

Tenants want force majeure to include covid restrictions

Cos leasing commercial offices are seeking tweaks in a bid to pay lower rents, skip payments

Madhurima Nandy
madhurima.n@livemint.com
BENGALURU

Commercial office tenants are pressing developers and co-working operators to include pandemic and lockdown-like restrictions in the force majeure clause in their lease agreements, multiple people aware of the matter said.

A force majeure clause is invoked when circumstances develop that are beyond the control of either of the contracting parties. Including lockdowns and similar curbs in the force majeure clause would allow tenants to pay lower rents or skip payments altogether when such events occur.

Several developers and flexible workspace operators are currently discussing the matter with existing and new corporate tenants.

"The scope of the force majeure clause is being broadened to include situations like the pandemic, which could lead to complete lockdown and hence, inaccessibility to the office premises. Since this is an unprecedented and evolving situation, there is a lot of discussion and debate on the impact the lockdown will have on the tenant's rental payout obligations," said Rishi Das, co-founder and chairman of Indiqube, a Bengaluru-based co-working operator.

Last year, leased office spaces remained largely unused as the pandemic forced companies to switch to work from home. With the second wave and sporadic lockdowns across states, clients now want to review their



Most rental agreements do not cover force majeure but some clients are insisting on it now due to curbs caused by the second wave, say developers. ISTOCKPHOTO

contracts and understand the force majeure provisions.

"Standard force majeure ideally cannot be implemented over a pandemic. However, there have been requests from clients to include the pandemic as part of the clause for complete rental

India's booming commercial office sector suffered a severe setback in 2020 due to the pandemic-led disruption that shuttered offices with companies encouraging employees to work from home. Most operators, landlords and tenants worked out arrangements

their landlords for concessions in rent.

"Force majeure cannot be considered unless there is a government-mandated full lockdown, state or national. We are talking to landlords for concessions but we are not following the force majeure clause. Our buildings are open and available to work. This clause is definitely a way people are using for negotiation and there are some larger companies asking for it," said Karan Virwani, CEO of WeWork India.

Office developers or landlords, however, do not want to give rental waivers because of lease rental discounting (LRD), which is a term loan offered against rental receipts obtained from lease contracts with corporate tenants.

Bijay Agarwal, managing director of Salarpuria Sattva Group, a prominent office developer, said, "Most rental agreements do not cover force majeure but some clients are insisting on it now. They aren't asking for a complete rental waiver but some concessions like waive-off on maintenance so far. But we expect in new leases, the pandemic will be a prominent clause."

Indiqube's Das too said that it will take about a year for acceptable norms to evolve.

Viral Desai, national director, office transactions at property advisory Knight Frank India, said most new lease deals have been put on hold.

"Even if occupiers seek, it is tough for developers to give rental waivers because they have LRD to serve every month. But co-working companies may agree. This is something that will be discussed and debated upon going forward," he said.

FAMILIAR TALE

LAST year, leased office spaces remained largely unused as firms switched to WFH

DUE to the second wave, clients want to review contracts and understand the force majeure provisions

CO-WORKING operators are also negotiating with their landlords for concessions in rent

HOWEVER, landlords don't want to give waivers because of lease rental discounting

waiver. Unless it's a national lockdown situation, most developers may not agree to the inclusion of this clause," a senior executive at a Bengaluru-based office developer said on condition of anonymity.

on rental discounts, given the ambiguity around the force majeure clause in most contracts.

Co-working operators, which had just 10-25% physical occupancy even in March 2021, are also negotiating with