

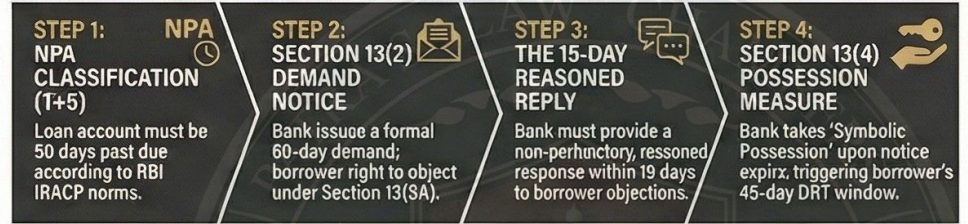
NAVIGATING SECTION 13(4): SYMBOLIC POSSESSION & BORROWER RIGHTS UNDER THE SARFAESI ACT

SARFAESI OVERVIEW



SARFAESI Act 2002 provides banks with accelerated NPA recovery mechanism via Section 13(4), enabling asset possession after a 60-day demand notice. Strict procedural requirements must be met; deviations provide legal grounds for borrower challenges at the DRT within a 45-day window.

THE PATH TO POSSESSION



SYMBOLIC VS. PHYSICAL POSSESSION

SYMBOLIC POSSESSION (RULE 8(1))	PHYSICAL POSSESSION (SECTION 14)
OCCUPANCY: Borrower/Tenant remains in the property.	OCCUPANCY: Property is vacated; Bank takes direct control.
METHOD: Affixing notices & Newspaper publication.	METHOD: Takeover via Magistrate/Police assistance.
LEGAL RIGHT: Right to issue sale notice and auction.	LEGAL RIGHT: Right to deliver vacant possession to buyer.
TRIGGER: Immediate upon 13(4) notice.	TRIGGER: Requires application to DM/CMM.

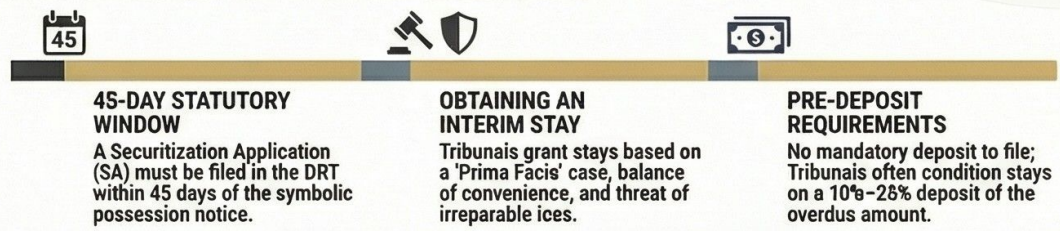
THE PROCEDURAL CHECKLIST (RULE 8)

- 7-DAY PUBLICATION DEADLINE**
Possession notice must be published in two leading newspapers within 7 days of the measure.
- CONSPICUOUS AFFIXATION**
Rule 9(1) requires notice to be physically pasted on a visible part of the property; lack of photographic proof is grounds for stay.
- RESERVE PRICE & VALUATION**
Banks must obtain valuation from a registered valuer and consult borrower before fixing auction's reserve price.

STRATEGIC DEFENSES & EXEMPTIONS

- THE 80% RULE (SECTION 31(J))**
SARFAESI Act cannot be used if remaining debt is less than 20% of the original principal and interest.
- AGRICULTURAL LAND EXEMPTION**
Under Section 31(1), agricultural land is strictly exempt; notice against such land can be quashed.
- RIGHT OF REDEMPTION (SECTION 13(8))**
Borrower can reclaim property by paying all dues; right extinguished upon publication of auction notice.
- PENAL INTEREST VS. PENAL CHARGES**
RBI forbids 'penal interest', banks may only levy 'penal charges', accounted for separately.

LEGAL RECOURSE: THE DRT CHALLENGE



LANDMARK JUDICIAL PRECEDENTS

- MARDIA CHEMICALS V. UNION OF INDIA**
“ Upheld the Act's validity but established the borrower's mandatory right to be heard and struck down high pre-deposit hurdles. ”
- HINDON FORGE PVT. LTD. V. STATE OF UP**
“ Confirmed that symbolic possession is a 'measure' challengeable in DRT immediately without waiting for eviction. ”
- MATHEW VARGHESE V. M. AMRITHA KUMAR**
“ Ruled that the 30-day notice for sale is mandatory and the bank must act as a 'trustee' for the borrower's asset. ”