

West Bengal Apartment Ownership Rules, 1974

WEST BENGAL

India

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036.

Notification No. 1504-HIV, dated 22nd November, 1974. In exercise of the power conferred by section 17 of the West Bengal Apartment Ownership Act, 1972 (West Bengal Act No. 16 of 1972), and in supersession of the West Bengal Apartment Ownership Rules, 1973, the Governor is pleased hereby to make the following rules, namely:

1. Short title.

- These rules may be called the West Bengal Apartment Ownership Rules, 1974.

2. Definitions.

(1) In these rules, unless there is anything repugnant in the subject or context, (a)"The Act" means the West Bengal Apartment Ownership Act, 1972 (West Bengal Act No. 16 of 1972);(b)"Bye-laws" means the bye-laws framed under section 13 of the Act;(c)"Form" means a form appended to these rules;(d)"Instrument" means a document referred to in sub-clause (ii) of clause (b) of sub-section (3) of section 4 of the Act; and(e)"Section" means a section of the Act.(2)'Words and expressions used in these rules and in the forms appended to these rules, but not defined herein above, but defined in the Act, shall have the same meaning as are respectively assigned to them in the Act.

3. The form and manner in which the Declaration referred to in section 2(1) of section 10 and section 10A shall be submitted to the Competent Authority.

[(1) The declaration under section 2 by the sole owner or majority of the owners, as the case may be, of a property shall (a) be executed in Form A, and (b) be signed and verified by the sole owner or majority of the owners, as the case may be, in the presence of Magistrate or any other person competent to administer oath. (2) After such Declaration is signed and verified as aforesaid the same shall, in strict conformity with the provisions of sub-section (1) of section 10A, be submitted to the Competent Authority.] [Substituted by Notification No. 572-HIV/IR-2002, dated 31st July, 2003 w.e.f. 02.08.2003.] (3) [When on receipt of such Declaration, the Competent Authority after following the procedure laid down in clause (a) of sub-section (2) of section 10A, records an order under clause (b) of sub-section (2) of section 10A accepting the Declaration it shall make an endorsement on the body of the Declaration testifying to the fact of acceptance of the Declaration, put its dated signature and set its seal. Thereafter when in terms of clause (c) of sub-section (2) of section 10A the Competent Authority returns the Declaration along with its enclosures to the declarant or all the declarant's, as the case may be, such declarant or declarant's shall, within fifteen days from the date of such return, present the Declaration of Registration under the Registration Act, 1908, at the office of the Registrar having Jurisdiction. In case where the declaration is submitted by majority of the owners and is accepted by the Competent Authority, the remaining owners shall, if they like, be allowed to submit Declaration or Declarations subsequently, either individually or collectively, for acceptance by the Competent Authority. Such Declaration or Declarations shall be treated as part of the original Declaration already accepted by the Competent Authority.] [Substituted, *ibid.*, w.e.f. 02.08.2003.] (4) After the Declaration is registered the declarant or all the declarant's, as the case may be, shall forthwith report in writing to the Competent Authority the fact of registration of the Declaration, furnish such authority with a copy of the registered Declaration. (5) When the Competent Authority after following the procedure laid down in clause (a) of sub-section (2) of section 10A rejects the Declaration, it shall make an order in writing, giving reasons therefor and the person aggrieved by such order of rejection may, in strict conformity with the provisions of sub-section (3) of section 10A, prefer an appeal to the State Government from such order. (6) When an appeal is preferred as aforesaid the State Government shall call for the relevant records from the Competent Authority and shall, after hearing the parties, by an order in writing giving reasons therefor, allow or dismiss the appeal, and shall, after such disposal of the appeal, forthwith return the records along with copy of that order to the Competent Authority. (7) When by the Appellate Authority the Declaration is accepted, the Competent Authority, on getting back the records from the State Government and after making an endorsement on the body of the Declaration in the manner referred to in sub-rule (3), shall forthwith return the Declaration together with its enclosures to the declarant or all the declarant, as the case may be, who shall thereupon, get the Declarations registered in strict conformity with the provisions of sub-rule (3) and further comply with the provisions of sub-rule (4)

4. Circumstances in which a Declaration may be amended under sub-section (2) of section 10.

A Declaration made under section 2 may be amended in any of the following circumstances, namely: (a)when there is any bona fide mistake in the Declaration,(b)when there is, subsequent to the submission of Declaration, any alteration in the description or nature of the property or any part thereof to which such Declaration relates, or(c)when subject to the approval of Competent Authority, an amendment is necessary for carrying out the purposes of the Act.

5. Manner in which a Declaration may be amended under subsection (2) of section 10.

[(1) When in any of the circumstances stated in rule 4, any amendment is to be made in the Declaration submitted under sub-section (1) of section 10A by the sole owner or majority of the owners of any property, such sole owner or such majority of owners, as the case may be, shall submit to the Competent Authority a fresh Declaration in Form A, superscribed "Amended Declaration" incorporating therein the amendment asked for in place of the portion to be amended. Such fresh Declaration shall be accompanied by an application for amendment in Form B stating clearly the circumstances necessitating such amendment and also the amendment to be made in the Declaration sought to be amended.(2)The fresh Declaration referred to in sub-rule (1) of rule 5 shall be signed and verified by the sole owner or majority of the owners, as the case may be, in the manner laid down in clause (b) of sub-rule (1) of Apartment-2 rule 3 and submitted to the Competent Authority in accordance with the procedure laid down in sub-rule (2) of rule 3.]

[Substituted by Notification No. 573-RIV/IR-2002, dated 31st July, 2003 w.e.f.

02.08.2003.](3)When after submission of the fresh Declaration and the application for amendment, the Competent Authority, after following the procedure laid down in clause (b) of sub-section (2) of section 10A records an order under clause (a) of sub-section (2) of section 10A accepting the amendment it shall make in the manner laid down in sub-rule (3) of rule 3 an endorsement on the body of the fresh Declaration submitted along with the application for amendment and return to the declarant or all the declarant, as the case may be, that Declaration along with its enclosures in the manner laid down in sub-rule (3) of rule 3 and the declarant or all the declarant, as the case may be, shall get that Declaration duly registered in strict conformity with the provisions of sub-rule (3) of rule 3 and shall further comply with the provisions of sub-rule (4) of rule 3.(4)When the Competent Authority after following the procedure laid down in clause (a) of sub-section (2) of section 10A records an order under Clause (b) of sub-section (2) of section 10A rejecting the amendment the person aggrieved by such order of rejection may, in strict conformity with the provisions of sub-section (3) of section 10A, prefer an appeal to the State Government from such order.(5)When an appeal is preferred as aforesaid the State Government shall call for the relevant records from the Competent Authority, and shall, after hearing the parties, by an order in writing giving reasons therefor, allow or dismiss the appeal and shall, after such disposal of the appeal, forthwith return the records along with a copy of that order to the Competent Authority.(6)When by the appellate order the amendment is accepted, the Competent Authority on getting back the records from the State Government shall make an endorsement on the body of the said fresh Declaration and return the same together with its enclosures in the manner laid down in sub-rule (7) of rule 3 and the declarant or all the declarant, as the case may be, shall get the fresh Declaration registered in accordance with the provisions of that sub-rule.

6. Execution and registration of an instrument referred to in sub-clause (ii) of clause (b) of sub-section (3) of section 4.

(1) The instrument referred to in sub-clause (ii) of clause (b) of sub-section (3) of section 4 shall-(a)be executed in Form C by the owner of an apartment within thirty days from the date of execution of the deed of purchase or the deed of lease under which such owner acquires his interest in such apartment, and(b)be signed and verified by such owner in the manner laid down in clause (b) of sub-rule (1) of rule 3.(2)After such instrument is executed as aforesaid the same shall be submitted to the Competent Authority in accordance with the ,procedure laid down in sub-rule (2) of rule 3.(3)When on receipt of such instrument the Competent Authority after following the procedure laid down in clause (a) of sub-section (2) of section 10A records an order under clause (b) of sub-section (2) of section 10A accepting the instrument and in terms of clause (c) of subsection (2) of section 10A returns the instrument along with its enclosures to such owner, it shall make in the manner laid down in sub-rule (3) of rule 3 an endorsement on the body of the instrument and return to the said owner that instrument along with all its enclosures in the manner laid down in sub-rule (3) of rule 3 and such owner shall get the instrument duly registered in strict compliance with the provisions of sub-rule (3) of rule 3 and shall further comply with the provisions of sub-rule (4) of rule 3.(4)When the Competent Authority after following the procedure laid down in clause (a) of sub-section (2) of section 10A records an order under clause (b) of sub-section (2) of section 10A rejecting the instrument, the person aggrieved by such order of rejection, in strict conformity with the provisions of sub-section (3) of section 10A, prefer an appeal to the State Government from such order.(5)When an appeal is preferred as aforesaid, the State Government shall call for the relevant records from the Competent Authority, and after hearing the parties shall, by an order in writing giving reasons thereof, allow or dismiss the appeal and after such disposal of the appeal shall forthwith return the records along with a copy of that order to the Competent Authority.(6)When by the appellate order the instrument is accepted, the Competent Authority on getting back the records from the State Government shall in the manner laid down in sub-rule (7) of rule 3 make an endorsement on the body of the instrument and return the same together with its enclosures to the executant or executant, as the case may be, of the instrument who shall, thereupon, get the instrument duly registered in strict conformity with the provisions of sub-rule (3) of rule 3 and shall further comply with the provisions of sub-rule (4) of rule 3.FormsFormaDeclaration under Section 2, read with Section 10 of the West Bengal Apartment Ownership Act, 1972[See sub-rule (1) of rule 3 and sub-rule (1) of rule 5]

1. In pursuance of section 2 of the West Bengal Apartment Ownership Act 1972, read with sub-section (1) of section 10 of the Act,

I/wehere by declare that I/we am/are the owner/owners ofthe property situated at city/town/villagein the district and do hereby further declare that I/we submit the said property comprising a building or buildings containing apartment, together with the common areas and facilities, mainly meant for residential purpose to the provisions of the West Bengal Apartment Ownership Act, 1972 (West Bengal Act No. 16 of 1972) and all amendments thereto.Authenticated copies of the building plan and site plan,

prepared by and sanctioned by are appended herewith and marked respectively as Annexure "A" and "B". The relevant title deed' [or agreement for purchase or agreement for lease] [Inserted by Notification No. 61-HIV/1D-47/2003, dated 4th February, 2009 w.e.f 05.02.2009.] is also appended herewith and marked as Annexure "C".

2. I/We do hereby furnish further the following

particulars as required under sub-section (1) of section 10 of the said Act: A. Description of the property : (i) Area and description of the land upon which the building/buildings is/are constructed: (ii) Area and description of the building/buildings: Building No (a) Total plinth area: (b) Number of storeys: (c) Number of apartments: (d) Other particulars, if any: (iii) Area and description of common areas and facilities: (a) Lawn, Parks, etc.: (b) Road, Pathways: (c) Other common areas, if any: (d) Water supply arrangements: (e) Street light within the property: (f) Internal drainage: (g) Other common facilities, if any: (iv) Description of the limited common areas and facilities, if any, stating to which apartments their use is reserved: (B) Description of common areas and facilities in respect of each building: (v) Value of the property: (vi) Nature of interest of the owner/owners in the property: (vii) Existing encumbrances, if any, affecting the property: (a) Foundation and main wall of the building/buildings: (b) Stairway: (c) Water Tank: (d) Plumbing network: (e) Electric wiring network: (f) Other common areas: (C) Description of each apartment or each building Apartment No.....or Building No..... (a) Location: (b) Approximate area: (c) Number of rooms: (d) Immediate common area to which it has access: (e) Any other information necessary for its proper identification: (f) Value of the apartment: (D) Percentage of individual interest in the common areas and facilities appertaining to each apartment and its owner for all purposes including voting: (E) Other particulars, if any:

3. I/We do hereby further declare, covenant and undertake as follows:

(i) [* * *] [Omitted by Notification No. 61-HIV/1D-47/2003, dated 4th February, 2009 w.e.f. 05.02.2009.] (ii) that each apartment owner, present or future, shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration and appurtenant to such apartment; (iii) that the common areas and facilities, general or restricted, shall remain undivided and that no owner shall bring any action for partition or division thereof so long as the property remains submitted to the provisions of the said Act; (iv) that the percentage of the undivided interest in the general or restricted common areas and facilities, as expressed in the Declaration, shall not be altered except with the consent of all the apartment owners expressed in an amended Declaration duly executed and registered as provided in the said Act; (v) that during the period the property remains subject to the said Act, no encumbrance of any nature shall be created against the property, though such an encumbrance may be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, in the same manner as in relation to any other separate parcel of property subject to individual ownership; (vi) that the percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned

in the conveyance or other instrument;(vii)that no apartment owner shall do anything which would be prejudicial to the soundness and safety of the property or reduce the value thereof or impair any easement or hereditament or shall add any material structure or excavate any additional basement or cellar;(viii)[* * *] [Omitted w.e.f 05.02.2009 vide Notification No. 61/HIV/1D-47/2003 dated 4th February, 2009.](ix)that for the proper and effective administration of the property and for the due maintenance, repair and replacement of the common areas and facilities the apartment owners shall strictly comply with the provisions of the said Act and the bye-laws made thereunder and shall pay their share or common expenses as assessed by the Association of Apartment Owners, and that the failure to comply with any such requirement shall be a ground for action for damages or for other relief or reliefs at the instance of the Manager or the Board of Managers on behalf of the Association of Apartment Owners or in a proper case, by an aggrieved apartment owner.In witness I/we have set our hands thisday of20.....and solemnly declare that what is stated in.....is true to my/our knowledge and what is stated in is to my/our information received from

(1) Shri/Smt..... Sole owner/or all the owner of the property

(2) Shri/Smt.....

(3) Shri/Smt.....

and so on,-in the presence of-(1).....and(2).....solemnly affirmed before me this day of 20....(Signature of the Magistrate/or person competent to administer Oath.)Form BApplication for amendment of Declaration submitted under sub-section (1) of Section 10A of the West Bengal Apartment Ownership Act, 1972[See sub-rule (1) of rule 5]ToThe Competent Authority, appointed by the Government of West Bengal under clause (g) of section 3 of the West Bengal Apartment Ownership Act, 1972.The application of of sheweth-(1)That on the applicant(s) submitted a Declaration in respect of under sub-section (1) of section 10A of the West Bengal Apartment Ownership Act, 1972.(2)That it is necessary in the following circumstances to amend the said Declaration, namely.(a)(b)(c)(3) That a fresh Declaration incorporating therein the amendment(s) to be effected is submitted along with this application.(4)That in the circumstances stated in paragraph 2 hereof the following amendment(s) may be allowed namely:(i)the entire "....." appearing inof the Declaration to be amended be substituted by entries "....."(ii).....(iii).....The petitioner(s) pray(s) that the amendment(s) aforesaid be accepted and that the fresh Declaration submitted along with this application be also accepted in place of the said Declaration which was submitted onForm CInstrument executed by the Apartment Owner(s) under sub-clause (i) of clause (b) of sub-section (3) of Section 4 of the West Bengal Apartment Ownership ACT, 1972[See sub-rule (1) of rule 6](1)I/We hereby declare that I/we am/are the present owner(s) of apartment No on the floor of the Apartment Building Nosituated at in the city/town/village of within the police station in the district of which forms part of a property already submitted to the provisions of the West Bengal Apartment Ownership Act, 1972, under a Declaration executed in conformity with the provisions of the Act and registered in the Office of the Registrar/Sub-Registrar in Book NoVoucher No Pages tobearing being No of the year(2)I/We further declare that I/we acquired ownership in the said apartment under a deed of

transfer registered in the Office of the Registrar/Sub-Registrar in book no.....
Voucher No.,..... bearing being No..... of the year a copy of which
deed of transfer is appended hereto and marked as Annexure "X".(3)I/We hereby further solemnly
declare and undertake that I/we my/our heirs, executors, administrators and assigns shall, in
respect of the said apartment, be subject to the provisions of the said Act and shall comply strictly
with the bye-laws made under section 13 of the said Act, and with the covenants, conditions and
restrictions set forth in the said Declaration.In' witness whereof I/we have set our hands this
..... dayof20.....and solemnly declare that what is stated in.....is
true to my/our knowledge, what is stated in.....is to my/our information received from and
what is stated in paragraph 3 above is an undertaking given by me/us.(1)Sri/Smt.....Sole
owner/or owners of the said apartment.(2)Shri/Smt.....(3)Shri/Smt.....and
so on, in the presence of (1).....and(2).....Solemnly affirmed
before me this.....day of.....20.....(Signature of the Magistrate/or any personcompetent
to administer Oath.)