

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** 559/2012

Subject: Request for urgent intervention on behalf of the residents of Vandana Apartment, Rajendra Nagar, Patna.

This matter was mentioned for urgent hearing, and accordingly taken up.

It is alleged that coercive action is being taken against purchasers of flats/residents of Vandana Apartment, Pataliputra Path, Rajendra Nagar, Patna for realisation of loan amount allegedly due from T.S. Dhupia of Nishant Housing Construction Pvt. Ltd. by the State bank of India. T.S. Dhupia/Nishant Housing Construction Pvt. Ltd. are said to have taken loan of Rs.15 lakh from the then SBI Home Finance for construction of the Apartment and mortgaged the land.

Part of the loan liability against Nishant Housing Construction Pvt. Ltd. appears to have remained outstanding. It is for recovery of the outstanding amount – which accumulated to over Rs.2 crore on 8.10.2009 – that impugned coercive action is being taken under the SARFAESI Act, 2002. The case of the residents/ flats owners is that they are not liable for the loan taken by the builder. In fact, they too had taken loan from State Bank Home Finance for purchase of flats which they repaid in course of time and got completion certificates for the same. In any case, the Bank having already realised part of the loan and released 35% of the of the mortgaged land in favour of the land-owner, and the interest of the builder being identifiable per flat numbers no recovery proceedings can be initiated with respect to the remaining land, and in any view, no coercive action can be taken against the flat owners in the recovery proceeding initiated against the builder. The Commission finds prima facie substance in the applicants' case.

Be that as it may, the complaint before the Commission is that the coercive action being/proposed to be taken against the flat owners/residents amounts to violation of their human rights as the proposed action is posing threat to their ownership and possession of the flats. Most of the residents are senior citizens suffering from different ailments and they are undergoing tremendous mental pressure and agony – one of them, in fact, suffered stroke and expired under fear of losing her flat.

In the facts and circumstances, the Commission is satisfied that a prima facie case is made out for intervention by the Human Rights Commission.

Accordingly, let notice issue to the Chief General Manager/Assistant General Manager, State Bank of India, Stressed assets Management Branch,

Kolkata at Nagaland House, 11 & 13 Shakespeare Sarani, Kolkata – 700071 fixing 15.03.2012 for response.

In as much as assistance is being sought from the District Magistrate for taking possession of the flats under section 14 of the SARFAESI Act – as per public notice issued under section 13(4)(a) of the Act, let notice also issue to District Magistrate, Patna to desist from taking action in the matter until further order of this Commission.

Copy of this order shall be sent along with notice to both – Bank and the District Magistrate – for compliance.

Copy may also be sent to the applicant's for information.

Date: 15.02.2012

Justice S.N. Jha
Chairperson