

Taking care of mortgaged property

After taking possession of a mortgaged house, the mortgagee becomes responsible and liable for management of the property

htestates legal remedies

Sunil Tyagi

■ htestates@hindustantimes.com

People taking loans usually provide a collateral security as immovable property to secure repayment of a loan to the lender. In legal terminology, such an arrangement of providing security of immovable property to secure loan/debt is recognised as mortgage. The person providing the security is known as mortgagor and the person accepting the security is called mortgagee.

If the mortgagor defaults on payment of dues, the mortgagee can invoke his rights under the mortgage arrangement through legal recourse or under any statute to, if applicable, and take pos-

session of the mortgaged property till repayment or recovery of his dues.

After taking possession, the mortgagee becomes responsible and liable for management of the property. Unless the mortgagee and mortgagor have agreed otherwise in their contract, as per Transfer of Property Act, 1882, the mortgagee is responsible for the following:

- Taking care and managing the mortgaged property as if the property were his own.
- Use his best endeavour to collect rent and profits received from the property, if it's on lease.
- Pay government taxes, dues and revenues and other charges of public nature out of the income of the property.
- Carry out necessary repairs of the mortgaged property from the rent and profit remaining after deduction of amount paid for government

revenues, dues, charges, lease rent and the interest on loan amount due from the mortgagor to mortgagee.

- Not commit any act which can destroy or damage the property.
- Repair of insured property if it is damaged by fire through insurance money.
- Keep clear, full and accurate accounts of receipts and disbursement in relation to the property and furnish true copies of such accounts to the mortgagor at his request.
- If he himself occupies the property, a fair occupation rent is debited from the mortgagee's account towards dues payable to him by the mortgagor/borrower.

If the mortgagee fails to perform any of the aforementioned duties, then at the time of final accounting, loss, if any, occasioned by such failure can be adjusted from the amounts



ISTOCK

payable by the mortgagor to the mortgagee.

It is important for both mortgagor and mortgagee to be aware of the above rights and duties in order to avoid disputes and differences with respect to the mortgaged property.

The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com.