 of the Act and such delegation can be made in absence of Regulation 9 also.

(Arising out of impugned final judgment and order dated 14-12-2021 in DBCWP No. 13688/2021 14-12-2021 in DBCWP No. 13758/2021 14-12-2021 in DBCWP No. 13768/2021 14-12-2021 in DBCWP No. 13774/2021 14-12-2021 in DBCWP No. 13775/2021 14-12-2021 in DBCWP No. 13801/2021 14-12-2021 in DBCWP No. 13817/2021 14-12-2021 in DBCWP No. 13823/2021 14-12-2021 in DBCWP No. 13825/2021 14-12-2021 in DBCWP No. 13857/2021 14-12-2021 in DBCWP No. 13864/2021 passed by the High Court Of Judicature For Rajasthan At Jaipur)

For Petitioner(s) : Mr. Tushar Mehta, SG Mr. O. P. Gaggar, AOR Mr. Aditya Gaggar Adv.

For Respondent(s) : Mr. Ritin Rai, Sr. Adv. Ms. Liz Mathew, AOR Mr. Navneet R , Adv. Mr. Mohit Khandelwal, Adv Ms. Gunjan Mathur, Adv UPON hearing the counsel the Court made the following

ORDER

We have heard Shri Tushar Mehta, learned Solicitor General appearing on behalf of the petitioner/Bank and Shri Ritin Rai, learned senior counsel appearing on behalf of one of the respondents/Caveator/one of the home buyers.

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 summarised as under:-

(i) Regulation 9 of the Regulations of 2017 is not ultra vires the Act or is otherwise not invalid.

(ii) The delegation of powers in the single member of RERA to decide complaints filed under the Act even otherwise flows from Section 81 of the Act and such delegation can be made in absence of Regulation 9 also.

(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.”

However, it is clarified that para 36(v) reproduced hereinabove shall be applicable in a case where proceedings before the RERA authority are initiated by the home buyers to protect their rights. With this, the Special Leave Petitions are dismissed.

Pending application(s) shall stand disposed of.

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