

# **The National Housing Bank (Recovery of dues of the Approved Institutions)General Regulations, 2002**

UNION OF INDIA

India

## **The National Housing Bank (Recovery of dues of the Approved Institutions)General Regulations, 2002**

### **Rule**

### **THE-NATIONAL-HOUSING-BANK-RECOVERY-OF-DUES-OF-THE-APPROVED INSTITUTIONS)GENERAL REGULATIONS, 2002**

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The National Housing Bank (Recovery of dues of the Approved Institutions)General Regulations, 2002Published vide Notification Gazette of India, Extraordinary, Part 2, Section 3(i), No. 215, dated 8th May, 2002.

### **1816.**

No. G.S.R. 342(E), dated 8th May, 2002. - In exercise of the powers conferred by Section 55 of the National Housing Bank Act, 1987 (53 of 1987), the Central Government hereby makes the following rules, namely :

#### **1. Short title and commencement.**

(1)These rules may be called the National Housing Bank (Recovery of Dues of the Approved Institutions) General Regulations, 2002.(2)They shall come into force on the date of their publication in the Official Gazette.

#### **2. Definitions.**

- In these regulations, unless the context otherwise requires,-(a)"Act" means the National Housing Bank Act, 1987;(b)"agent means a person duly authorised by a party to present application or to given reply on its behalf to the recovery officer or to the Appellate Tribunal as the case may be;(c)"appeal" means an appeal made to the Appellate Tribunal under Section 36-S of the

Act;(d)"appellant" means a person or an approved institution making an appeal to the Appellate Tribunal under Section 36-S of the Act;(c)"applicant" means an approved institution or person making an application to the recovery officer under Section 36-E;(e)"application" means an application made to the recovery officer under Section 36-E;(g)"Registrar" means the Registrar of an Appellate Tribunal and includes an officer of such Appellate Tribunal who is authorised by the Presiding Officer to function as Registrar;(h)"Registry" means the Registry of the Appellate Tribunal;(i)all other words and expressions used and not defined in these regulations but defined in the Act shall have the meanings respectively assigned to them in the Act.

### **3. Form of application.**

- Every application to the recovery officer for recovery of dues under Section 36-E of the Act shall be in Form No. 1.

### **4. Documents to accompany the application.**

- Every application under Regulation 3 shall be accompanied by a paper book containing(i)a statement showing details of the assistance due from a respondent and the circumstances under which such as assistance has become due;(ii)all documents relied upon by the applicant and those mentioned in the application;(iii)index of documents; and(iv)where the parties to the suitor proceedings are being represented by an agent, documents authorising; him to act as such agent.

### **5. Form of Notice to the borrower.**

- A notice of demand to be served on the borrower under sub-section (1) of Section 36-F shall be in Form No. 2.

### **6. Form of appeal.**

- Every memorandum of appeal to the Appellate Tribunal under Section 36-S of the Act shall be in Form 3.

### **7. Fee.**

- The amount of fee payable in respect of appeal under Section 36-S shall be 1% of the amount due subject to a minimum of Rs. 2,500 and a maximum of Rs. 30,000.Procedure in Sales of Immovable Properties

### **8. Sale and proclamation of sale.**

(1)The recovery officer may direct that any immovable property mortgaged or assigned to the approved institution as security for any assistance in respect of which default has been made or such portion thereof as may seem necessary to satisfy the dues of the approved institution together with

all costs, charges and expenses incurred by the recovery officer, shall be sold.(2)Where any immovable property is ordered to be sold, the recovery officer shall cause a proclamation of the intended sale to be made in the language of the district where the property is situate.

## **9. Contents of proclamation.**

(1)A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall specify the time and place of sale, and shall also specify, as fairly and accurately as possible.(a)complete description of the property to be sold;(b)the revenue, if any, assessed upon the property or any part thereof;(c)any incumbrance, grant or contract to which the property is known to be liable;(d)the amount for the recovery of which the sale is ordered;(e)the reserve price, if any, fixed by the recovery officer below which the property may not be sold; and(f)any other thing which the recovery officer considers it material for a purchase to know, in order to judge the nature and value of the property.(2)The place of sale specified under sub-regulation (1), shall be either the office of the recovery officer or some other place appointed by him in this behalf and situate on or near the property to be sold.

## **10. Mode of making proclamation.**

(1)Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary method and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the property and also upon a conspicuous part of the office of the recovery officer.(2)Where the recovery officer so directs, such proclamation shall also be published in such other manner including publication in the local newspaper and the cost of such publication shall be deemed to be the cost of the sale.

## **11. Time and conduct of sale.**

(1)The sale shall not take place on a Sunday or other holiday, or till after the expiration of at least thirty days from the date on which the copy of the proclamation was affixed in the office of the recovery officer or affixed on the property, whichever is later.(2)The sale shall be by public auction and shall be conducted either by the recovery officer in person or by a person specially appointed by him in this behalf, if the recovery officer is of the opinion that it will be more advantageous to appoint a person to sell a property.(3)Where the recovery officer has appointed a person to sell a property, he shall also fix the remuneration of such person for such services and the remuneration payable to such person shall be deemed to be cost of the sale.

## **12. Power to postpone sale.**

- The recovery officer may from time to time postpone the sale.

### **13. Stay of sale.**

- If at any time before the bidding at the auction is completed, the borrower pays, the dues of the approved institution together with all costs, charges and expenses incurred by the recovery officer in respect of the property which has been proclaimed for sale, to the recovery officer or to the person appointed by him for conducting the sale, or proves to the satisfaction of such person that he has already paid the same to the approved institution, the sale shall be stayed.

### **14. Payment of deposit by highest bidder.**

- When the highestbid at the auction has been ascertained, the person who made that bid shall, on the requisition of the recovery officer or the person appointed by him, as the case may be, conducting the sale, deposit twenty five per cent, of the amount of his bid, and shall, on deposit thereof, be declared to be the purchaser subject to the provisions hereinafter contained: Provided that no sale under this regulation shall be made if the amount of bid by the highest bidder is less than the reserve price, if any specified under clause (e) of sub-regulation (1) of Regulation 9.

### **15. Consequences of failure to pay deposit.**

- If the person who made the highest bid fails to pay the deposit as required by Regulation 14, the property shall forthwith be put up again and sold, and all expenses attending the first sale, and the deficiency of price, if any, which may happen on resale, may be recovered from him by the recovery officer.

### **16. Time for payment in full.**

- The full amount of the purchase money shall be paid by the purchaser within fifteen days of the bid.

### **17. Procedure in default of payment.**

- In default of payment of the full amount of the purchase money within the period mentioned in Regulation 16, the deposit referred to in Regulation 14 shall after defraying the expenses of the sale, be forfeited and be applied in reduction of the dues, and the property shall be resold, and the defaulting purchaser shall have no claim to the property or to any part of the sum for which it may subsequently be sold.

### **18. Application to set-aside sale.**

(1)At any time within thirty days from the date of the sale, application may be made to the Housing Finance Institutions Debts Recovery Appellate Tribunal to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it: Provided that a sale shall be set aside only on the ground that the appellant has sustained injury by reason of such material irregularity or

mistake in non-service of notice requiring the borrower to pay the dues or in publishing the proclamation or in the conduct of the sale.

### **19. Order confirming or setting aside sale.**

(1) After the expiration of thirty days from the date of the sale, if no application under Regulation 18 has been made, or if such application has been made and rejected, the recovery officer shall make an order confirming the sale, and, if such application has been made and allowed, the recovery officer shall make an order setting aside the sale. (2) An order made under this regulation shall be final.

### **20. Refund of purchase money on setting aside of sale.**

- Whenever the sale of any property is set aside, the purchaser shall be entitled to receive back his purchase money.

### **21. Proclamation after postponement or on resale.**

- A sale made after a postponement under Regulation 12 and a resale consequent on a purchaser's default under Regulation 17 or on the setting aside of a sale under Regulation 19, shall be made after the issue of a fresh proclamation in the matter hereinbefore prescribed for the sale.

### **22. On confirmation of sale possession and certificate to be granted to purchaser.**

(1) After the sale has been confirmed in manner aforesaid the recovery officer shall put the person declared to be the certified purchaser into possession of the property sold, and shall grant him a certificate to the effect that he has purchased that property. (2) The certificate shall state the property was sold for the recovery of the amount due to an approved institution and shall set forth the encumbrances, grants, contracts and right of occupancy, if any, specified in the proclamation of the sale. (3) Every certificate granted under sub-regulation (1) shall be deemed to be a document registrable as a conveyance under the provisions of the Registration Act, 1908 (16 of 1908). (4) The certified purchaser of any immovable property shall be entitled to all rents and profits falling due in respect of the property after the date of the confirmation of the sale and be liable for all dues, cess and taxes falling due in respect thereof after that date. Procedure for Sale of Movable Property

### **23. Sale of Movable Property.**

- The recovery officer may direct that a movable property mortgaged, pledged, hypothecated or assigned to the approved institution as security for any assistance in respect of which default has been made or such portion thereof as may seem necessary to satisfy the dues of the approved institution together with all costs, charges and expenses incurred by the recovery officer, shall be sold. (2) Where any movable property is in order to be sold, the recovery officer shall conduct the sale as nearly as may be, in accordance with the law for the time being in force for the sale of movable

property for the recovery of arrears of income tax under the Income Tax Act, 1961 (43 of 1961).

## **24. Proceeds of Sale.**

- When a sale of immovable or movable property under those regulations has been confirmed, the proceeds of the sale shall be applied by the recovery officer in accordance with the provision of Section 36-G of the National Housing Bank Act, 1987 (53 of 1987).

## **25.**

Save and except the provisions of the regulations herein contained, the recovery officer shall be guided by the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-Tax (Certificate Proceedings) Rules, 1962, as in force from time to time in the matter of sale of the immovable and movable property. FORM NO.1[See Regulation 3]Application under Section 36-E of the National Housing Bank Act, 1987Before the Recovery Officer.....  
(Place)Application No .....of.....BETWEEN.....(Name of the approved institution).....APPLICANTAND.....(Borrower).....RESPONDENTDETAILS OF APPLICATION :

### **1. Particulars of the applicant :-**

(i)Name of the applicant :(ii)Address of Registered Officer :(iii)Address for service of all notices :

### **2. Particulars of the respondent :-**

(i)Name of respondent :(ii)Address for service of all notices :

### **3. Jurisdiction of the Recovery Officer;**

The applicant declared that the subject matter of the recovery of dues falls within the jurisdiction of the Recovery Officer.

### **4. Limitation :**

The applicant further declares that the application is within the limitation prescribed under the Limitation Act, 1963.

### **5. Facts of the case:**

(i)The facts of the case are given below :(Give here a concise statement of facts in the chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise.)(ii)Details of security :(Give here description of the property pledged, mortgaged, hypothecated or assigned to the approved institution as security for the dues.)

## **6. Relief(s) sought :**

In view of the facts mentioned in paragraph 5 above, the applicant prays that the amount due to it be recovered and be paid to the applicant by the sale of the property hereinbefore mentioned.

## **7. Interim and ad-interim order, if prayed for:**

Pending final decision on the application, the applicant seeks issue of the following order:(Give here the nature of the interim and/or ad-interim order prayed for with reason).

## **8. Matter not pending with any other Court, etc :**

The applicant further declares that the matter regarding which this application has been made is not pending before any Court of law or any other authority.

## **9. Details of index :**

An index in duplicate containing the details of the documents to be relied upon is enclosed.

## **10. List of Enclosures :-**

Dated:(Authorised Official/Agent).....(Approved Institution)VERIFICATIONVerified that the contents of paras 1 to 10 are true to my personal knowledge and belief and that I have not suppressed any material facts.Verified at .....on this day of.....(Authorised Official/Agent)For use in Recovery Officer's Office Date of filing..... Date of receipt by post ..... or Registration No .....Signature of Recovery OfficerFORM NO. 2[See Regulation 5]Notice under Section 36-F of the National Housing Bank Act, 1987To.....(Respondent)Whereas. ....one of the approved institutions under the National Housing Bank Act, 1987 has filed an application before the undersigned under Section 36-E (1) of the said Act stating that Mr./Ms .....however, along with Mr./Ms..... as co-borrower, and Mr./Ms .....As guarantor borrowed from it a sum of Rs.....as assistance on the basis of security by way of pledge/mortgage/hypothecation/assignment of the property specified below,And whereas the above said borrower/s who are under a liability to the said approved institution have made default in repayment and/or otherwise failed to comply with the terms of the agreement and the amount due to the said approved institution has not yet been paid and accordingly prayed or an order for the sale of the property specified below.Now, therefore, in exercise of the powers under Section 36-F of the National Housing Bank Act, 1987 (53 of 1987), you are hereby called upon to pay the amount due to the said approved institution, within a period of ninety days from the date of service of this notice or to show cause why the relief prayed should not be granted.Please take notice that in the case of default, necessary order for the sale of the property shall be issued in accordance with the provisions of the Act and the regulations/rules made thereunder :A copy of the application filed by the approved institution and paper book are sent herewith.Description of the property pledged, mortgaged hypothecated or assigned as security for

the dues.(Recovery Officer)Dated : .....Seal .....FORM NO. 3[See Regulation 6]Memorandum of Appeal under Section 36-S of the National Housing Bank Act, 1987 (53 of 1987)For use in the Appellate Tribunal's OfficeDate of filing.....Date of receipt by post.....Registration No .....Signature of RegistrarIn the Housing Finance Institution Debt Recovery Tribunal,..... (Place)APPEAL NO .....OF.....BETWEEN.....APPLICANTAND.....RESPONDENTSDETAILS OF APPLICATION :

### **1. Particulars of the appellant:-**

(i)Name of the appellant:(ii)Address:(iii)Address for service of all notices :

### **2. Particulars of the respondent/s :**

(i)Name of respondent/s :(ii)Address for service of all notices

### **3. Jurisdiction of the Appellate Tribunal.**

The appellant declared that the subject matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

### **4. Limitation :**

The appeal is against the order of the Recovery Officer dated.....and the appellant declare that the appeal is within the limitation prescribed in sub-section (2) of Section 36-S of the National Housing Bank Act, 1987 (53 of 1987).

### **5. Facts of the case and the orders passed by the recovery officer :-**

The facts of the case are given below :(Give here a concise statement of facts and grounds of appeal against the specific order of the Recovery Officer in a chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise).

### **6. Relief(s) sought :**

In view of the facts mentioned in paragraph 5 above, the appellant prays for the following relief(s)-[Specify below the relief(s) sought explaining the grounds for relief(s) and legal provisions (if any relied upon.)]

### **7. Interim and/or ad-interim order, if prayed for:**

Pending hearing and final decision on the appeal, the appellant seeks issue of the following order :(Give here the nature of the interim and/or ad-interim order prayed for with reason).



## **8. Matter not pending with any other Court, Tribunal etc.:**

The appellant further declares that the matter regarding which this appeal has been made is not pending before any Court of law or any other authority or any other Tribunal.

## **9. Particulars of bank draft in respect of the deposit of amount due in terms of Section 36-T of the Act:**

(a)Name of the bank on which drawn(b)Demand draft number.

## **10. Particulars of bank draft/postal order in respect of the fee paid in terms of Regulation 7 of these Regulations:**

(a)Name of the bank on which drawn(b)Demand draft number OR(a)Number of Indian Postal Order(s)(b)Name of issuing Post Office(c)Date of issue of Postal Order(s)(d)Post Office at which payable

## **11. Details of Index :**

An index in duplicate containing the details of the documents to be relied upon is enclosed.

## **12. List of Enclosures :**

VERIFICATIONVerified that the contents of paras 1 to 11 are true to my personal knowledge and belief and that I have not suppressed any material facts.Verified at.....on this day of .....(Appellant)To The Registrar,.....