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CAN BANKS TAKE AWAY YOUR HOUSE IMMEDIATELY IF YOU MISS EMI PAYMENTS?

-EVA

Meta Description: Missed your home loan EMI? Learn what banks can and cannot do, the recovery process, your legal rights, and the options available before your property can be taken.

So, it is an emotional time when you miss an EMI payment. Perhaps it's a layoff, a medical emergency, a downturn in business activity, or just a cramped budget. And pretty soon, that fear sets in: "Now the bank is going to foreclose my home?"

First of all, here is some good news: banks don't have the power to take your home away from you when you miss a payment. There is a legal procedure involved, which has several stages and there are measures in place to protect borrowers- and it's important to understand the process so that you don't panic and make bad decisions.

THERE IS NO SUCH THING AS MISSING ONE EMI PAYMENT AND LOSING YOUR HOUSE!

Banks acknowledge that it is a fact of life that payments will at times be delayed. When a payment arrives that is late:

1. An overdue charge or penalty fee.
2. Call reminder, SMS or an email from the bank will be sent to you.
3. Bigger missed payments that affect your credit score, as missing payments get reported to the credit bureaus.

A Non-Performing Asset (NPA) is a loan account that is only considered an NPA after the loan is not paid regularly for a long time (typically after three consecutive EMIs, meaning 90 days). This classification gives rise to more serious recovery action.

WHAT HAPPENS AFTER A LOAN BECOMES AN NPA?

In the case of the secured loan such as Home Loan, banks in India are required to follow the procedure as specified in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) once your account is declared as NPA. The process is more or less, as follows:

Step 1: Demand Notice (60 Days)

The bank has to send you a formal written notice under Section 13(2) of SARFAESI Act to pay the outstanding dues within 60 days. This notice will outline the total balance due and explicitly detail the ramifications if payment is not made. This is a prerequisite and the bank cannot jump straight to the foreclosure of the property.

Step 2: Your Right to Respond

In the 60 days following the notice, as a borrower, you may object or make representations to the notice, such as challenging the amount claimed, pointing out any inaccuracies, or providing a statement of any factors that may affect the amount. If the bank refuses to accede to your objections, they have a legal obligation to provide reasons and justification for their refusal.

It's a critical period. When you actually are in a financial bind this is the time to be proactive with the bank, not passive.

Step 3: Possession Notice (If Dues Remain Unpaid).

The bank can also take symbolic or actual possession of the property under section 13(4) of the Act, if the dues are not paid within 60 days, after issuing of a possession notice. At this point the process must adhere to the rules of law- there should be no coercion and no circumvention of the legal process.

Valuation and Auction (Step 4)

The bank will most likely value the property as soon as they take it and then sell it at public auction to pay back the loan amount. The borrower(s) should be informed about the auction in a proper manner (in the prescribed time, at least 30 days, description of this auction should be published and communicated to them, not in a secret manner).

Step 5: Collecting dues from the sale proceeds.

Should the property exceed the amount that is due and payable to the bank, the bank cannot retain any amount over the amount due and payable to it (including principal, interest and recovery costs) and must return the surplus.

IS THERE ANY POINT AT WHICH THIS PROCESS CAN BE STOPPED?

Yes, it is worth noting that:

1. **Pay-off outstanding dues.** Once the due is outstanding, it can cease the process at almost any time before the sale process is over and completed (or settlement with the bank).
2. **Reorganize or renegotiate the loan.** If you have approached the bank with proactive efforts and not waited for the legal notices, they might be inclined to discuss options such as a revised repayment schedule, a temporary moratorium, or even loan restructuring.
3. **Go to Debt Recovery Tribunal (DRT).** If you feel that the bank has not followed the correct legal procedure, the amount claimed is wrong or that your objections have not been adequately considered, you can appeal to the DRT under Section 17 of the SARFAESI Act. Please note that this generally involves a deposit of some amount of the disputed amount.
4. **Set up a One-Time Settlement (OTS).** Many banks will accept a one shot settlement agreement, particularly, when there is a possibility of total recovery at auction - and that will take time as well as cost the bank money.

WHAT BANKS CANNOT DO

It's equally important to know your rights and the limits on what banks can legally do:

They're not allowed to take possession of your property without adhering to the notice periods and procedures required by law.

They are unable to recover dues or possession by force, threat or intimidation.

They are not allowed to put the property up for sale without setting aside reasonable public notice and a chance to bid.

They will not be able to keep any overage from the sale other than what is rightfully theirs.

The recovery agents are expected to adhere to the fair practices guidelines laid by the RBI — actions such as harassment, making calls at odd time of the day or night or public humiliation are not acceptable practices and complaints may be made to the bank or the Banking Ombudsman of RBI.

IF YOU'RE HAVING TROUBLE WITH EMI PAYMENTS, WHAT SHOULD YOU DO?

If you are struggling to pay your home loan EMIs do this:

1. **Don't stay away from the bank.** Contact the bank proactively and explain your situation- banks like to work out a solution rather than recover through the long legal process.
2. **You can make a request for restructuring**, as most banks have the option of providing you with a revised EMI schedule, a loan tenure extension or a temporary payment holiday in cases of genuine hardship.
3. **Answer all correspondence**. Notices are not to be ignored and the ignoring does not remove the problem, it simply restricts your choice of options going forward.
4. **Record all correspondence with the bank-** both email and mail- along with telephone calls.
5. **If you receive a demand notice or possession notice seek legal advice**, particularly to ensure that the process is being completed properly, and to know what your rights are at each stage.
6. **If you can see that you are going to be able to get the property back, and if the time is right, sell it yourself-** this can be done for a higher price than a distressed bank auction and it will help you to settle the loan at a time of your own choosing.

THE BOTTOM LINE

A foreclosure isn't something that happens overnight- it's a long process with certain deadlines, notice periods and chances to talk to your lender or make an offer to settle the debt. Banks must abide by due process, and you have genuine rights in the process. When you're experiencing EMI problems, the last thing you want to do is sit on the sidelines- communicate with your bank, find out what you can do, and if you receive a legal notice, seek a lawyer's advice as soon as you can to safeguard your position.