FINANCE/ LOAN DOCUMENTS AN APPRAISAL

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CHAPTER VI

INTRODUCTION:

The buyer of the property generally requires long term loans from banks and NBFCs. While granting the loan, the banks and NBFCs get various documents executed from the borrower. These documents are generally quite lengthy and beyond the comprehension of the borrower. The borrower normally is in a hurry to get the loan and executes these documents without understanding the same and does not realise their implications. More than often, it has become a practice on the part of the lenders to get one sided and unfair documents executed from the borrower.

The borrower later on realises that he has become a victim of unfair trade practices as the borrower may be called upon to pay higher interest rates and may get harassed by the lender's musclemen and suffers from various malpractices.

Most of the times, the borrower is a victim of misrepresentation of facts. It is advisable that before availing of any loan and executing the documents, the borrower must pay due attention to the fact whether he is getting a fair deal or not. This will help him in preventing various hardships which may come up in any unforeseen circumstances.

INTEREST CLAUSE:

- **INTEREST VARIATION CLAUSE:**

It gives banks/NBFC the right to fix the interest rate as per their base rate fluctuations. If the borrower is seeking a long term loan, the bank can alter the rate of interest as and when they change their base rate without seeking borrower's approval. Thus, it is important to read the terms and conditions of this clause for better negotiation with banks and NBFC.

- **RESET CLAUSE:**

It applies to fixed rate loans where the bank reserve their right to reset the rate to a higher level after 2-5 years if interest rates at that time show a rising trend. At times, even if there is no rising trend, the banks/NBFC reserve a right to alter the rate under the garb of asset-liability mismatch.

DEFAULT CLAUSE:

Different lenders have different definition for the word “default”

Default can mean:

- non-payment of EMIs
- death of borrower
- borrower is divorced (in case of a joint loan)
- borrower is involved in any civil or criminal offence
- cross default i.e. when the borrower defaults on any other loan provided any bank or the same bank though both are transactions of independent nature.

DISBURSEMENT:

Banks/NBFC disburse the loan as per their disbursement clause i.e. if the bank disbursement clause says direct disbursement to the builder, then the loan will be disbursed directly to the builder irrespective of the fact whether the builder has fulfilled its promises or not. The borrower must ensure some control on the disbursement.

FORCE MAJEURE:

Also known as Money Market Condition clause, the bank/NBFC reserves the sole right to alter the fixed interest rates for loan from time to time suitably and prospectively in the event of any unforeseen economic conditions, change in the internal policies or some extra ordinary circumstances. The borrower may negotiate to balance such clauses.

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RECOVERY AGENTS:

Banks/NBFC may have an authorization clause stating that banks/NBFC have a right to give borrower's details including post-dated cheques, collection and administration rights to any third parties without informing the borrower, for recovery in case of default or dues.

AMENDMENT RIGHTS:

It gives the banks/NBFC sole discretion to amend any terms and conditions of the loan without informing or seeking the approval of the borrower. Banks/ NBFC may alter terms by written intimation sent to the borrower by courier. Any amendment proposed by the borrower shall be valid only if made by a written agreement signed by both the parties. *So there you are, heads they win, tails you lose.*

DELAY IN PROVIDING PROPER DOCUMENTS ON TIME:

Banks/NBFC may be hesitant to provide the borrower with a copy of documents in advance so that this could be read and understood before the borrower signs the agreement under the pretext that no one really reads them.

INCOMPLETE DISCLOSURE:

Banks/NBFC at times do not give full and meaningful disclosure in simple and easy to read language with respect to annual percentage rate, finance charges and other related terms. Even though these disclosure are made, they are not clear and noticeable as they are written in extremely small fonts.

ADDITIONAL SECURITY WHEN PROPERTY PRICES DECLINE:

Irrespective of payment of EMI's on time, it has become a practise by banks/NBFC to ask the borrower to provide extra security above the mortgage. Further, the banks may also declare all sums outstanding under the loan (including the principal, interest, charges, expenses) to become due and payable forthwith if the value of the property or any security (including guarantees) created or tendered by the borrower, in the sole discretion and decision of the bank, depreciates entitling the bank to call for further security and the borrower fails to give additional security.' The bank will deem the borrower to be a defaulter if the borrower doesn't give the additional security..

PROCESSING CHARGE:

For processing of documents, banks charge around one per cent of the loan amount which should be refunded if the banks ultimately deny the loan

VAGUE AND AMBIGUOUS CLAUSES:

Banks/NBFC also at times keep the wordings of the clauses vague and ambiguous in order to provide them a space to take advantage of the same in case of any future disputes.

JURISDICTION:

The legal jurisdiction in case of disputes is always at the place where the Bank/NBFC central office is located or at a place which is convenient to them by giving jurisdiction to a place which is totally unrelated to the transaction. Borrowers who may be spread across the country have to travel long-distance to seek legal enforceability of their rights.

DISPUTES AND ARBITRATION:

Even though jurisdiction battle may be resolved after a tiresome effort, banks/NBFC have a clause in the agreement that the right to appoint arbitrator lies only with the banks/NBFC. These arbitrators are generally well known to the banks/NBFC and they might have acted as an arbitrator for the banks/NBFC. The supposedly fair and transparent dispute settlement is thus plagued by the bias of the arbitrator and thus the arbitrator acts as an in-house counsel of the banks/NBFC.

CONCLUSION:

A proper negotiation by borrower before execution of loan documents will keep the interest of the buyer well aligned with the interest of the lender.