Our ref: 23/05-0081992

21 August 2023

Radue

Dear Sir/Madam

YOUR COMPLAINT AGAINST ABSA

We refer to the complaint that you lodged with our office. The following Assessment was prepared based on our evaluation of the details of your complaint on the one hand and the response obtained from the bank on the other hand.

Summary of complaint

The bank approved a bond without the required NHBRC certificate on a house less than 5 years old, putting the first time buyers are risk of losing their investment.

After purchasing a property, you subsequently discovered that the property was, in fact, built on 2 plots and that Anne Coventry is the owner of the 2nd plot.

You want Anne Conventry to be compensated for her land and the title deeds of both properties to be registered in your names and the bank to pay the associated costs. You want a new bond agreement to be concluded for both plots and the house for the same value of the original assessment. You also want compensation for the time and costs associated with trying to resolve the matter.

Bank's response

The bank advised that when the valuator conducted a physical valuation of the property, it was not identified that the dwelling was partially built on the neighbouring property. The sub-division of portion 335 has not been registered at the Pietermaritzburg Deeds Registry and is, therefore, not easily identifiable from public records.

The bank has relied on the following clause of the mortgage loan agreement:

12 Property
12.1 Our valuation of the Property is solely for us to determine the value of the security for your Mortgage Loan. Our Assessors may not have physically inspected the Property and have not assessed the condition of the Property, structural or otherwise. The valuation is not intended to be an indication of the present or future value of the Property and may not be the same as the purchase price.

The bank has further advised that it was not a party to the agreement of sale, and merely financed the transaction. In terms of the provisions of the agreement concluded with the seller, there was a duty upon you to satisfy yourself of the condition of the property prior to signing the agreement. The bank cannot be held liable for any claims which may later arise due to the condition of the property.
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In respect of your allegation that the bank acted in contravention of the provisions of The Housing Consumer's Protection Measures Act, the bank has submitted that the finance granted was not in respect of the granting of mortgage finance but to purchase property. There were further no disclosures made to the bank regarding the age of the dwelling unit or that you meet the requirements of the definition being "an owner builder who has not applied for exemption in terms of section 10A".

Our Assessment

We have considered both your submissions and the bank's response and wish to advise as follows:

From clause 12 it is evident that the bank does not provide any warranties regarding the conditions of the property, the correctness of the building plans or whether the dwelling has been built in accordance with applicable laws and regulations. The valuation is simply performed to determine the value for purposes of security.

In this regard, we also refer you to our Consumer Information Note 3 – Home Loans, which provides as follows:

"When you apply for a home loan the bank will not necessarily inspect or value the property you wish to purchase. Banks often do so called "desktop" valuations. This means it will base its valuation on information it obtains from various electronic data sources. In these cases it does not physically inspect the property. If a physical valuation is done it does not necessarily check for building defects or any other problems with the property. The purpose of the bank's valuation is purely to assess the property for itself as a credit security risk. The valuation is not in your interests and is not to protect you in any way. You cannot rely on the bank's valuation or assessment. If you want to check that the property is in a good condition you must obtain an independent professional report from an expert. If you want to determine whether the asking price is reasonable you must obtain an independent opinion from an expert in the field. The banks do not provide these services or make any contractual undertaking to you in this regard.

As the valuation is purely for the bank's purposes it is not required to provide its valuation to you and you have no right to a copy of it (even though you may have paid for the valuation as part of the initiation costs of the loan application). Banks do not generally check whether buildings which are erected on the property you wish to purchase have been approved by the town council or not. It is in your best interests to check that all improvements to the property have been approved before purchasing the property.

Any disputes you may have regarding any defects in the property must be taken up with the seller/developer etc."

The bank cannot be held liable for any claims which arose out of the sale agreement to which it was not a party. Any claims which you may have, accordingly, lies against the seller and not the bank.

We have not found any maladministration or negligence on the part of the bank and, accordingly, cannot rule in your favour.

Conclusion

In light of the above we advise that, based on the facts of this case, the information and evidence furnished to this office, the principles of reasonableness and fairness, there is no reasonable prospect of this office making a more favourable recommendation in your favour.

Should you have any new, relevant and substantial information, which could change the finding, please forward it to us for consideration.

Yours faithfully
Andre van Dyk
Adjudicator