RBI seeks bank services reforms

The apex bank has spoken on behalf of home loan customers on various irksome practices followed by Indian lenders

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In June 2010, the Reserve Bank of India (RBI) constituted a Committee under the chairmanship of M Damodaran (former chairman, Securities and Exchange Board of India) to review the system of customer services in banks and to recommend measures for effective resolution of customer grievances. In addition to taking feedback from banks, the committee also sought inputs from other stakeholders, including members of the public, bank customers, academicians, consumer organisations and NGOs. Recently, the committee released its report on customer service in banks. In preparing this report, RBI studied customer care and protection measures available in developed economies as well as prevalent international best practices in banking.

Amongst other customer-centric issues in banking services, the report also highlights key concerns of the average customer with respect to home loans:

- Foreclosure charges that are levied by some banks on prepayment of home loans are resented by many borrowers. As a practice, foreclosure charges work to deter borrowers from switching over to a competitor bank which is offering a lower interest rate to new customers. In this report, RBI observes that banks should not impose exorbitant penal rates towards foreclosure of home loans. Rather, a policy should be devised to help customers enjoy the benefits of market competition where they can exercise choices that contribute to their economic welfare.
- Customers who have opted for home loans with floating interest rate often feel they are 'discriminated against' as their banks offer lower interest rates to new clients. In this report, RBI has observed that a customer's 'point of entry in time' should not matter when such loans are taken on a floating rate basis. The report recommends initiating measures to stop such practices that discriminate between new and old customers having identical characteristics and risk profiles.
- The report recommends that customers should be given the option to switch over from fixed interest rate to floating interest rate and vice versa for their home loans. This option should be offered to customers at least once during the loan tenure. Also, the fee charged by banks for such a switchover should be appropriate and reasonable.
- Unfortunate cases abound where title deeds of the mortgaged property deposited by the customer with the bank are lost and, thus, not returned to them at the time of full repayment of loan amount. The report suggests that title deeds deposited by the customer should be returned to customers within a period of 15 days from the loan closure. Also, banks should have a policy in place to compensate customers in case of loss of title deeds kept in the bank's custody as well as compensate for delayed return of title deeds to the customer.
- Home loans that are backed by insurance products should be automatically settled by the insurance amount, with minimum inconvenience caused to nominees and heirs of the customer.
- The report states that banks should automatically provide annual account statements (which contain details of payment made towards principal and interest including principal outstanding) to home loan customers without them having to request the bank for the same.
- The report also suggests that the most important terms and conditions of home loans should be clearly and legibly stated for the benefit of customers. Also, home loan documents should be made available to customers in local languages.

The report observes that explicit rules and regulations should be put in place which can help correct these existing anomalies. The report is a step forward in raising awareness and generating discussion about market practices in the home loan sector which ought to be transparent, non-discriminatory and objective from the point of view of customers. Such actions taken by banks can also help address many grievances, thereby greatly reducing the backlog of disputes pending in customer redressal forums.

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Harsh Roongta

I will be taking a home loan from a financial institution for tenure of 20 years. However, in the sanction letter, it is mentioned that I will have to take insurance coverage for the loan amount from an insurance provider they have a tie-up with. Is this legal?

–Tarun Lamba

Most banks only provide insurance facility as an add-on (for which the borrower needs to pay extra amount) and if the borrower has not chosen the facility then there is no insurance cover. Buying such insurance from the insurance company which has a tie-up with the lender is not compulsory. If the bank insists on the insurance, you can always buy a policy from any other insurance company and assign the same to the lender. However, it is in the interest of your dependents that you take a term insurance plan and a critical illness plan so as to cover the amount outstanding on your loan account to at least co-terminate with the tenure of your loan. This will ensure that your dependents are not burdened with the home loan, should anything untoward happen to you. You will need to assign the policy to the lender. If your lender is not agreeing, there are plenty of other lenders in the market who will agree to accept insurance policy from other insurance companies.

I have bought a flat in Navi Mumbai in October 2010 against which I took a loan of ₹19 lakh. In July 2011, I sold a flat in Pune for ₹20 lakh. This flat was seven year old. Can I use the proceeds from this sale to square off my loan and thus also not attract any long-term capital gains tax?

–Mohan Sinha

Since you have purchased a flat within one year before sale of your house, you can claim exemption in respect of capital gain arising from sale of your Pune flat. Arguably, it will not matter how you funded the flat purchase. It will also not matter how you use the proceeds of the sale of your house as long as you satisfy the condition of having purchased one house within one year before sale of the other house. The quantum of exemption from capital gains is proportionate to the amount of capital gain – and can be determined by the amount invested in your new house. Since you have not specified the cost price of your old house and purchase price of the new house, it is not possible for us to tell the extent to which you will get the tax exemption.

I am planning to withdraw my entire provident fund balance that I have saved in the last five to six years. I thought of doing a part payment for my home loan and keep some liquid cash for critical times. Please advise if this is a smart idea.

–Sharad Deep

Provident fund is meant to be your retirement fund and hence should not be touched as far as possible. In any case, withdrawals from the PF are available only after five years. Withdrawal will not be allowed from your employee PF for partial pre-payment of home loan. It is advisable to continue repaying the loan EMI's from your current income. As far as making partial pre-payment of the loan is concerned, it is a good option only if you have surplus funds and you are sure that you will not need these funds in the near future.

In case we take a home loan and the project gets delayed, is there any provision to safeguard us from spiralling bank interest?

- Rakesh Singh

No. Even of the builder delays the project, you must continue to pay the loan or pre-EMI to avoid being shown as defaulter with delays in your credit history. This will impact your future ability to get a loan or credit card. Please service the loan even if the project is delayed to ensure clean credit history.

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Sunil Tyagi

After my retirement, I purchased a flat from a developer. Since more funds were required to meet the cost of the flat, my wife and younger son took a joint loan from a bank. However, my elder son has also contributed in clearing this loan. Registration of this flat has been done in our younger son's name. To avoid misunderstanding at a later stage, how can I include my elder son as joint owner of this flat? Will it be cheaper to have this flat transferred in my name instead?

– R A Mehta

Since the flat has been registered exclusively in the name of your younger son, by virtue of his being its sole owner, he has the right to determine whether to share his ownership of this flat with your elder son. If he is willing to have your elder son as joint owner of this flat, he can execute a gift deed of a specific share in this property in favour of your elder son. This way, your elder son can be made joint owner within your lifetime. It is imperative to make timely and complete payment of requisite stamp duty and registration fee on a gift deed of immovable property. Though your younger son can also execute a gift deed of this property in your favour instead, it shall be a long-winded option given your ultimate desire to have both sons as joint owners.

My brother and I have inherited a house in equal share. We are contemplating giving it on rent and sharing the rental income. Since both of us are owners of this house, whose responsibility is it to pay income tax on the rental income?

–Evea Mary

Since you and your brother are joint owners of this property and have agreed to share the rental income, your and your brother's individual share in the rental income derived from this property shall be computed separately for the purposes of income tax.

My father had made a gift of a flat in the name of my minor son. We now wish to sell this flat and invest in a bigger property. Is it necessary to seek the court's permission before selling this flat as I have heard it is a time-consuming process?

–Mukesh Duggal

Yes, since the absolute and sole owner of this property is a minor, it can only be transferred after you (as guardian of the minor) have obtained written permission from the courts to do so. The court may permit transfer of this property to any third party on conditions as the court may deem fit.

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If you have any queries, email us at htestates@hindustantimes.com

The ten step buyer's guide

Have you investigated the title? Have all electricity and water dues been paid up? There are numerous checks you need to do before buying a house. Keep this list handy to avoid headaches later on

Sunil Tyagi

Every property transaction is unique. Nevertheless, this guide can serve as added help. Keep the following steps in mind before buying a property, irrespective of whether it is being purchased from a developer or an independent seller. Also, certain additional documents/ procedures that vary from state to state may be required at some stages.

The location

The choice starts with zeroing in the property on broad parameters. At this stage, key considerations must include size and type of the property (flat, bungalow, penthouse, etc.), distance of the property from hospitals, schools, malls. The state of public infrastructure in and around the area, green cover and availability of open spaces, clubs, golf courses, etc are also being factored in now during the finalisation of purchase deals.

The property

Buyers should decide whether they want a leasehold property or freehold property, as their rights and nature of ownership shall differ for the two. Leasehold properties come under the purview of public land owning agencies. Here, the parties execute a perpetual lease deed where the land owning authority takes on the role of a lessor and the person who is allotted the property takes on the role of a lessee. To transfer a leasehold property, the lessee requires prior permission of the land owning authority, upon fulfilment of certain conditions by the lessee. Freehold properties, on the other hand, require no such prior permission to be taken before transfer. Such freedom obviously comes at a price as freehold properties are usually more expensive. At this stage, identifying your financial assets and liabilities is key to decision-making.

The developer

With competition at an all-time high, developers are competing by differentiating themselves in terms of price and value-added amenities such as concierge facilities, spa, gym, tennis courts, etc. In addition to comparing these, conduct a background check of the developer's projects and track record with respect to previous housing projects undertaken by it. This is usually a good indicator of the reliability and market standing of the developer.

Investigation of title

The importance of checking the history of change of ownership of the property being purchased, ideally for the past 30 years at least, cannot be stressed enough. Such investigation of title can safeguard against possible defects in the buyer's title of ownership. As due diligence is a time consuming and complex process, professional legal help may be sought at this stage.

Demand title documents

As the exact nature of ownership is known only by the seller (owner), it is his duty to acknowledge the buyer's right to demand and get details of seller's ownership in the property. Moreover, having original title deeds in hand rules out the possibility of an equitable mortgage (by previous owners) existing on the property. In a welcome step to bring about transparency, developers now keep originals of title deeds at their office, for the prior inspection by prospective purchasers.

Title documents include sale deed, development agreement, power of attorney, perpetual lease deed, etc. In all these documents, the description of the property must match the description of the property being purchased. The property should be clearly demarcated by metes and bounds and identify all owners, if more than one. If the property is indeed jointly owned, check the quantum of share that each joint owner holds. To be valid, title deeds that require mandatory stamping and subsequent registration by law should also have been duly stamped and registered by the seller and previous owners.

- In a perpetual lease deed, note the remaining duration of lease and clarify whether the rent payable by the seller to the land owning authority is an annual/ recurring payment or a one-time payment has been made.
- If the seller has inherited the property as a sole legal heir, in case of intestate death of previous owner of the property, the seller can validly sell such property. If the seller has inherited property along with other heirs, ensure that all legal heirs give their consent to sale.

Encumbrances and dues

Registered debts and mortgages can be ascertained by visiting the relevant sub-registrar's office (where title deeds of the property have been registered). If the seller had previously taken a mortgage on the property being purchased, he must be able to prove the same by showing the release certificate from the concerned bank. If the property is still under mortgage, the parties would require a no objection certificate from the bank before any sale/ purchase. If the bank grants such permission, the buyer usually becomes liable for paying the outstanding loan. Buyers should also visit local municipal departments and service providers to check if there are any outstanding charges (eg property tax, water/electricity/telephone/gas connection charges) on the property in the name of the seller.

Permitted usage

Ensure that the property does not fall within any un-authorised settlement/colony. Moreover, it should also have been permitted for residential use. In case the previous permitted usage of land was non-residential, check whether the seller has the requisite conversion licence/deed permitting the land to be used for residential purposes. Some buyers are also keen to purchase a residential property for the purpose of carrying out a commercial activity in it, such as running a crèche, doctor's clinic, etc. Before doing so, ensure that the property is actually situated in a "mixed use" area according to the city's master plan. Buyers must check whether a conversion license for the property has been obtained. Other features of the property (eg parking space, width of road surrounding the property) should also be in compliance with the rules and regulations contained in the relevant master plan.

Construction

It is not unusual for buyers to repent their decision when they discover the poor quality of the property's construction. When purchasing a fully constructed property, the seller should provide sanctioned building plans, completion certificate and occupation certificate for the property. Also check whether the property has indeed been constructed according to such sanctioned building plans and whether the construction is within permissible FAR. If it has been constructed over and above the permissible limit in the sanctioned building plans, the seller should have paid the requisite compounding charges to relevant local authorities in order to regularise such construction. If not, the property would be in danger of demolition and sealing as it would amount to an illegal construction.

Execution

Once the buyer has completed entire due diligence of the property and is satisfied with his decision to purchase the property, he must continue exercising similar caution at the time of executing the sale/purchase documents. For properties in a housing complex in the process of being developed, an allotment letter followed by a buyer's agreement is executed between a developer and buyer. However, the buyer's agreement by itself does not confer title of the property in favour of the buyer, unless it is followed by the execution of a sale deed in favour of the buyer at a later stage. Buyers should thoroughly examine terms and conditions in the buyer's agreement and sale deed.

Stamping and registration

The Indian Stamp Act, 1899 and Registration Act, 1908, make payment of stamp duty and registration fee mandatory for "conveyance" deeds. Stamp duty and registration fee levied vary from state to state. Adequate stamping and subsequent registration, wherever required, grants legal documents the status of being admissible as evidence in courts. Inadequate/non-payment of stamp duty can lead to competent authorities impounding such document and charging a hefty penalty of up to ten times the applicable stamp duty. The buyer must pay complete stamp duty and registration fee on time to fully secure ownership over the purchased property.

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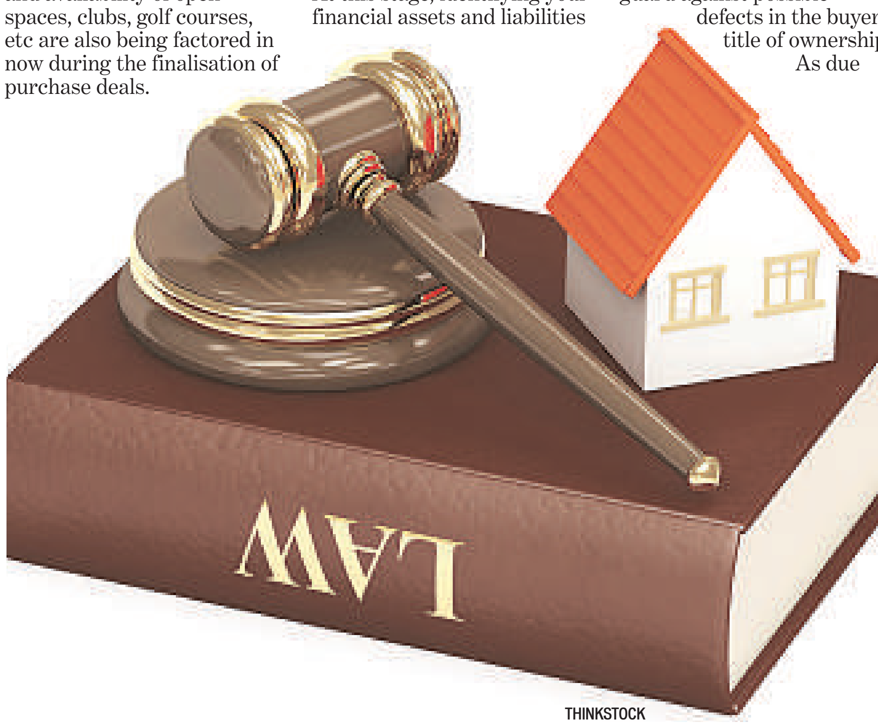

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DOCUMENTS YOU SHOULD CHECK BEFORE FINALISING A HOME BUY

Sl. No	Documents	Group/Housing Societies	Independent Housing	Floors in Independent Housing
1	Title documents - Check the legal validity of title deeds previously executed with respect to the property	Documents showing how land was originally allotted to the group housing society	Complete chain of title documents showing change in ownership evidenced by original title deeds	Complete chain of original title documents showing change in ownership
2	Sanctioned building plans/layout plans	✓	✓	
3	Occupation/completion certificate	✓	✓	✓
4	Land usage documents	Specified under buyer's agreement	✓	✓
5	Electricity; water; gas connections payments	✓	✓	✓
6	Society bye-laws	✓	✗	✗
7	Environmental clearance	✓	✗	✗
8	Construction specifications (applicable for properties under construction)	✓	✓	✓
9	Inventory (if applicable)	✓	✓	✓
10	Property tax receipts and utility payments	✓	✓	✓