



Mortgage muddle

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One should get the original title deeds of the property concerned verified before entering into an agreement to sell or purchase a mortgaged property, advises Navin Kumar

A friend of mine was finally able to buy a place to call home in this happening city. But, one fine day on his return from work, he found a notice affixed at his entrance, stating that the house was being attached for payment of a debt the previous owner of the said property had incurred. And, thus began a tiring round of legal wrangles.

I also recollect the case of a client, who was declared the highest bidder in an auction held under a Debt Recovery Tribunal for a three-storey

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property in Rajinder Nagar, Delhi. He bid for one of the flats in the building and deposited twenty-five per cent of the total value. A few days later, he discovered to his dismay, that somebody had mortgaged the property to a bank and the said person after mortgaging the property had sold the same to a builder, who in turn had demolished the old construction and erected a new three storey building comprising a set of flats in its place. The bank went for recovery and the tribunal ordered the auction of the entire property inhabited and owned by various people who subsequently went for an appeal. The result is that a substantial part of my client's money has remained blocked ever since. It would not be wrong to say at this point that the said client

should have exercised due diligence before going for the auction.

It is, therefore, important to understand that 'mortgage' refers to the transfer of an interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of a loan etc. The property so charged or encumbered is mortgaged property.

There may be two conditions, when a person buys a property knowing its encumbrance or mortgage. A person buys a mortgaged property without the knowledge of the existing mortgage on the property he intends to buy. To avoid this, he should always insist on verifying the original title deeds of the property/flat/ shop/ plot concerned, be-

fore entering into an agreement to sell or purchase a property. Besides the originals of the last title deed, the entire chain of title deeds should be verified. It is always advisable to search for records at the concerned Sub Registrar's office. This is the office that maintains the records of registered mortgages.

The verification of the originals is directly linked to the mortgage. The Transfer of Property Act, 1882 recognises a mortgage by the deposit of the deeds, known as equitable mortgage. Banks and financial institutions take into their custody all the original title deeds, while granting loan/credit facility against an immovable property. One can avail credit from a financial institution bank by handing over the original title papers. The absence of even one title paper can give rise to suspicion.

In a situation where the original has been lost, one should lodge a report with the police and get a notice published in a newspaper. It should be kept in mind that a mortgagee could always sell the property mortgaged to him to recover his dues irrespective of any subsequent sale.

It is, therefore, advisable to get due-diligence done by a professional in respect of the property to be purchased apart from personally verifying the details. Sometimes, friend-ship and neighbourhood enquiries open a curtain of untold tales.

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