

IN THE DEBTS RECOVERY TRIBUNAL AT AURANGABAD

SECURITIZATION APPLICATION NO. _____ OF 2016

Shree Osiya Builders
A partnership firm having its office at
Gurudev Residency, Ground Floor,
Opp. John's School, Jalna
Through its partner
Mr. Ankush S/o Mukesh Gupta,
Age: 28 years, Occupation: Business,
Resident of : C/o As Above.

.....APPLICANT

VERSUS

1] State Bank of India,
Kandivali Industrial Estate Branch,
Near Hindustan Naka,
Government Industrial Estate, Plot No. 11/AB,
Kandivali, Mumbai-400 067,
Through Authorised officer.

2] Ketan Shah Industries Limited Liability Partnership,
A LLP firm having its office at,
CTS No. 4088/6, Nath Nagar,
Mantha Road, Jalna -431 203,
Through its Partner
Mr. Ketan Vinodkumar Shah,
Age: 42 Years, Occ.: Business,
Resident of : As Above.

...RESPONDENTS.

**AN APPLICATION UNDER SECTION 17 OF THE SECURITISATION
AND RECONSTRUCTION OF FINANCIAL ASSETS AND
ENFORCEMENT OF SECURITY INTEREST ACT 2002.**

1] NAME AND ADDRESS OF THE APPLICANT :-

Shree Osiya Builder A Partnership firm Having its office at Gurudev Residency, Ground Floor, Opp. John's School, Jalna Through its partner Mr. Ankush S/o Mukesh Gupta, Resident of : C/o Gurudev Residency, Ground Floor, Opp. John's School, Jalna.

2] NAME AND ADDRESS OF THE RESPONDENTS:-

A] State Bank of India, Kandivali Industrial Estate Branch, Near Hindustan Naka, Government Industrial Estate, Plot No. 11/AB, Kandivali, Mumbai-400 067, Through its Authorised officer.

B] Ketan Shah Industries Limited Liability Partnership, A LLP firm having its office at CTS No. 4088/6, Nath Nagar, Mantha Road, Jalna -431 203, Through its Partner Mr. Ketan Vinodkumar Shah, Resident of : As aforesaid.

3] JURISDICTION : The respondent bank has initiated action under section 13 [4] of the Securitization Act allegedly by taking over possession of the alleged security interest created in its favour of the properties i.e.

- i] All that piece or parcel of land bearing CTS No. 4088/6 admeasuring about 450 sq. meters and property No. 1-28/4088/6 situated at Jalna Tq. and Dist. Jalna.
- ii] All that piece or parcel of land bearing CTS No. 4055 admeasuring about 6816.1 sq. meters, Survey No. 261 situated at Jalna Tq. and Dist. Jalna.
- iii] Land and Building and Construction thereon at CTS No. 4016 admeasuring approx. 629.60 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- iv] Land and Building and Construction thereon at CTS No. 4017 admeasuring approx. 893.60 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- v] Land and Building and Construction thereon at CTS No. 2894 admeasuring approx. 883.50 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- vi] Plot No. 13 in construction thereon, CTS No. 2862/468 in survey No. 555, Nirmal Nagar, Mantha Road (Chaufuli), Near Green Gold City Project, Off Jalna- Hyderabad, Tq. and dist. Jalna,

The present applicant firm respectfully submits that out of the aforesaid properties stated from serial No. [i] to [vi] it is having right, title and interest in and over the properties stated at serial No. [iii], [iv] and [v] stated above. The applicant firm is restricting the scope of the present S.A. limited to the extent of the said three properties only i.e. the said three properties stated at serial No. [iii], [iv] and [v] above. [Hereinafter referred to as the "said properties"]. The said properties are situated within the territorial jurisdiction of this Honourable Tribunal, as such this Hon'ble Tribunal has got every jurisdiction to try entertain and decide the present application.

4] LIMITATION :- The present applicant / third party has got the knowledge on 24-06-2016 that the respondent bank has taken possession of the said properties under section 13 [4] of the Securitization Act after getting copy of the reply notice dated 20-06-2016 addressed by the respondent No.1 bank to Advocate Sitaram M. Dhanawat. It is respectfully submitted that the present applicant firm has entered into a contract with the respondent No.2 for developing the said properties by way of carrying out construction over the said properties in the nature of shops, flats for residential purposes. One of the proposed purchaser had agreed to purchase one flat from the present applicant. The said proposed purchaser had published an advertisement in local news paper " Anand Nagari " Jalna Edition on 10-06-2016 thereby inviting objections if any for completion of the sale transaction. A copy of the said newspaper publication alongwith translation thereof is enclosed herewith for the kind perusal of this Honourable Tribunal and marked as **Annexure " A "**. The sale transaction mentioned in said publication has been objected by the respondent NO.1 bank by giving its reply dated 20-06-2016. A copy of the said letter issued / objection raised by the respondent bank is enclosed herewith for the kind perusal of this Honourable Tribunal and marked as **Annexure " B "**. The said reply was further forwarded by the said prospective purchaser to the present applicant as such the present applicant on 24-06-2016 for the first time got knowledge about the action / measures initiated by the respondent bank in respect of the said properties. The applicant submits that from the date of knowledge of the said action under section 13 [4] of the SARFAESI Act the present application is moved within Limitation period of 45 days. Further the applicant submits that no notice of possession has been served upon the present applicant by the respondent bank.

5] **FACTS OF THE CASE AND GROUNDS OF APPLICATION:-**

i] The present applicant is a third party and is not concerned with the loan account of the respondent No.2 with the respondent No.1 bank. The present applicant is neither the borrower nor a guarantor nor a mortgagor of the said property.

ii] It is the brief case of the present applicant firm is that it has entered into a development agreement on 14-07-2014 with the respondent No.2. By the said development agreement the applicant firm has agreed to develop the said properties i.e.

- a] Plot Property bearing CTS No. 4016 admeasuring approx. **893.60** Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- b] Plot bearing CTS No. 4017 admeasuring approx. **810.00** Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- c] Plot bearing CTS No. 2894 admeasuring approx. 883.50 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.

The said development agreement is duly registered with the office of sub registrar at Jalna-3 on 14-07-2014. A copy of the said development agreement is enclosed herewith for the kind perusal of this Honourable Tribunal and marked as Annexure " C ".

iii] It is respectfully submitted that at the time of entering into the development agreement the present applicant firm also had obtained search report in respect of the said properties from advocate. After entering into development agreement the present third party applicant has carried out construction of a huge building comprising of 47 number of residential flats over the said properties. It would not be out of place to mention here that the necessary permissions for commencement of the construction are duly obtained by the present third party and the plans of the construction are duly sanctioned by the competent authorities.

iv] In pursuance to the said development agreement the owner and builder agreed to retain area of the superstructure in the ratio of 50 : 50. The ascertainment of the flats to be allocated to the share of the owner and the builder i.e

the present third party was done by executing a registered deed of rectification. The said deed of rectification is duly enclosed herewith for the kind perusal of this Honourable Tribunal and marked as Annexure “ D ”.

a] According to the said deed of rectification the flats allotted to the share of the present third party developer are bearing flat No. 4 [3 BHK], 5, 6, 7, 105, 106, 107, 205, 206, 207, 304 [3 BHK], 305, 306, 307, 404 [3 BHK], 405, 406, 407, 408 [3 BHK], 505, 506, 507 and 508 [3 BHK] situated at the building known as Krishna Residency, C.T.S. No. 4016,4017 and 2894 at Jalna. Barring the said flats specifically stated to be of 3 BHK the rest of the flats are of 2 BHK.

b] So also according to the said deed of rectification the flats allotted to the share of the owner i.e. the respondent No.2, are bearing flat No. 1, 2, 3, 101, 102, 103, 104 [3 BHK], 108 [3 BHK], 201, 202, 203, 204 [3 BHK], 208 [3 BHK], 301, 302, 303, 304 [3 BHK], 308 [3 BHK], 401, 402, 403, 501, 502, 503, 504 [3 BHK] situated at the building known as Krishna Residency, C.T.S. No. 4016,4017 and 2894 at Jalna. Barring the said flats specifically stated to be of 3 BHK the rest of the flats are of 2 BHK.

The further details of all the flats e.g. area, floors etc. are all given in detail in the deed of rectification read with the development agreement stated herein above.

v] The partners of the present third party developer in pursuance to the execution of the development agreement are also given powers by the respondent No.2 to enter into sale transactions in respect of the flats constructed over the said plot properties i.e. CTS No. 4016, 4017 and 2894 Jalna. An irrevocable power of attorney to that effect is duly registered before the sub registrar No.3 at Jalna and is registered with the said authority at day book serial No. 1685 dated 24-06-2016. A copy of the registered irrevocable power of attorney executed by the respondent No.2 in favour of the present third party developer is enclosed herewith for the kind perusal of this Honourable Tribunal and marked as Annexure “ E ”

- vi] It would not be out of place to mention here that on the basis of the power entrusted upon the present third party developer firm has executed sale deeds in respect of some the newly constructed flat properties in favour of third party flat purchasers. The said third party flat purchasers are occupying the said flats.
- vii] The respondent No.2 has kept the present developer firm and its partners in dark about the loan transaction entered into between the respondent No.2 and the respondent No.1 bank. The present applicant / third party has got the knowledge on 24-06-2016 that the respondent bank has taken possession of the said properties under section 13 [4] of the Securitization Act after getting copy of the reply notice dated 20-06-2016 addressed by the respondent No.1 bank to Advocate Sitaram M. Dhanawat. It is respectfully submitted that one of the proposed purchaser had agreed to purchase one flat from the present applicant. The said proposed purchaser had published an advertisement in local news paper " Anand Nagari " Jalna Edition on 10-06-2016 thereby inviting objections if any for completion of the sale transaction. The sale transaction mentioned in said publication has been objected by the respondent NO.1 bank by giving its reply dated 20-06-2016. The said reply was further forwarded by the said prospective purchaser to the present applicant as such the present applicant on 24-06-2016 for the first time got knowledge about the action / measures initiated by the respondent bank in respect of the said properties.
- viii] In view of the fact that the construction is carried out by the present applicant over the said plot properties there is a value addition to the said plots. As on date as per the prevailing government valuation the said plots alongwith the construction of the flats is taken into consideration values at about 4000 Rs. Per Sq, Meters meaning thereby the collective valuation of the said properties even as per the Government Valuation would come to about Rs. 4 Crores/-.
- ix] Taking into consideration the value addition done by the present third party applicant to the said plots and taking into consideration the recovery action initiated by the respondent No.1 bank against the said properties the present applicant respectfully submits that the flats allotted to the share of the present applicant firm which are taken in symbolic possession by the Authorised Officer of the respondent No.1 bank under the SARFAESI Act may kindly be released.

The present applicant firm intends to continue the remaining construction for timely completion of the project. The applicant firm apprehends that in case the project is not completed as per schedule the present third party applicant will have to unnecessarily face further legal consequences in the nature of consumer cases, suits for damages, etc. which will spoil the goodwill and reputation of the applicant firm.

x] The applicant firm further respectfully submits that even if the said flats allotted to the share of the applicant firm are released the same will not be detrimental to the interest of the bank because the a] the bank has already got adequate security in its hands by way of mortgage of the properties stated at serial No. [i] [ii] and [vi] in para No. 3 herein above. So also the flats allotted to the share of the owners as stated in para No. iv [b] above and b] there is value addition done in multiples done to the valuation of the said plots taken for development. At the time when the said plots No. C.T.S. No. 4016, 4017 and 2894 were given as security by way of mortgage if the valuation was [X] today it has become [4 X] taking into consideration the new building constructed over it.

xi] In the backdrop of the aforesaid circumstances it is further submitted that even if the measures under the SARFAESI Act are continued against the flats allotted to the share of the owner i.e. respondent No.2 the present applicant does not have any objection for the same. However it is brought to the notice of this Honourable Tribunal that out of the said flats allotted to the share of the owner / respondent No.2 it has further transferred some of the flats in favour of third parties by executing registered sale deeds. The present applicant has knowledge about execution of one such sale deed i.e. registered sale deed pertaining to flat No. 203 Second Floor, bearing day book serial No. 1968 dated 11-05-2016 executed and registered before sub registrar No. 3 Jalna.

xii] The present applicant is unnecessarily been dragged in the proceedings initiated by the respondent No.1 under the SARFAESI Act which has created hurdles in the continuation and completion of the construction activities. In order to resolve the issues immediately urgent decisions and time action on behalf of the respondent No.1 bank is also expected. The applicant hereby would like to fairly place its proposal before this Honourable Tribunal as well as before the

respondents for working out an immediate solution in the given set of circumstances. The applicant would like to suggest that a fair price of each of the flats allotted to the share of the respondent No.2 can be worked out, otherwise also the respondent No.1 by this time was under obligation to get the valuation done of the said properties. If appropriate price is arrived at by the respondent bank taking into consideration the cost of construction being incurred by the applicant firm, the applicant firm may take immediate steps to purchase the said flats directly from the authorized officer of the respondent No.1 with the consent of the respondent No.2 as per the provisions of Rule 8 [6] of the Security Interest [Enforcement] Rules. The respondents No. 1 and 2 may kindly be directed to file their immediately Say in this regard also.

xii] It would not be out of place to mention here that in the revenue records in respect of the said properties C.T.S No. 4016, 4017 and 2894 no where disclosed the charge of the respondent No.1 over it. The said properties are as on date stands amalgamated and now the P.R card of CTS No. 2894 only is kept open A copy of latest P.R. Card of each of the said C.T.S. numbers as well as the latest P.R card of CTS No. 2894 are enclosed herewith for the kind perusal of this Honourable Tribunal and marked as **Annexure "F"**, "**F-1**", and "**F-2**" alongwith amalgamation map respectively.

xiii] On 24-06-2016 the present applicant was shocked and surprised to note from the bank's letter about the charge by way of mortgage being created by the respondent No.2 in favour of the respondent No.1 bank. The present applicant is challenging the very measures initiated by the respondent No.1 of allegedly taking possession of the said properties, alleged to have been initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and the rules there under. The applicant respectfully submits that the respondent No.1 and its alleged authorized officer have committed irregularities by allegedly taking the possession of the said properties even.

xiv] It is respectfully submitted that, the very action of taking possession is bad in law. The measures taken by the respondent No.1 which is/are under challenge i.e. the action of taking possession of the said flat property, are *per se* illegal and without any right or authority. Under the circumstances the applicant respectfully

submit that such a practice adopted by the authorized officer initiating action without getting itself satisfied about the ground realities amounts to illegalities. If at all the authorized officer might have visited on site he would have certainly come across to see a huge construction standing upon the said properties. The construction over the said properties is being done since past two and half years. It cannot be believed that the respondent bank is not aware about the construction being done at site. Suffice is to state here that the measures are initiated in the chamber of the bank officers without paying visit to the site. Secondly the possession notice ought to have been served on the present applicant firm because the possession under the development agreement was handed over by the respondent No.2 to the present applicant. If the possession under the SARFAESI Act is to be taken by the respondent No.1 it could take it from the present applicant only. No notice of possession was ever given and / or served upon the present applicant. The respondent No.1 has proceeded ahead to sheer misuse the powers given to it under the Securitisation Act. The said action of the respondent No.1 and its officers has resulted in stress and pressure on the applicant and its partners. It would not be out of place to mention here that the present applicant has sustained monetary loss as there is delay in completion of project and the prospective purchasers have turned back so also the applicant is saddled by court fees, advocates fees etc. which are required to initiate present application.

The irregularities committed by the respondent No.1 at the time of alleged possession action which could be gathered from the perusal of the following grounds:-

i] No possession notice is affixed at site nor the same is delivered to the present applicant. It is respectfully submitted that the present applicant was and is in actual possession of the said properties since the date of execution of the development agreement by the respondent No.1. The alleged action of taking over possession of the said property at the hands of the alleged Authorised Officer of the respondent No.1 is nothing but an action of taking over possession on papers only. The said action of taking over possession was never proclaimed at site.

ii] If at all the possession of the said properties could have been taken by the respondent No.1 it ought to have and could have taken the same from the present applicant only and not from any other third person. The respondent No.1 nowhere has stated from whom it has taken the possession of the said properties. In the absence of the said factual details the alleged action of taking over possession of the said properties itself is bad in law and is conducted unfairly.

iii] No notice of possession is served upon the present applicant.

The applicant craves leave and liberty of this Honourable Tribunal to add, alter, amend any of the contents of this application if need to do so arises, with the leave of this Honourable Tribunal.

Under the circumstances it would be in the fitness of the things and in the interest of justice to hold the action initiated by the respondent No.1 through its alleged authorised officer, of taking over possession of the said properties :

- i] Land and Building / Construction thereon at CTS No. 4016 admeasuring approx. 629.60 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- ii] Land and Building / Construction thereon at CTS No. 4017 admeasuring approx. 893.60 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- iii] Land and Building /Construction thereon at CTS No. 2894 admeasuring approx. 883.50 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.

alleged to be under section 13 [2] of the SARFAESI Act, is illegal; and the said actions may kindly be quashed and set aside, and release its possession thereof in favour of the present applicant.

6] RELIEFS SOUGHT :-

- a] The present application be allowed and
- b] It be held that the action initiated by the respondent No.1 through its alleged authorised officer, of taking over possession of the said properties i.e.

- i] Land and Building / Construction thereon at CTS No. 4016 admeasuring approx. 629.60 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- ii] Land and Building / Construction thereon at CTS No. 4017 admeasuring approx. 893.60 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- iii] Land and Building /Construction thereon at CTS No. 2894 admeasuring approx. 883.50 Sq. meters, Near Sahyadri Hospital, Sahyadri Hospital Mission Road, off main post office Road, Talreja Nagar, Jalna.
- c] The respondent No.1 bank and its authorized officer be directed to release its possession over the following flat properties which are allotted to the share of the present applicant firm :-
- a] Flat No. 4 [3 BHK], 5, 6, 7, 105, 106, 107, 205, 206, 207, 304 [3 BHK], 305, 306, 307, 404 [3 BHK] , 405, 406, 407, 408 [3 BHK], 505, 506, 507, 508 [3 BHK] situated at the building known as Krishna Residency, C.T.S. No. 4016,4017 and 2894 at Jalna.
- d] Pending hearing and final disposal of this application the respondent No.1 may kindly be restrained by an order of injunction, from alienating or creating any third party right, title or interest in and over the said flat properties stated in para [c] above, in favour of any third party and
- e] Any other suitable or equitable relief may kindly be granted in favour of the present applicant for which he is found fit under the circumstances and oblige.

7] INTERIM RELIEFS PRAYED FOR:-

A] pending hearing and final disposal of this application the respondent No.1 may kindly be restrained by an order of injunction, from alienating or creating any third party right, title or interest in and over the following mentioned properties, in favour of any third party

a] Flat No. 4 [3 BHK], 5, 6, 7, 105, 106, 107, 205, 206, 207, 304 [3 BHK], 305, 306, 307, 404 [3 BHK] , 405, 406, 407, 408 [3 BHK], 505, 506, 507, 508 [3 BHK] situated at the building known as Krishna Residency, C.T.S. No. 4016,4017 and 2894 at Jalna.

B] Any other suitable or equitable interim relief may kindly be granted in favour of the present applicant for which he it found fit and entitled for under the circumstances of the case and oblige.

8] MATTER NOT PENDING WITH ANY OTHER COURT : The applicant respectfully submits that as per the knowledge of the applicant firm no matter pertaining to the cause of action of which this application has been made is pending before any other court of law or any other authority or any other bench or Tribunal.

9] PARTICULARS OF BANK DRAFT IN RESPECT OF COURT FEES:-

Demand Draft No. _____ dated ___-07-2016 for an amount of Rs. _____/- Drawn In Favour of "REGISTRAR D.R.T., AURANGABAD" payable at Aurangabad. The applicant is neither a borrower not a guarantor as such being third party the fees is computed accordingly.

10] DETAILS OF INDEX :- A detail index of the documents is enclosed herewith.

11] LIST OF ENCLOSURES :- A list of documents is enclosed herewith.

12] No notice of caveat is received by the applicant.

13] The applicants undertake to supply translation of Marathi Documents to English.

14] The applicants undertake to supply duly addressed full size envelopes and copies of SA and documents for all the respondents.

Date : 22-07-2016
Submitted by

Applicant

K.B. DESHPANDE
Advocate.

Shree Osiya Builders
Through its Partner
Mr. Ankush S/o Mukesh Gupta

VERIFICATION

I, Mr. Ankush S/o Mukesh Gupta, Age : 28 years, Occ : Business partner of Shree Osiya Builder, Resident of : C/o Gaurav Residency, Ground Floor, Opp. Saint Johns School, Jalna, do hereby state on oath that the contents of this application are true and correct to the best of my knowledge and belief, hence verified on this 22nd day of July 2016 at Aurangabad.

Deponent/ Applicant

Explained and
Identified by

Shree Osiya Builders
Through its Partner
Mr. Ankush S/o Mukesh Gupta

K. B. DESHPANDE
Advocate