

GOVERNMENT OF TAMIL NADU

Abstract

Loans and Advances - House Building Advance - Sanction of house building advance to Government servants - creation of second mortgage in respect of certain types of financial institutions - orders issued - modification of mortgage deed forms and the procedure - regarding - equitable mortgage - Instructions - Issued.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

G.O.No.261

Dated 27th March, 1984,
Ruthrothkari, Panguni 14,
Thiruvalluvar Aadam 2014.

Read:-

- i) G.O.No.222 1342, Housing and Urban Development Department dated 2.9.83.
- ii) From the Government of India, Ministry of Works and Housing, G.M.No.1/17011/482-N III, New Delhi dated the 7th May 1983.

Order:

In the G.O.first read above, orders were issued permitting the Government servants who have obtained House Building Advance from this Government to create a second charge on the property provided they obtain prior permission of the Heads or the Department concerned and the draft deed of second mortgage is submitted to the Head of the Departments/ for scrutiny prior to their registration. Such a second charge may be created only in respect of loans to be granted for meeting the balance cost of the houses/flats by recognised financial institutions such as the following:-

- i) Banking institutions including Co-operative Banks;
- ii) Financing Corporations set up by the State Government which provide loans for house construction.
- iii) Apex Cooperative Housing Finance Institutions.
- iv) Public companies formed and registered in India with the main object of carrying on the business of providing long term finance for construction or purchase of houses in India for residential purposes like the Housing Development Finance Corporation Limited.

The above scheme has been introduced based on the introduction of a similar scheme by the Government of India in the sanction of house building advance to General Government Servants.

2. The Government of India, subsequently in their reference second read above, have stated that, it has come to their notice that some financial institutions such as Housing Development Finance Corporation are prepared to advance housing loans to the Central Government employees on creation of the second charge in their favour only in the shape of "Equitable mortgage" namely; the deposit of title

deeds with them, as security and not in any other form. In the event of execution of such an "Equitable Mortgage" the draft deed of second mortgage, would not exist. On the other hand the original deed of title that are required to be kept in safe custody by the Head of the Department concerned, in terms of the House Building Advance Rules, till such time as the entire amount of the House Building Advance along with interest thereon is fully recovered from the Government employee, will have to be handed over to the financial institution which is to advance the loan to the Government employee for the purpose of creation of the "Equitable Mortgage".

3. The question of adopting a similar procedure in the House Building Advance Rules of State Government has been examined in detail and it has been decided to adopt the same.

4. The Government, therefore direct that, if any financial institution, which is prepared to advance housing loans to the State Government Servants on creation of the Second charge in their favour, insists on the execution of a "Equitable Mortgage" the original mortgage deed executed by the Government servants as a security for the Government loan which is required to be kept in safe custody till the redemption of the principal and the interest of house building advance will be handed over to the above mentioned financial institution subject to the following conditions:

- i) the said documents of title shall be held and retained by the financial institution concerned only as a second mortgage subject and subordinate to the rights of this mortgagee hereunder;
- ii) The said financial institution shall not at any time or for any reason part with such title deeds without written consent of this mortgagee first had and obtained and on such conditions as may be imposed by this mortgagee at its discretion;
- iii) after at any time, the said financial institution ceases to be second mortgagee of the said premises, the said financial institution shall be obliged to return the said title deeds to this Mortgagee only, whether or not any demand in this behalf is made by this Mortgagee;
- iv) the said financial institution, shall produce or caused to be produced the said title deeds as and when required by this mortgagee for any reason whatsoever regardless of whether the said proposed second mortgage due to be in existence or otherwise discharged. This will be in the understanding that as soon as the purpose is served, the same shall be returned by the Mortgagee to the financial institution, to be dispensed subject to these conditions;
- v) nothing in these provisions shall be construed to create any financial or other obligations or liabilities in this mortgagee, vis a vis, the said financial institution or shall in any manner alter, abridge or abrogate the rights of this Mortgagee hereunder, who shall always be and continue to be the paramount Mortgagee".

5. In addition to the above, it is further directed that in the event of the loanee Government servant wishing to obtain, further housing loan by creating a second charge on the same premises as already mortgaged to the Governor of Tamil Nadu and a financial institution agreeing to advance the loan to the said Government employee by creating a second charge in their favour by means of "Equitable Mortgage" they will convey their consent to the concerned Head of the Department to abide by the above mentioned conditions in the matter of safe custody etc., of the title deeds, in letters to be written by them in the forms given in Annexures I and II to this Government order. On receiving the above mentioned letters, from the state government servants and the financial institutions in question, the request shall be examined and if, it is decided to permit the Government servant to raise loan by creating the second charge, the Head of the Department the authority who has sanctioned the House Building Advance, shall transmit the deeds of title on behalf of the mortgagee or only to the concerned financial institutions under registered cover addressed to the concerned officer by name, under intimation to the Government servant. Necessary entries will be made in the records by the Head of the Department/the sanctioning authority for keeping a watch over the proceedings in this regard thereafter.

6. Relevant conditions, regarding deposit/custody of the title deeds, with the Head of the Department appearing under rule 10 of the House Building Advance Rules, shall stand modified to the extent as above, relevant only to cases of advancing of the housing loans to the Government servants by financial institutions by creating a second charge by way of "Equitable Mortgage".

7. The concerned authorities may, so far as possible, retain true copy of the title deed, before the same is transmitted to a financial institution, for purposes of references and records.

8. This order issues with the concurrence of Finance/Law Departments Vide U.O.Nos.123351/Sal.I/83-1 dated 29.11.83 and 38885/83 dated 7.2.84 respectively.

9. The following amendment is issued to the "State Rules to regulate the grant of advances to State Government servants for building etc., of houses.

AMENDMENTS

In the said rules,
In the mortgage deed,
In form No.3,
In sub-clause(g) of clause(v) and
In Form No. 4
In sub-clause (f) of clause(v) the following proviso may be added.

"Provided, always that in the event of the Mortgagor creating a second mortgage on the same premises only by deposit of title deeds in favour of a financial institution including Housing development ~~trust~~ Finance Corporation or a Bank, the Mortgages may, at the written request of the Mortgagor and the financial institution concerned to this Mortgagee, hand over such documents of title to the said premises as are in possession of this Mortgagee; to the said financial institution for the sole purpose of creating the said proposed second Mortgage.

It is a strict condition that before the said documents of title are handed over by the Mortgagee to the said financial institution as herein before provided, that the said financial institution and the mortgager shall assure and undertake to the Mortgagee in writing in such form as may be determined by this Mortgagee that;

i) the said documents of title shall be held and retained by the financial institution concerned only as a second Mortgage subject and subordinate to the rights of this Mortgagee hereunder;

ii).the said financial institution shall not at any time or for any reason part with such title deeds without written consent of this Mortgagee first had and obtained and on such conditions as may be imposed by this Mortgagee at its discretion;

iii) after at any time, the said financial institution ceases to be second Mortgagee of the said premises, the said financial institution shall be obliged to return the said title deeds to this Mortgagee only, whether or not any demand in this behalf is made by this Mortgagee;

iv) the said financial institution, shall produce or caused to be produced the said title deeds as and when required by this Mortgagee for any reason whatsoever regardless of whether the said proposed second Mortgage due to be in existence or otherwise discharged. This will be in the understanding that as soon as the purpose is served, the same shall returned by the Mortgagee to the financial institution, to be dispensed subject to these conditions;

v) Nothing in these provisions shall be construed to create any financial or other obligations or liabilities in this Mortgagee, vis a vis, the said financial institution or shall in any manner alter, abridge or abrogate the rights of this Mortgagee hereunder, who shall always be and continue to be the paramount Mortgagee".

(BY ORDER OF THE GOVERNOR)

G. Ramachandrarao,
Commissioner and Secretary to Govt.

To.
XXXX

// true copy//

ANNEXURE-1

Draft of letter to be written to the Head of the Department by the loanee, State Government Servant.

....

Subject: Obtaining housing loan from
by creating a second charge in their favour
by 'Equitable Mortgage'.

Sir,

I have been sanctioned House Building Advance amounting to Rs.
by Vide G.O.No.
dated. I have since executed the Mortgage in favour of the Governor of Tamil Nadu and deposited the ~~xxxx~~ deeds of title of the property and Mortgage deed with the as per terms of the House Building Advance rules.

M/s. whom I had (Name of financial institutions) approached for an additional housing loan by creation of Second charge in terms of G.O.No. 1342 Housing and Urban Development Department dated 2.9.83 have consented to advance loan amount to Rs.) to me and have also agreed to abide by the conditions as laid down in the G.O.No.261 Housing and Urban Development Department dated 27.3.1984.

I hereby convey my consent to agree and undertake to abide by the following conditions in this regard;

i) the said documents of title shall be transferred to M/s. (the financial institution) by the Mortgagee on behalf of this Mortgagor and that shall be held and retained by the said financial institution only as a second Mortgage subject and subordinate to the rights of the Governor of Tamil Nadu as first Mortgagee;

ii) M/s. shall not at any time or for any reason part with such title deeds without written consent of the Mortgagee first had and obtained and on such conditions as may be imposed by the said Mortgagee at its discretion.

iii) after at any time, the said financial institution ceases to be second Mortgagee of the said premises, the said financial institution shall be obliged to return the said title deeds to the said first Mortgagee only, on behalf of this Mortgagor whether or not any demand in this behalf is made by that Mortgagee;

iv) the said financial institution shall produce or caused to be produced the said title deeds as and when required by the first Mortgagee for any reason whatsoever regardless of whether the said proposed second Mortgage due to be in existence or other-wise discharged; on the understanding that as soon as the purpose is served the same

shall be returned by the Mortgagee to the financial institution to be dispensed subject to these conditions,

v) Nothing in these provisions shall be construed to create any financial or other obligations or liabilities in the first Mortgagee, vis-a-vis the said financial institution or shall in any manner alter, abridge or abrogate the rights of the said Mortgagee, who shall always be and continue to be the paramount Mortgagee.

I now request you please to grant me permission to raise loan on said second charge in favour of M/S and to transmit the deed of title to M/s. on my behalf under intimation to me, so as to enable them to release the loan of Rs. (Rupees.) to me by creation of an Equitable Mortgage in this manner.

Thanking you,

Yours faithfully,

Signature.

Name in full :
(in Block letters)

Complete Address:

1. Office

2. Residence.

ANNEXURE-II

Draft of letter to be written by the Financial Institution to the Head of the Department concerned.

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Subject: Request of Thiru. for sanction to housing loan from by creating a second charge in their favour by 'Equitable Mortgage'.

....

Whereas Thiru. employed in the office of has intimated in his/her letter No. dated. that he/she has been sanctioned House Building Advance amounting to Rs. by vide his/her letter No. dated. and

Whereas he/she has approached this organisation for sanctioning an additional housing loan amounting to Rs. for the same purpose as the said house building advance was sanctioned to him/her by creating a second charge on the Mortgage deed already executed by him/her in favour of the Governor of Tamil Nadu in terms of the G.O.No.1342 Housing and Urban Development Department 2.9.1983.

a housing loan amounting to Rs. This organisation has agreed to advance to Thiru/Thirumathy on his/her aforementioned request on his/her creating a second mortgage in favour on this organisation by means of an 'Equitable Mortgage' by depositing with them the deeds of title.

This organisation now hereby agrees and gives its consent and undertakes to abide by the conditions in this regard as laid down in the G.O.No.261 Housing and Urban Development Department dated 27.3.84 and which are reproduced below:

i) the said documents of title shall be held and retained by us only as an 'Equitable Mortgage' which shall be second Mortgage subject and subordinate to the rights of the first Mortgage, viz., the Governor of Tamil Nadu.

ii) We shall not at any time or for any reason part with such title deeds without written consent of the said Mortgagee first had and obtained and on such conditions as may be imposed by the first Mortgagee at its discretion;

iii) At any time, we cease to be second Mortgagee of the said premises, we shall be obliged to return the said title deeds to the first Mortgagee only, whether or not any demand in this behalf is made by the said first mortgagee;

iv) We shall produce or caused to be produced the said title deeds as and when required by the first Mortgagee for any reason whatsoever regardless of whether the said proposed second Mortgage due to be in existence or otherwise discharged. This will be on the understanding that as soon as the purpose is served the same shall be returned by the Mortgagee to us.

v) nothing in these provision shall be construed to create any financial or other obligations or other obligations or liabilities in the first Mortgage, vice-versa, ourselves or shall in any manner alter, abridge or abrogate the rights of the said first Mortgage, who shall always be and continue to be paramount Mortgage.

You are now, therefore, requested to transmit to us the deeds of title pertaining to the above property of Thiru/Thirumathi on his/her behalf, for creation of an 'Equitable Mortgage' and for safe custody in this organisation, in terms of the above mentioned conditions.

Yours faithfully,

Dated:

To
Thiru.
.
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//true copy//

Office of the Tamil Nadu Institute
of Urban Studies, Coimbatore.

RF/19/84

Dated: 3.5.84.

Copy communicated.

Sd/-(G.HANDAPANI)
Director in charge.

To
All Family Members.
A1, M1 and A2 of Stock File.

//forwarded by order//

Manager.

vr/22/5/