

NHB (ND)/DRS/Policy Circular No.91/2018-19  
January 21, 2019



All Registered Housing Finance Companies

Madam / Sir,

### Filing of Security Interest in CERSAI

1. Please refer to the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 ("Act"), published vide the Gazette notification dated August 16, 2016, whereby amendments were effected *inter-alia* in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). In terms of the provisions of the said Act, the Government of India has issued notifications dated September 01, 2016 and January 18, 2017 specifying the provisions of the Act which shall come into force with effect from the said dates.
2. Attention is drawn to the provisions contained under Section 26 D & E of Chapter IV-A of the SARFAESI Act, introduced pursuant to the aforesaid amendments, relating to "Right of enforcement of securities" and "Priority to secured creditors" respectively. The relevant extracts of the said regulations are annexed for ready reference.
3. Keeping in view the essence of the legislation, it is imperative that Housing Finance Companies (HFCs) as a matter of prudent practice should ensure requisite compliance in the matter of the security interest created in their favour by the borrowers' being registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI), the Central Registry set up under the provisions of the SARFAESI Act.
4. HFCs are, therefore, advised to complete filing of records with CERSAI in respect of all the subsisting transactions with reference to the instructions issued by CERSAI from time by March 31, 2019. HFCs are also advised to ensure meticulous compliance in the matter of registration of the applicable records with the CERSAI on an ongoing basis.

Please acknowledge receipt.

Yours faithfully,

(V. Vaideswaran)  
General Manager  
Department of Regulation and Supervision

Encl.: as above

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Annexure to NHB(ND)/DRS/Policy Circular No.91/2018-19

**Relevant extracts of Section 26 D and E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**

**26D. Right of enforcement of securities.**—Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.

**26E. Priority to secured creditors.**—Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

*Explanation.*—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

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