The Authorized officer, M/s.Shriram Housing Finance Ltd., has filed the present petition U/s 14 of the SARFAESI Act, 2002 praying to pass an order for taking possession of the schedule property and deliver the same to the authorized officer by appointing the Court Commissioner with suitable directions to the police authorities to assist the court Commissioner.

2. It has contended by the applicant that the petitioner is registered under Section 29A of the National Housing Bank Act 1987 and it is a non banking company incorporated under the Companies Act 1956 governed and regulated by policies and guidelines of Reserve Bank of India. The petitioner submits that the respondent no.1 being the Principal borrower and respondent no.2 being co-applicant had approached the petitioner for mortgage loan facilities of Rs.45,62,533/- vide loan a/c.No.SLPHBGLR0000792 and Rs.5,00,000/- under reference of loan a/c.No.SLPHBGLR0001217 dtd: 30/9/19 and 30/6/21 by the petitioner bank under the loan by offering to mortgage of residential schedule immovable property. After respondents submitted the concerned documentation the petitioner sanctioned mortgaged loan. The respondent has deposited all the original documents of schedule property and created the mortgage by way of deposit of title deeds. But the respondents have failed to repay the loan instalments as agreed. The loan account of Respondents has classified as Non performing assets with the applicant bank on 8/5/22 as per the SARFAESI Act. To recover the due amount from the

respondent, petitioner issued demand notice dtd: 21/5/22 as provided u/s.13(2) of SARFAESI Act and calling upon the respondent to discharge in full his liabilities to the petitioner bank within 60 days from the date of notice. A sum of Rs.52,61,881/- + Rs.5,59,564/- is a due as on 18/5/22. The said notice has been duly served to the respondent. Even then the respondent failed to discharge the liability even after expiry of 60 days nor replied to the said. After issuance of notice, the petitioner has taken the symbolic possession of the schedule property and issued Possession Notice dtd: 29/7/22 u/s.13(4) of SARFAESI Act. The notice is published in Samyuktha Karnataka daily and The New Indian Express dtd: 4/8/22. The petitioner has apprehension that the respondents and their agents may prevent the petitioner to enter into the schedule property and may cause breach of peace as the respondents have proclaimed that if anybody from the petitioner approaches them to take possession of the schedule property will be threatened with dire consequence. Accordingly, the petitioner prayed to pass an order of taking physical possession and to deliver the same to the applicant bank or authorized officer by appointment of Court Commissioner to take the possession of immovable property with a directions to the concerned police to assist the Court Commissioner in evicting the occupants of the schedule property by empowering to break open the locks of the schedule property if found lock while taking the possession.

3. After filing of the petition no notice has sent to the respondents, who are the borrowers, in view of recent ruling of Hon’ble High Court of Karnataka in Crl.Pet.No.1395/05 and Writ Pet.No.9694/05 on 11/4/05 and 23/02/2006 respectively.

4. The authorized officer has filed his Affidavit in support of the version stated in the petition. The petitioner bank has produced the copy of all the documents and also produced the original documents and after scrutinizing the same, the original documents have been returned to the petitioner.

5. Heard. Perused the records.

6. The petitioner applicant/petitioner has filed the petition and sought for the assistance of the Court for taking possession of the schedule property U/sec.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after

referred as the Act). No Notice is sent to the Respondents in view of the ruling of Hon'ble Supreme and High Court. The petitioner has also sworn an affidavit stating similar facts as mentioned in the petition. Further, he has produced the original loan documents before this court.

7. On perusal of the available materials, I am satisfied that applicant/petitioner is a secured creditor and Respondents are the secured debtors and schedule property is secured asset within the meaning of the provisions of this Act. Before filing this petition petitioner as secured creditor has given 60 days notice and complied provisions of Sec.13(2) of the Act. In-spite of 60 days notice, Respondents have not paid the dues to the petitioner. By looking into these aspects coupled with the ratio of the decision of Hon'ble Supreme Court and our High Court as stated above and in a reported ruling of Hon'ble High Court of Punjab in the matter of Sindh Bank V/s. M/s. Gemini Fashions Pvt. Ltd. And Others in Criminal Petition 1395-2005, it was held that U/Sec.13 and 14 of the Act, petitioner being the secured creditors is entitled to enforce security interest against the Respondents for recovery of the dues.

8. As on 18/5/22, the Respondents are liable to pay Rs.52,61,881/- + Rs.5,59,564/- along with interest to the Petitioner Bank. In fact, even from the date of the filing of the petition the Respondents have not made attempt to make any payment. This attitude of the Respondents clearly reveals that they have become chronic defaulters. Thus the Petitioner Financier without any alternative has presented the petition. Thus, there is no malafide in filing the petition. Therefore, the Petitioner is at liberty to proceed against the Respondents as per SARFAESI Act, 2002. For the reasons stated supra, petition is liable to be allowed. Accordingly, the following :

O R D E R

Petition is allowed with following terms.

1. Applicant/petitioner is entitled to take possession of the schedule property towards satisfaction of the creditors due.

2. The Hon'ble CMM has informed to the Judicial Officers of IPC courts in CMM unit to assign the advocates instead of Sheristedar of the courts to enforce and execution of the orders, as per the intimation of the Hon’ble CMM dtd: 21/6/22 in respect of SARFASESI Act. Hence, as per the memo of counsel

for petitioner bank, Sri.Anilkumar.S.P, Advocate Enrol.No.KAR/3218/2019 is hereby appointed as a Commissioner to deliver the possession of the secured property to the petitioner.

3. Police Inspector of Jurisdictional Police Station is hereby directed to give necessary assistance to the applicant/petitioner while taking possession of the schedule property.

4. Applicant/petitioner shall bear the legal expenses if any of the said police.

5. The Petitioner is at liberty to break open the lock after following due procedure of law in the presence of the respectable persons.

XXIV A.C.M.M., BANGALORE.