LENDERS WHETHER EMERGING PROMOTERS UNDER RERA

Nitin Adinath Rajebhosale, Bharati Vidyapeeth (Deemed to be University)

Dr. Ujwala Bendale, Bharati Vidyapeeth (Deemed to be University)

ABSTRACT

Emerging concept is that a Lender which includes a bank, a financial institution, a non-banking financial company is a promoter merely because it lends money to a developer or holds a mortgage over the real estate project. However, the legal ramifications may change depending upon the nature and extent of the Lender's intervention in the real estate project, particularly where the Lender invokes enforcement rights or effectively steps into the shoes of the developer.

Keywords: The Real Estate (Regulation and Development) Act, 2016 – Promoter – Financial Institution – Mortgage – Security Interest - Secured Creditor - SARFAESI Act – 13(4) of SARFAESI - Assignee- Allottee - Application for change of Promoter-Section 15 RERA Act – Role of Secured Creditor – Section 11(4)(h) of RERA Act - HARERA – MahaRERA – Rajasthan RERA – Karnatak RERA.

Introduction

Primary objective of The Real Estate (Regulation and Development) Act, 2016 ("RERA") is protecting the interests of homebuyers while regulating the real estate sector. To ensure greater transparency and accountability in real estate transactions, the legislation imposes substantial statutory obligations upon the "promoter", defined in RERA. RERA provides remedies to "allottee" in cases of delay, default, misrepresentation and failure to comply with such substantial statutory obligations. Despite the best legislative intent to formulate a holistic Act with the widest ambit as possible, there is scope for judicial interpretation to fill in the lacunae experienced during practical implementation of the provisions of the Act.

The definition of a "promoter" under section 2(zk) of RERA is deliberately drafted broad. It encompasses not merely a conventional Developer but also persons who construct, cause construction, develop land, act as a builder, colonizer, contractor, developer, estate developer and certain other persons associated with the development and sale of real estate projects. Pertinently, the definition also refers to/includes the "assignees" of a person who constructs or causes construction of a building for sale.

This term/expression "assignee" has generated an important conundrum:

"Can a bank/financial institution or non-banking financial company ("NBFC") that finances a real estate project and obtain a mortgage or security interest over such real estate project be regarded as a "promoter" as defined under section 2(zk) of the Act?"

This issue becomes particularly significant when a Developer defaults on its loan and the lender – bank/financial institution/NBFC seeks to enforce its security under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"). Homebuyers/Allottees as defined under RERA Act may object to such enforcement on the ground that their rights under RERA must be protected. Conversely, lenders may argue that they are merely secured creditors and have no role in constructing, developing, marketing or selling the real estate project.

One such recent conundrum is posed in light of the recent pivoting decisions as follows:

1. Order dated 11 September 2020 by the Ld. Haryana Real Estate Regulatory Authority ("HARERA") in Deepak Chowdhary vs PNB Housing Finance Ltd. & Ors., 2145 of

2020 wherein the lender being the assignee of promoter was considered as the promoter;

2. Order dated 16 January 2025 by Maharashtra Real Estate Regulatory Authority ("MahaRERA") in Honest Shelters Private Limited vs India Infoline Finance Limited ("IIFL") wherein it was discussed at length whether a bank/financial institution could be treated as a Promoter under the definition of Section 2(zk) of the Act;

3. Judgement & Order dated 14 December 2021 passed by the Hon'ble Supreme Court in the case of Union Bank of India vs Rajasthan Real Estate Regulatory Authority;

4. Judgement & Order dated 14 February, 2022 passed by the Hon'ble Supreme Court in the case of Union Bank of India vs Rajasthan Real Estate Regulatory Authority;

5. Judgement & Order dated 12 November 2025 passed by the Hon'ble Karnataka High Court in Anand Rathi Global Finance Ltd. vs Real Estate Appellate Tribunal.

In Deepak Chowdhary vs PNB Housing Finance Ltd. & Ors., 2145 of 2020, it was argued that a Lender be it a bank/non-banking financial institution though falling within the definitions of promoter has no rights pertaining to construction/completion and sale of the real estate project. However, it was noted by the Ld. Authority that the definition of the Promoter under the RERA Act includes its assignees. Assignee as defined in legal parlance is a third party who receives the rights as that of the assignor and steps into the shoes of the assignor. It was observed that the Lender caused the real estate project to be constructed by giving a construction loan to develop the real estate project which in turn would be sold and the receivables would be used to generate revenues with which the loan of the Lender could be repaid. In return, the Promoter assigned its rights in the real estate project to consolidated its risk. Such arrangement is captured in the mortgage deed itself to avoid the enormous stamp duty payable over a separate Deed of Assignment. In the event of enforcement of security by a Lender i.e. a bank/non-banking financial institution on the real estate project, the Lender entitled to such assignment is already in the knowledge of the allottee as well as the Ld. Authority in light of the declaration supported by an affidavit for encumbrance, if any, over the project land, including the rights, title and interest or name of any party in or over such project land, as prescribed under section 4(2) (l) (B) of RERA. In the circumstances, it was held by HARERA for the limited purpose of auctioning the real estate project for recovering its dues, the Lender in this case PNB Housing Finance Ltd. & Ors.would fall within the definition of a 'Promoter' i.e. an assignee and would have to compulsorily take the approval of the Ld. Authority and of the 2/3rd allottee as is prescribed under section 15 of the RERA Act. Hence, it was held by HARERA that the Lender i.e. PNB Housing Finance Ltd. & Ors. Will be considered a Promoter, by the operation of law, for the limited purpose of mediating the transfer in the interim period by virtue of falling under the ambit of "assignee" under Section 2(zk) of the RERA Act[1].

In terms of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), when a borrower is unable to pay the debt and the asset is classified as a non-performing asset, the bank/financial institution after issuing a notice, can take over the possession of the secured asset in accordance with section 13(4) and enjoy all the rights which the borrower had including the right of sale for realizing the secured asset, transfer by way of lease, appointing a person to manage the asset. For all intents and purposes, the secured creditor steps in the shoes of the borrower in relation to the secured asset, this being an assignment of rights of the borrower in the secured creditor by operation of law. Therefore, the moment the Lender takes possession of the secured asset or any step as per section 13(4), it triggers statutory assignment of the rights of the borrower in the secured creditor.

The assignment of rights to Lender culminates into another repercussion which is that an allottee can file a complaint under section 31 of RERA Act against such Lender before the RERA Authority. Upon such event of assignment of rights of the borrower, RERA Authority gets jurisdiction to entertain a complaint filed against such bank/financial institution to entertain a complaint filed against such bank/financial institution by an aggrieved person which is even upheld by the Hon'ble Supreme Court in the case of Union Bank of India vs Rajasthan Real Estate Regulatory Authority, Supreme Court, 14 February, 2022. [2]

Thereafter, in several complaints by and between – Honest Shelters Private Limited as the "Promoter", Shree Ram Urban Infrastructure Private Limited as the "Erstwhile Promoter", the original purchasers of the respective subject flats as the "erstwhile Allottees and India Infoline Finance Limited as the "Allottee", MahaRERA vide its common order dated 16 January 2025 held that IIFL – a financial institution, which has acquired title to the subject flats under respective deed of transfer cum assignment from the Erstwhile Allottees, is an Allottee with

[1] https://www.argus-p.com/papers-publications/thought-paper/from-priority-to-prejudice-the-lenders-dilemma-in-the-rera-regime/

[2] https://www.amsshardul.com/insight/rera-vs-sarfaesi/

respect to such subject flats. The MahaRERA on perusal of the definition of allottee in section 2(d), of RERA Act states that allottee is a person to whom a plot, apartment or building is allotted, sold and which also includes any person who subsequently acquires the said allotment through sale, transfer or otherwise. Thus, MahaRERA states that under the provision of the RERA a Party becomes an Allottee not only on the first allotment/sale/transfer but also in the event of subsequent sale/transfer or otherwise. Further MahaRERA held that IIFL is granted liberty to approach the Adjudicating Officer, MahaRERA vide a fresh application for the limited purpose of determination and computation of compensation.

Subsequently, contradictory to HARERA, MahaRERA vide its common order dated 27 November 2025[3] in several complaints primarily filed by and between IIFL, Shreeji Enterprises (new promoter) held that though IIFL is a secured creditor it cannot be conferred upon the status of a "promoter" within the meaning of Section 2(zk) of the Act, nor does it impose upon IIFL any of the statutory duties or liabilities envisaged under RERA. Consequently, IIFL was held to lack the requisite locus to maintain a complaint before the Authority in respect of matters pertaining to the real estate project. Hence, the complaint was dismissed. [4]

1. Promoter as defined under RERA

The starting point is Section 2(zk) of RERA, which defines "promoter". The provision includes a person who constructs or causes to be constructed a building or apartments for the purpose of selling them and expressly includes his assignees. It also covers a person who develops land into a project for the purpose of selling plots, development authorities, certain cooperative housing societies, persons acting as builders, colonisers, contractors or developers, persons claiming to act under a power of attorney from the landowner, and persons constructing buildings or apartments for sale to the general public.

The Explanation to Section 2(zk) is also significant. Where the person constructing or developing a project and the person selling the apartments or plots are different, both may be deemed to be promoters and jointly liable for the statutory functions and responsibilities.

The legislative scheme therefore focuses primarily upon **construction, development and sale**.

[3] https://maharera.maharashtra.gov.in/orders-judgements

[4] Trupti Daphtary, Advocate & Solicitor Legal Updates

A lender, in contrast, normally performs an entirely different set of functions. Its role is to provide finance against repayment obligations and security which ordinarily does not include:

1. construct the project;
2. develop the land;
3. market apartments;
4. enter into agreements for sale with homebuyers;
5. collect consideration from allottees; or
6. undertake the contractual obligations of the developer.

The ordinary lending relationship therefore does not naturally fall within the substantive elements of the statutory definition.

The controversy principally arises because Section 2(zk)(i) includes the promoter's "assignees".

2. Importance of the Word "Assignee"

A mortgage or creation of security interest involves an interest in property being created in favour of the lender. This has led some RERA authorities to reason that a lender acquiring an interest in project property may be regarded as an "assignee" of the promoter.

This reasoning was adopted prominently in proceedings concerning **Deepak Chowdhary v. PNB Housing Finance Limited**, before the Haryana Real Estate Regulatory Authority, Gurugram[5].

The case concerned the Supertech Hues project. The lender had financed the developer, and disputes arose after the developer defaulted and enforcement proceedings were initiated. The Haryana Authority examined whether the lender could be treated as a promoter because of the interest created in its favour over the project. The Authority took the view that the word "assignee" in Section 2(zk) was sufficiently broad to include a lender in circumstances where

[5] https://haryanarera.gov.in/admincontrol/judgements/3

the lender had acquired an interest in the project through the security arrangement[6].

The Authority consequently treated the lender as a promoter for purposes of RERA and considered itself empowered to issue directions affecting the lender.

This interpretation was significant because it potentially transformed the legal position of banks and financial institutions from that of ordinary secured creditors into entities subject to promoter-level obligations under RERA.

Though RERA is a central legislation but it is implemented and enforced independently by each state government through its own respective authority therefore order passed by one state RERA does not have precedent value for other State RERA. This is because each state operates under its own state-specific rules, notifications, and adjudicatory mechanisms, Hence, an order passed by one state's RERA cannot be used as a binding legal precedent in another state. It merely has persuasive value or influential value during arguments, but the authority in a different state is under no legal obligation to follow or replicate it.[7]

3. The Argument in Favour of Treating Lenders as Promoters

There are strong policy considerations behind the expansive approach.

A real estate project is normally financed through multiple sources. A developer may obtain construction finance from banks or NBFCs while simultaneously receiving substantial amounts from homebuyers. The lender may take security over the land, buildings, receivables and unsold inventory.

If the developer defaults, the lender may invoke SARFAESI and attempt to take possession of or sell the secured assets. The homebuyers may then find themselves caught between two competing claims:

- the lender's right to recover its secured debt; and
- the allottee's right to obtain the promised apartment or recover amounts from the promoter.

[6] https://www.argus-p.com/papers-publications/
[7] https://www.khuranaandkhurana.com/state-wise-rera-variations-what-buyers-and-developers-must-know

The homebuyer generally has no role in the financing transaction but may suffer the consequences of enforcement.

From the perspective of RERA, therefore, one could argue that permitting a lender to take control of the project and dispose of the property without regard to the rights of allottees could undermine the very purpose of the legislation.

RERA is a welfare-oriented legislation designed to protect purchasers and ensure completion and transparency in real estate projects. The Supreme Court has repeatedly recognised the importance of protecting homebuyers in the context of insolvency and stalled projects.

The Haryana RERA authorities accordingly attempted to balance the rights of lenders with the rights of allottees, taking the view that the interests of homebuyers should not become subordinate merely because the developer has created a mortgage in favour of a financial institution.

However, the policy argument for protecting homebuyers does not necessarily answer the separate statutory question of whether a lender is actually a "promoter".

4. The Counter-Argument: A Lender Is Not a Developer

The principal argument against treating lenders as promoters is based upon the language of Section 2(zk).

A bank does not become a builder merely by financing construction.

A lender may conduct extensive due diligence before sanctioning a loan. It may inspect the project, monitor construction, impose financial covenants, control disbursements and require the developer to maintain particular accounts. These actions are undertaken to protect the lender's financial exposure. They do not necessarily mean that the lender has assumed responsibility for developing or selling the project.

Similarly, taking a mortgage creates a security interest. It does not ordinarily transfer the business of developing the project to the mortgagee.

The distinction between **security interest** and **development rights** is therefore fundamental.

If every mortgagee were automatically treated as an assignee and promoter, ordinary project financing could expose banks and NBFCs to potentially extensive promoter liabilities under RERA. Such an interpretation could have major consequences for the financing of real estate projects.

It could also discourage lenders from providing construction finance, thereby making legitimate project financing more difficult.

The better argument, therefore, is that the expression "assignee" should be understood in its statutory and contextual setting rather than as automatically encompassing every secured creditor.

5. Section 11(4)(h): Protection of Allottees Against Subsequent Mortgages

Another important provision is Section 11(4)(h) of RERA.

It provides, in substance, that after execution of an agreement for sale in respect of an apartment, plot or building, the promoter cannot mortgage or create a charge over that apartment, plot or building, and any mortgage or charge created subsequently does not affect the rights and interests of the allottee.

The Supreme Court considered the interaction between lenders, mortgages and allottee rights in **Bikram Chatterji v. Union of India**, concerning the Amrapali projects[8].

The Court emphasised that the rights and interests of allottees could not be defeated by subsequent mortgages or diversion of project funds. The judgment recognised the special position of homebuyers and the need to prevent financial arrangements from defeating their statutory and contractual interests.

However, Section 11(4)(h) does not itself state that the lender becomes a promoter. Rather, it protects the allottee against the consequences of certain mortgages created by the promoter.

This distinction is important.

Protection of an allottee's rights and classification of a lender as a promoter are two

[8] https://indiankanoon.org/doc/6791744/

separate legal questions.

A lender can be subject to restrictions or directions designed to preserve allottee rights without necessarily becoming a promoter for all purposes under RERA.

6. Union Bank of India v. Rajasthan Real Estate Regulatory Authority

The issue received significant consideration before the Rajasthan High Court in **Union Bank of India v. Rajasthan Real Estate Regulatory Authority**[9].

The cases arose in the context of banks seeking to enforce security interests under SARFAESI against properties forming part of real estate projects. The banks argued that RERA could not exercise jurisdiction over them because they were neither promoters, allottees nor real estate agents.

The Rajasthan RERA Authority had taken an expansive position and considered the bank to be an assignee of the promoter. The dispute ultimately reached the Rajasthan High Court. (Indian Kanoon)

The High Court examined Section 13(4) of SARFAESI. That provision gives a secured creditor certain powers upon default, including taking possession of secured assets and taking steps for their management or sale.

The Rajasthan High Court adopted a narrower approach than the RERA authorities.

The reasoning was essentially that when a secured creditor actually exercises the statutory powers available under Section 13(4) of SARFAESI, it may, for the limited purpose of the regulatory proceedings, be regarded as stepping into the shoes of the borrower in relation to the secured asset.

This was an important distinction.

The Court did not establish a general rule that:

every lender is a promoter under RERA.

[9] https://indiankanoon.org/doc/104567675/

Rather, the reasoning linked the lender's position to the **exercise of statutory enforcement powers** and the consequences flowing from that exercise.

Thus, the lender's status could depend upon its conduct and the stage at which it intervenes.

7. Interaction between RERA and SARFAESI

The question cannot be considered without examining the relationship between RERA and SARFAESI.

SARFAESI provides a mechanism for secured creditors to enforce security interests without the ordinary requirement of obtaining a decree from a civil court. It is intended to facilitate recovery of secured debts.

RERA, on the other hand, is concerned with regulation of real estate projects and protection of allottees.

The two statutes can therefore come into direct conflict when a developer defaults.

For example, suppose:

- a developer mortgages a project to a bank;
- 100 apartments are sold to homebuyers;
- the developer defaults on its construction loan;
- the bank invokes SARFAESI;
- the bank takes possession of the project; and
- the homebuyers approach RERA seeking protection.

The bank asserts a security interest, while the homebuyers assert statutory rights arising from their agreements for sale.

The question then becomes whether RERA can issue directions to the lender and, if so, whether such directions effectively restrict the lender's enforcement rights.

The Supreme Court's jurisprudence in **Bikram Chatterji** demonstrates the importance attached to homebuyer interests in stalled projects. At the same time, the statutory rights of secured creditors cannot simply be ignored.

The legal challenge is therefore one of harmonisation rather than simply declaring one statute superior in every circumstance.

8. The Karnataka High Court's 2025 Decision: Anand Rathi Global Finance

A significant development came from the Karnataka High Court in **Anand Rathi Global Finance Ltd. v. Real Estate Appellate Tribunal**, decided on 12 November 2025[10].

The petitioner was a creditor of a real estate promoter and challenged an order requiring compliance with the proviso to Section 43(5) of RERA, which requires a promoter appealing against certain orders to make a specified deposit.

The lender argued that it was not a promoter and therefore could not be subjected to the requirement applicable to promoters.

The Karnataka High Court examined Section 2(zk) and observed that the statutory definition refers to persons who construct or cause construction, develop land, act as builders, colonisers, contractors or developers and other specified categories. It specifically held that the provision does not include a financier or bank merely because it has lent money to the promoter.

The Court also considered the Rajasthan High Court decision.

Importantly, the Karnataka High Court observed that the Rajasthan High Court had **not held that a lender becomes a promoter merely by lending money or exercising powers under Section 13(4) of SARFAESI**.

The Karnataka High Court therefore allowed the writ petition and held that the petitioner was not a promoter under Section 2(zk), directing that its appeal be considered without insisting upon the promoter-specific deposit requirement.

This judgment is particularly important because it directly addresses the statutory definition

[10] https://indiankanoon.org/doc/199216905/

and rejects the proposition that lending itself converts a financial institution into a promoter.

9. The 2026 Karnataka High Court Development

The issue continued to arise in 2026 in proceedings involving **Anand Rathi Global Finance Limited v. The Secretary**[11].

The case concerned an NBFC that had provided secured finance to a real estate developer. The lender had sanctioned substantial project finance and obtained security over the property. Following default, enforcement proceedings were initiated.

Homebuyers subsequently approached RERA, and the lender was made a respondent. During the proceedings, questions arose concerning the lender's involvement in the project and the extent to which RERA could issue directions affecting the secured creditor.

The Karnataka High Court, in its order dated 8 April 2026, did not finally determine the substantive conflict between RERA and SARFAESI. Instead, it held that the lender had an alternative statutory remedy of appeal before the RERA Appellate Tribunal and that the disputed questions concerning the interaction between RERA and SARFAESI should appropriately be considered in that statutory forum.

This decision is important for two reasons.

First, it confirms that the question of whether regulatory directions can affect secured creditors may depend upon the facts and statutory remedies available.

Second, it demonstrates that the mere assertion that a lender is a secured creditor does not automatically resolve every dispute concerning its interaction with RERA.

10. Is a Lender a Promoter Merely Because It Has a Mortgage?

The better view emerging from the recent jurisprudence is **No**.

A mortgage creates an interest in property for securing repayment. It does not, by itself, make the mortgagee responsible for construction or sale.

[11] https://indiankanoon.org/doc/9043544/

The statutory definition of promoter is activity-oriented. It focuses on construction, development, sale and related real estate functions.

A lender therefore should not ordinarily be treated as a promoter merely because:

- it has financed a real estate project;
- it has taken a mortgage;
- it has obtained a security interest;
- it monitors the project;
- it has rights over receivables;
- it has the right to enforce its security upon default; or
- it has initiated recovery proceedings.

The position may, however, become more complicated if the lender actually assumes control over the project and begins performing functions characteristic of a promoter.

11. When Can a Lender Potentially Step into the Shoes of a Promoter?

The distinction between **financing** and **taking over the project** is crucial.

If a lender merely advances money and holds security, it is difficult to characterize that it as a promoter.

However, consider a situation where, following default, the lender:

1. takes effective control over the project;
2. assumes responsibility for construction;
3. appoints contractors and project managers;
4. markets and sells apartments;

5. enters into arrangements with purchasers;
6. assumes development rights; or
7. otherwise conducts the project as an owner/developer.

In such circumstances, the argument that the lender has become functionally equivalent to a promoter becomes significantly stronger.

The issue should then be examined not merely by looking at the label "bank", "NBFC" or "secured creditor", but by considering the **substance of the rights exercised and responsibilities assumed**.

This approach is consistent with the broader principle that statutory definitions should be applied to the actual legal and commercial arrangement rather than merely to the nomenclature used by parties.

12. "Assignee" Should Not Be Equated Automatically with "Mortgagee"

One of the central legal questions is whether every mortgagee is an "assignee".

A mortgage transfers or creates an interest in immovable property for securing a debt. An assignment, depending upon its legal context, may involve transfer of rights from one person to another.

But the fact that a mortgage involves an interest in property does not necessarily mean that every mortgagee becomes the assignee of every right and obligation of the mortgagor.

The distinction becomes especially important under RERA because promoter status carries extensive statutory obligations.

A promoter is responsible for matters such as project registration, disclosures, sanctioned plans, advertisements, agreements for sale, construction quality, possession, defect liability, maintenance and other obligations prescribed by the Act.

It would be difficult to argue that an ordinary lender assumes all these responsibilities merely because it has a mortgage.

Therefore, the expression "assignee" should be interpreted in context and not in a manner that converts every security interest into a transfer of promoter obligations.

13. Consequences of Treating Lenders as Promoters

If lenders were automatically treated as promoters, the consequences would be considerable.

A lender could potentially become subject to:

- RERA registration-related obligations;
- disclosure obligations;
- promoter liabilities;
- directions issued by the RERA Authority;
- monetary penalties;
- requirements concerning project completion;
- obligations towards allottees;
- appellate deposit requirements applicable to promoters; and
- restrictions affecting enforcement of security.

This could significantly increase the regulatory risks associated with real estate lending.

From a commercial perspective, banks and NBFCs may respond by requiring stronger security, higher interest rates, additional guarantees and greater contractual protection.

There could also be an unintended reduction in construction finance, which may adversely affect legitimate real estate development.

On the other hand, refusing to regulate lenders in circumstances where they have effectively taken control of a project could potentially leave homebuyers without an efficacious remedy.

The law must therefore strike a balance.

14. Protecting Homebuyers Without Expanding the Definition Beyond the Statute

The interests of homebuyers are unquestionably central to RERA. The Ministry of Housing and Urban Affairs ("MoHUA") describes the Act as legislation intended to ensure transparency, regulate the real estate sector and protect consumers. The statutory scheme imposes extensive duties upon promoters and provides a regulatory mechanism for addressing grievances. (India Code)

However, the beneficial nature of legislation does not mean that every entity connected with a real estate project can automatically be treated as a promoter.

The classification must remain anchored in the statutory language.

There is a distinction between:

(a) protecting the allottee against the consequences of a lender's enforcement action, and

(b) imposing the complete statutory obligations of a promoter upon the lender.

The first may be justified where necessary to preserve allottee rights. The second requires a stronger statutory basis.

This distinction provides a more coherent framework for reconciling RERA with SARFAESI.

15. Practical Position for Banks and NBFCs

From a lender's perspective, several precautions are advisable when financing RERA-registered projects.

First, lenders should conduct comprehensive title and project due diligence.

Second, they should verify the RERA registration status and project details.

Third, they should carefully examine existing allotments, agreements for sale and prior encumbrances.

Fourth, they should ensure appropriate registration of their security interests.

Fifth, lenders should distinguish between project monitoring undertaken to protect the loan and activities amounting to actual project management.

Sixth, before enforcement, lenders should assess the rights of existing allottees and the implications of RERA, SARFAESI and other applicable laws.

Finally, where enforcement involves taking actual control of the project, the lender should obtain appropriate legal advice regarding whether its proposed actions could expose it to promoter-like obligations.

16. Practical Position for Homebuyers

Homebuyers, on the other hand, should not assume that a lender has become a promoter merely because the project is mortgaged.

Their principal rights remain against the promoter and other persons who fall within the statutory definition.

However, if a bank or NBFC has taken possession, control or management of the project and is seeking to sell project assets, allottees should examine:

- the nature of the mortgage;
- the date on which it was created;
- the date of the agreement for sale;
- whether the relevant apartment was already allotted;
- whether Section 11(4)(h) applies;
- whether SARFAESI proceedings have commenced;
- whether RERA proceedings are pending;
- whether the lender has merely enforced security or has assumed project development responsibilities; and

- whether the lender's actions affect existing allottee rights.

The legal remedy will depend substantially upon these facts.

17. Need for an Authoritative Supreme Court Ruling

Although several High Courts and RERA authorities have considered the issue, the jurisprudence is not completely uniform.

The Haryana and Rajasthan authorities adopted an expansive approach to the expression "assignee". The Rajasthan High Court subsequently narrowed that approach in the context of enforcement under SARFAESI. The Karnataka High Court has expressly held that a financier or bank does not fall within Section 2(zk) merely because it has lent money to the promoter. (Argus Partners)

The issue would benefit from authoritative consideration by the Supreme Court, particularly on the following questions:

1. Whether a secured lender is an "assignee" under Section 2(zk) merely because a mortgage or security interest is created in its favour.

2. Whether the invocation of Section 13(4) of SARFAESI changes the lender's status under RERA.

3. Whether a lender can be treated as a promoter only for limited purposes or "for all purposes" under RERA.

4. Whether RERA authorities can issue directions affecting secured creditors without formally treating them as promoters.

5. How Section 11(4)(h) should interact with pre-existing security interests.

6. How RERA and SARFAESI should be harmoniously interpreted when both homebuyer and lender rights are involved.

Such clarity would be beneficial to homebuyers, developers, banks, NBFCs and regulators alike.

18. Conclusion

The question **"Whether lenders are promoters under RERA?"** cannot be answered by simply stating that every lender is or is not a promoter.

The statutory definition in Section 2(zk) is broad, but its central elements relate to construction, development and sale. A bank or financial institution that merely provides finance and obtains security over a project does not ordinarily perform those functions.

The earlier approach of certain RERA authorities, particularly in the **Deepak Chowdhary** litigation, treated a lender as an assignee and therefore as a promoter in circumstances involving project security and enforcement. This approach was motivated substantially by the need to protect homebuyers from the consequences of enforcement against stalled projects. (Argus Partners)

The Rajasthan High Court subsequently adopted a more nuanced approach in **Union Bank of India v. Rajasthan Real Estate Regulatory Authority**, particularly examining the consequences of a lender exercising powers under Section 13(4) of SARFAESI. The decision did not establish that every lender automatically becomes a promoter.

The Karnataka High Court's decision in **Anand Rathi Global Finance Ltd. v. Real Estate Appellate Tribunal** represents a clearer rejection of the proposition that lending itself makes a financial institution a promoter. The Court specifically noted that Section 2(zk) does not include a financier or bank merely because it has lent money to the promoter. (Indian Kanoon)

The subsequent Karnataka High Court proceedings in 2026 also demonstrate that the interaction between RERA and SARFAESI remains fact-sensitive and that questions concerning the extent of regulatory control over secured creditors may require consideration through the statutory appellate mechanism. (Indian Kanoon)

Accordingly, the most defensible legal position at present is:

A lender is not a promoter under RERA merely because it finances a real estate project or holds a mortgage/security interest over project property. However, where the lender goes beyond the conventional role of a secured creditor and assumes rights, control or responsibilities characteristic of a developer or otherwise steps into the shoes of the

promoter, the question of promoter status may arise depending upon the facts and applicable judicial interpretation.

The crucial distinction is therefore between **"lending against a project"** and **"taking over and operating the project."**

RERA should undoubtedly protect the legitimate interests of homebuyers, but that objective should not, without clear statutory authority, convert ordinary secured creditors into promoters. At the same time, lenders who effectively take over the role of developers cannot necessarily rely upon the label of "secured creditor" to avoid all regulatory consequences.

The future of this area of law will therefore depend upon a careful balance between **three competing interests: the statutory rights of allottees, the enforcement rights of secured creditors, and the regulatory objective of ensuring completion and transparency of real estate projects.** Until a definitive Supreme Court ruling settles the scope of "assignee" under Section 2(zk), the status of lenders will continue to depend significantly upon the nature of the transaction, the security created, the conduct of the lender and the extent to which the lender has actually assumed control over the project.

References:

1. **Articles**

    a. *Argus Partners From Prority To Prejudice – The Lenders Dilemma In The Rera Regime by Nidhi Arya (Partner) and Umang Pathak (Associate.*

    b. *Are Banks new Promoters Article by Shreya Gupta dated 25 August 2022.*

    c. *Financial Institutions as Promoters: The SARFAESI-RERA Conundrum Article dated January 1, 2021 By Aman Saraf, student at the Government Law College, Mumbai.*

    d. *Khurana & Khurana State-wise Rera variations what buyers and developers must know.*

2. **Websites:**

    a. *https://www.mohua.gov.in/*

    b. *MahaRERA website for judgements and orders - https://maharera.maharashtra.gov.in/orders-judgements;*

    c. *Haryana RERA website for judgements and orders- https://haryanarera.gov.in/login/loginview/2;*

    d. *India Code for Bare Acts - https://indiacode.gov.in/home;*

    e. *Indian Kanoon for judgements and orders - https://indiankanoon.org/*

3. **Books**

    a. *Treatise on RERA (Law and Practice) by Dr. Dilip K. Sheth;*

    b. *The Real Estate (Regulation and Development) Act, 2016 Bare Act by Snow White Publications;*

    c. *Introduction to The Constitution of India by Prof. D. D. Basu;*