

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

ROLE & DUTIES OF VALUERS IN INDIA

DRAFTED/COMPILED BY: ER. KAPIL DEV (GENERAL SECRETARY) 98720-07872

Valuation of Land & Building/ Plant & Machinery is **primarily a technical profession** as it involves Quality & material used Construction as well as calculation of Area of all shapes and sizes of lands at site & prepare comparison chart vis a vis documents provided by Secured Creditors. Valuers play important role in assessing the value of Property for mortgage purpose by bank. The Valuation Profession in India is Technical in nature and as per various notification, guidelines and circulars by Govt. of India as well as RBI, Civil Engineers, Architects & Town Planner are competent to become Govt. Approved Valuers. There is one clause of Master in Valuation also but as per Section 22(3) of UGC Act, **no course/degree in Master in Valuation by name of M.Sc. in Real Estate or Plant & Machinery is valid degree in India.** Valuers have faced many problems in the past as Valuers duties are not properly defined by any other organisation in India.

It has been observed that, in case of Fraud with the Bank, the concerned Bank Officials sometimes tries to fix the charges against the Valuer without giving him/her fair opportunity to be heard. There are lot many examples that Bank Officials, going against Principle of Natural Justice, have sent name of Innocent Valuers to be uploaded in IBA TPE Caution List and Valuer has got relief from High Court because Bank Officials had not followed the proper laid down procedure. The main reason behind banks unconstitutional Act is that, the bank officials too are not aware of DUTIES OF VALUERS. Further, the existing Private Valuers Institutions which are in existence since more than one decade have never even thought of drafting Role/Duties of Valuers as well as one Standard format for Valuation Purposed. Most of them are blindly accepting the policies/ conditions of Secured Creditors (Banks, FIs, NBFCs) without going into the genuineness and applicability of such documents.

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

After looking into the gravity of situation, Valuers Association (Regd.), has drafted Duties/Role of Valuers considering the technical aspects of Valuation, Educational Qualification to become Valuer and most important, limitation of valuers, various Court judgments delivered by Hon'ble Apex Court, various high courts, CBI Court and District Courts in India as under:

CHARTER OF DUTIES OF VALUER OF IMMOVABLE PROPERTIES/PLANT & MACHINERY

- A Valuer should do his duty honestly.
- A Valuer must have Loyalty / Sincerity towards the financial institution with whom he is empanelled.
- The valuer must inspect the property personally.
- Purpose of Valuation & name of Secured Creditor must be clearly mentioned on First Page of Valuation.
- Valuation of property must be carried out by applying appropriate method of Valuation (Land and Building method, Rent Capitalization, Development method etc.).
- The Ownership Rights of Property i.e. Free Hold or Lease Hold as per copies of documents provided by bank must be clearly mentioned in the Valuation Report.
- All factors effecting the value of property i.e. Narrow or restricted approach, Overhead Electric/High Tension wires, Tenancy of property (as reported to Valuer), Visible structural defects (as seen with Naked Eyes) etc. must be highlighted on First Page of Valuation report.
- For preparation of Valuation report proper Physical Measurements of all sides of property should be measured and recorded in valuation report, discrepancies of area or sides of boundaries/orientation w.r.t dimensions mentioned in copy of documents provided by the bank must be mentioned in the valuation report.

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

- Valuer should be in position to physically locate the property of which valuation report has been done within the stipulated time period of 90 days from date of issuing valuation report.
- Valuer must attach Photographs, GPS location (Longitude/Latitude) of Property under consideration including location plan showing approach road from main road and must highlight some references of nearby Properties/commercial places as landmark.
- The Valuer must ensure that the property is demarcated at site.
- Valuer must submit the report directly to the bank.
- In case of Agricultural Activities, the Valuer must specifically mentioned the activity and in large pocket of vacant land, valuer must mention that the report is Valid only if all the provisions of SARFAESI Act, 2002 are applicable from day one of mortgaging the property by bank.

VALUATION IS AN OPINION GIVEN BY VALUER

That State Bank of India has clearly mentioned in Point 8 of its e-circular No. CCO/CPPD-ADV/492019-20 dated 03-07-2019 addressed to The Chief General Managers, State Bank of India, All LHOs/CAG/CCG/SARG/I& AD as well as defined in clause 1.9 of Handbook of Policy & Procedure for Valuation of Real Estate issued by Indian Bank's Association (IBA), which are re-produced as under that:

Obligations of the Banks / HFIs

- All appointments / empanelment of valuers shall be done in accordance with the provisions of this document and its amendments from time to time.
- All instructions to the valuer are to be given by the bank / housing finance institution in writing.

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

- Supportive documents, wherever possible, shall be provided to the valuer before the valuation work begins. Any other document will have to be procured by the valuer and sufficient time for the same will be provided.

- A minimum of 3 days and a maximum of 10 days of time shall normally be given to the valuer to carry out the valuation. In case of outstation properties or in case of large property valuations, more time shall be given, depending on the circumstances, on a case to case basis.

- **No security deposits or any other indemnity money should be taken from the valuers as security for the professional services that they provide.**

- Professional fees / payments to the valuers need to be paid by the banks / housing finance institutions within 45 days of the submission of the valuation report and its acceptance by the banks / housing finance institutions.

- In case the valuation report submitted by the valuer is not in order, the banks / housing finance institutions shall bring the same to the notice of the valuer within 15 days of submission for rectification and resubmission. In case no such communication is received, it shall be presumed that the valuation report has been accepted.

- **All procedures as outlined in this document have to be followed by the banks and the housing finance institutions.**

That there is huge black money involved in Real Estate Sector due to very low Collector Rates in almost all across the country. The Prevailing fair market rates of property fluctuate with time due to market conditions as well as amendment or introduction of policies by State and/or Centre Govt. Most of the times, there is no evidence of huge gap between collector rates vis a vis prevailing market rates and under such circumstances, it becomes almost impossible for valuer to justify the market rates adopted in valuation report even after few months of submitting the Valuation Report. The Valuers gives Guideline Value of Property along with Fair Market Value too. **There are other**

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

many factors considered by bank while disbursing the loan and it is Bank's discretion to decide & choose value given by Valuer. The Valuation is not a primary decision making document or instruction for lending purposes by bank.

That pre-sanction visit is mandatory for concerned bank officials for the purpose of mortgaging the property and tentative prevailing market rates in the area is also recorded by them. Only after his/her own satisfaction, the Valuation assignment is issued to valuer along with Photocopies of documents. The Valuer, after physical inspection of property submits the valuation to the bank. As per e- circular of SBI/IBA handbook, if the valuation report submitted by the valuer is not in order, the banks / housing finance institutions is require to bring the same to the notice of the valuer **within 15 days** of submission for rectification and resubmission. **In case no such communication is received, it is presumed that the valuation report has been accepted.**

Therefore, it is understood that once the report is termed as Accepted by bank, the liability of Valuer is complete in terms of Value of Property. After that, Valuer duty is confined to cross-verify the land area and quality of constructions physically inspected at site at the time of visit of property, and that is also subjected to no addition or alternation done in land or building after site visit by Valuer.

That the Value of Property adopted by valuer in Valuation is an opinion based on prevailing market conditions. However as described above, most of the time, there is no evidence of fair market rates of land adopted by Valuers due to low collector rates. Even in Valuation format of SBI, bank asks for two latest transactions at rates adopted by Valuer, **if available.** The words **"if**

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

available” clearly construes that if the transaction is not available, the rate adopted by Valuer, if not pointed or questioned by bank within 15 days, is acceptable. Therefore, the valuer cannot be held responsible for variation in value of property with time.

That in a case title “**Jacob Mathew vs. State of Punjab & Anr. (2005) 6 SCC 1**” the Hon’ble Apex Court has held as under thus:

Negligence by professionals: In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. **The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence.**

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

That relying upon “Jacob Mathew vs. State of Punjab & Anr. (2005) 6 SCC 1” (Supra) as well as another judgment of Hon’ble Apex Court with title “CBI, Hyderabad Vs. K. Narayana Rao, reported in (2012) 9 SCC 512”, the Hon’ble Patna High Court in a case title “**Vijay Kumar Singh vs. State of Bihar**” Criminal Miscellaneous No.27162 of 2011 quashed the orders of learned Chief Judicial Magistrate, Patna in Patna Kotwali P.S. Case no. 393 of 2008 and **acquitted Valuer Sh. Vijay Kumar Singh from charges** framed under Sections 406, 420, 467, 468, 471, 109 and 120B of the Indian Penal Code.

That as per Hon’ble Apex Courts directions (supra) & Hon’ble Patna High Court (Supra), a Qualified Valuer Professional (Architect/ Engineer/Town planner) who is possessing requisite skills & has exercised with reasonable competency, cannot be held responsible for gross negligence.

The Report issued by Valuer is an Opinion based assessment of Fair Market Rate of Property depending upon its physical characteristics of Property, its location and prevailing market conditions at the time of visit at Property.

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

IDENTIFICATION/ GENUINENESS OF DOCUMENT OF PROPERTY IS NOT DUTY OF VALUER

It is well known fact that the location of Property as mentioned in any title deed is mainly based on Khasra No. of locality. Valuer is neither qualified nor competent to verify revenue records (Khasra, Khata, Jamabandi etc.) as well as Legal aspects (Ownership, transferability of rights of property, dispute if any court of law etc). Hence any visits to Patwari office, Checking of Revenue data/ Details, Verification of Genuineness of Submitted Documents is outside scope of Valuer's Duty/ Valuation report. A valuer cannot assess the Khasra No. of Property by physical inspection at site. Moreover, even if the Khasra No. is right, the title deed most of the times is part of any one or more Khasras. A Valuer cannot certify that the property being shown to him is same as mentioned in title deeds until unless, the concerned revenue officials demarcate the property at site. Therefore, any discrepancy in Khasra No. or location of property in Khasra/s w.r.t to copy of title deed of Property as provided to Valuer by bank or report owner or person referred to him by bank officials cannot be termed as negligence on part of duty of valuer. The valuer estimate the value of the properties referred to him by the bank which are identified and as shown or referred by the owner/bank officials.

Valuer's main duty is to assess the Value of Property as shown/referred to him by bank officials only. It is bank officials who are competent to get verification of genuineness of documents as well as demarcation of property from concerned revenue officials or through legal advisor. However, in the past, many Valuers faced problem because of wrong Identification of Property. However, it has been clarified by High Courts and CBI Court in their judgments that **IDENTIFICATION/GENUINENESS OF DOCUMENT OF PROPERTY IS NOT DUTY OF VALUER.**

The relevant paragraphs of various judgments are produced as under:

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

Hon'ble Madras High court in a case L.N.Rajagopalan vs State By on 10 August, 2009 has clearly directed in the orders that:

Para No. 7-

A Valuer is supposed to estimate the marketability of the property referred for valuation by the bank based on the documents provided by it. Of course, Valuer is bound to inspect the property referred by the bank for valuation purpose. The Valuer cannot simply go to a location of a property on his own. **For the purpose of identification, he takes the Branch Manager or some authorised agent to the location at the time of inspection for the purpose of identifying the property.** The Valuers take this precaution just to avoid any mistake in the identification of the property.

Para no. 11:

Firstly, the Valuer is not associated with the business transaction when the application for loan is submitted by the borrower. Therefore, there is no occasion for the Valuer to see the persons who appear before the bank. Some of the properties might have been Government properties. **It is not the duty of the Valuer to go to the Registrar's Office to verify whether the lands belong to the Government or private individuals.**

Hon'ble Kolkata High Court in a case No. 22699W/2014 on 19 August, 2014 has directed while passing the orders that:

The job of a valuer is to value a property. **A valuer is not expected to read title deeds as a legally trained person. Therefore, to expect of a valuer to detect forged document or a manufactured document would be to expect a valuer to be a legally trained person. A valuer and a legally trained person cannot be equated.** Both are specialized in their own fields but both have been treated as one in the instant case and the reason for doing so to cover a lapse on the part of the Chief Manager of the concerned branch of the respondent bank. The reason for which the petitioner has been depanelled is the job of a Law Officer or a legal officer. One is not aware whether the said post exists

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

in a Branch office. If such post exists, then the legal document is to be securitized by the Law Officer and if no post exists, then it is for the Chief Manager to consider the document. But certainly it is not the job of a valuer.

High Court of Patna, Vijay Kumar Singh vs. State of Bihar Criminal Miscellaneous No.27162 of 2011:

Considering the rival submission of the parties, it is clear that the bank was defrauded basically by the loanee Manoj Kumar, who pledged a fraudulent deed as a collateral security and the petitioner being valuer was not supposed to certify the genuineness and otherwise of the title of the loanee over the land which was given to the bank as collateral security.

Special Judge, Anti-corruption CBI Cases, Jammu recently in a case CBI Vs. Chief Manager, Bank of Baroda, H. R. Phonsa (Valuer) and others has clearly directed in its orders that:

So far as the job of H. R. Phonsa is concerned, his job is to assess the market value of property. Whether the documents are genuine or forged was the job of the bank officials. It was for them, to have enquired about the genuineness of the documents, which later on turned to be fake. The valuer has estimated the value of the properties referred to him by the bank which was identified by the owner who had been sent by the bank with the valuer. **Once the property was shown to him and identified by the owner, he had no reason to disbelieve him regarding the identification of property which was shown to him. He has given the report of the property identified.**

From above contents of orders passed by various courts, it is clear that a valuer is not supposed to identify the Property.

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

IDENTIFICATION OF OWNER/BORROWER IS NOT DUTY OF VALUER

It is well known fact that Valuer is not equipped with access to Govt. Official Website for verification of genuineness of Identity of Reported Owner or Borrower by bank. The Valuer is not associated with the business transaction when the application for loan is submitted by the borrower. Therefore, there is no occasion for the Valuer to see the persons who appear before the bank. High courts of Madras has given judgment in favour of Valuers regarding **IDENTIFICATION OF OWNER IS NOT DUTY OF VALUER.**

The related paragraphs of high court Judgments are as under:

Hon'ble Madras High court in a case L.N.Rajagopalan vs State By on 10 August, 2009 has clearly directed in the orders that:

Para No. 9.

It is definitely not the duty of the Valuer to look into the authenticity of the documents. He is not an expert to test the genuineness of the documents. He is not equipped with knowledge to identify a document as a fabricated or concocted one. For assessing the value of the property which is the prime job of the Valuer, he is not supposed to identify and meet the owner of the property.

Para no. 11:

Firstly, the Valuer is not associated with the business transaction when the application for loan is submitted by the borrower. Therefore, there is no occasion for the Valuer to see the persons who appear before the bank.

From above, it is crystal clear that IDENTIFICATION OF OWNER IS NOT DUTY OF A VALUER.

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

ALL PROVISIONS OF INTERNATIONAL VALUATION STANDARDS (IVS) ARE NOT VALID IN INDIA

Now a days, the bank has started taking undertaking that Valuer has to maintain International Valuation Standards (IVS) while taking up the assignments, however, the IVS is not completely applicable on Valuation procedures in India on the grounds as under:

- a. That IVS are applicable in developed countries and there is no black money involved in transactions i.e. sale & purchase. The entire information of Sale & Purchase is available on Govt. website in Public domain. However, as described above, due to huge involvement of black money in Real Estate Sector, the prevailing market rates may be on much higher side than collector rates fixed by State Governments. Further no information or data of transaction is made available in Public Domain by concerned departments.
- b. That as per IVS, a valuer has to identify Owner also however as held by various high courts, identification of owner is not part of duty of Valuer.
- c. That as per IVS, identification of property is also duty of Valuer, however as held by CBI Court, the identification of property is not duty of Valuer.
- d. The IVS allows professionals to prepare report based on certificate issued by other professionals which is not a valid in India as per Hon'ble Apex court directions in various cases.

VALUERS ASSOCIATION (Regd.)

Registered under Societies Registration Act (XXI of 1860) - Regd. No. 377 of 2015-16

Office: # 914 (Plot No. 69), FF, Maya Nagar, Ludhiana 141001 (Pb.) M: 9780000914

Email: valuersassociationindia@gmail.com

www.valuersassociation.org

ASSUMPTIONS IN VALUATION REPORTS

For preparation of any Valuation report, it is assumed that:

- a) That all the legal/revenue details mentioned in copy of documents provided to valuer, have been verified by the concerned bank officials from the concerned Govt. departments/legal advisor at the time of issuing valuation assignment
- b) That the reported ownership is correct.
- c) That the title to the property is Legally Sufficient.
- d) That there is no encumbrances or defects of title of property Valued.
- e) That the property is free and clears from all liens or known to bank officials.
- f) That the property will be efficiently managed and properly maintained.
- g) That there are no structural conditions which are not apparent.
- h) That there is no sub-surface soil condition which would cause extraordinary development cost.
- i) All the provisions of SARFAESI Act 2002 are applicable from day one of mortgaging the property by Bank.
- j) Valuers Role is strictly limited to as per competency of Valuers defined by Hon'ble Apex Court for professionals, various High Courts & CBI Court.
- k) The Value of Land considered in Valuation Report is Value at the time of Visit at Site and it may vary with time depending upon the policies of Governments or Local Bodies or some particular directions by Hon'ble Courts of India.

Er. Kapil Dev
General Secretary
Valuers Association (R)
98720-07872