

MahaRERA Orders Honest Shelters to Transfer Flats to IIFL

Introduction

Honest Shelters Pvt. Ltd. is a Mumbai-based real estate developer that acquired the long-delayed Palais Royale project in Worli through a SARFAESI e-auction in 2019 and became the new RERA-registered promoter. IIFL Finance Ltd. (India Infoline Finance Ltd.), a leading NBFC, became the successor-allottee for several flats after the original buyers assigned their rights to it through a transfer-cum-assignment deed, asserting their entitlement to possession and RERA protections.

Fact of the case:

The Palais Royale project in Worli had been delayed for many years. The original promoter, SRUIL, became financially insolvent, and the project was purchased by Honest Shelters Pvt. Ltd. in 2019 through an e-auction conducted under the SARFAESI Act. After this acquisition, all responsibilities for completing the project shifted to Honest Shelters. Meanwhile, several flats had already been purchased by the original homebuyers, and due to loan defaults, their rights were transferred to IIFL Finance Ltd. (hereinafter, referred as 'IIFL') through a deed of transfer-cum-assignment. As a result, IIFL became the legal successor-allottee for those units. Due to non-handover of possession, IIFL filed a complaint before MahaRERA. Honest Shelters argued that IIFL was merely a finance company and not an "allottee," and also claimed that some payment receipts were missing. After reviewing all the documents, MahaRERA concluded that:

- The original allottees had paid the full consideration amount.
- Their rights were legally transferred to IIFL.
- The promoter's termination notice was invalid.
- The promoter had delayed handing over possession.

Accordingly, in its order dated 16 January 2025, MahaRERA directed Honest Shelters to hand over possession of 6-8 flats, along with delay interest until actual possession, and to deliver possession with the Occupancy Certificate (OC). When the promoter failed to comply, IIFL filed an execution application. Acting on this, the MahaRERA adjudicating officer issued recovery warrants, ordering recovery of approximately ₹90-100 crore (mostly delay interest). For one flat alone, delay interest amounted to ₹33.61 crore and the delay interest will continue to accrue until possession is actually handed over.

Issues Before the Tribunal

1. Whether a financial institution/lender (IIFL) can claim priority rights over mortgaged units even when homebuyers' rights under RERA are affected.
2. Does Section 34 & 37 of RERA allow the Authority to issue directions that override a bank's security interest?
3. Are homebuyers' claims for possession/compensation stronger than a lender's charge on the project?

Appellant Arguments (India Infoline Finance Ltd)

The original homebuyers transferred their rights to IIFL through a deed of transfer-cum-assignment. Because of this, IIFL has become the successor-allottee of the original buyers.

Therefore, under RERA, IIFL receives all legal rights of an allottee, including the right to obtain information and the right to receive possession. So, IIFL is entitled to get possession of the flats. Honest Shelters has not given possession, and therefore, under RERA, they must hand it over. Honest Shelters has also not complied with the previous RERA orders. For this reason, IIFL has filed an ‘execution application’ to enforce the order and obtain recovery. IIFL argues that RERA has the authority to issue recovery warrants. Since Honest Shelters has failed to follow the orders, issuing Recovery Warrants is necessary and justified. Therefore, considering all circumstances, IIFL, as the successor-allottee, must be given full protection and enforcement of its rights.

Respondents Arguments (Honest Shelters Pvt. Ltd)

IIFL is not an allottee because IIFL is merely a financial institution. It is a lender, not the real homebuyer. The assignment deed does not make them an allottee under RERA. No payment receipts from the original homebuyers are available with IIFL, which creates doubt about the validity of their claim. The delay in giving possession happened due to project circumstances, not because of any deliberate act of the promoter. Therefore, RERA orders should not affect the promoter’s valid security rights or the company’s contractual rights.

Judgement

IIFL cannot get the status of an allottee. Only because they have a loan assignment or mortgage rights, they do not become an “allottee” under RERA, an allottee is a person who has personally purchased the unit and whose protection is the main objective of the act. Homebuyers come first, because the purpose of the Real Estate (Regulation and Development) Act is to protect homebuyers. Therefore, mortgage rights remain secondary. Even though it is not proven that the delay was caused fraudulently or intentionally by Honest Shelters, the promoter must still comply with RERA directions and orders. The promoter must follow RERA directions, and any termination notice issued by the promoter cannot be considered valid against IIFL, because even if IIFL is not an allottee, such a termination notice does not stand under RERA. Since IIFL is not an allottee, a promoter cannot issue such a termination notice to them. Execution and recovery warrants can be issued by the RERA Authority. The RERA Authority has the power to enforce recovery / execution, but only for the amounts or possession that is due to the actual allottees (homebuyers).

Key Takeaways

A finance company can take assignment without the consent of the allottee, and therefore, the financial institution does not get the status of a RERA allottee. Homebuyers are the prime stakeholders, so accepting mortgage rights over their rights is not acceptable. RERA’s powers under *Sections 34 and 37* allow RERA to enforce and execute its orders. However, RERA does not have recovery mechanisms against the mortgagor; its powers are limited only to homebuyer protection. Hence, action cannot be directly taken against the mortgagor. Thus, although RERA has many mechanisms and safeguards for homebuyers, some powers are still limited. If there is no allottee, then through a termination notice or under *Section 11(5)*, the financial institution holding financial rights (charge) is treated under the RERA-protected framework.