

West Bengal Apartment Ownership Act, 1972

WEST BENGAL

India

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035.

An Act to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property. Whereas it is expedient to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property; It is hereby enacted in the Twenty-third Year of the Republic of India, by the Legislature of West Bengal, as follows;

1. Short title, extent and commencement.

(1) This Act may be called the West Bengal Apartment Ownership Act, 1972. (2) It extends to the whole of West Bengal. (3) This section shall come into force at once; and the remaining provisions of this Act shall come into force in such areas, and on such dates as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas.

2. [Application of the Act, This Act shall apply to every building having residential units or commercial units or both residential and commercial units, and the sole owner or all the owners of every such building shall submit the same to the provisions of this 'Act by duly executing and registering a declaration setting out the particulars referred to in section 10:

Provided that the State Government may exempt, by a general or special order, any such owner for submitting such building to the provisions of this Act: Provided further that notwithstanding such exemptions, the other provisions of this Act shall, upon the submission of such building to the

provisions of this Act by the majority of the owners of such building, also apply to the owner exempted under the first proviso.] [Substituted by the West Bengal Apartment Ownership (Amendment) Act, 2008 (West Bengal Act No. 29 of 2008) w.e.f. 04.02.2009.]

3. Definitions.

In this Act, unless the context otherwise requires, (a)"apartment" means part of a property having a direct exit to a road, street or highway or to a common area leading to such road, street or highway which together with its undivided interest in the common areas and facilities forms an independent [residential unit and includes a flat] [Substituted by West Bengal Act 28 of 1996 for the words residential unit];[Explanation. "Flat" shall mean a separate set of premises, whether self-contained or not, used or intended to be used for residence or office or showroom or shop or godown or garage or any other commercial purposes forming part of a building or for any of the purposes referred to in sub-clauses (a) to (i) of clause (2) of section 390 of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980).] [Substituted by the West Bengal Apartment Ownership (Amendment) Act, 2008 (West Bengal Act No. 29 of 2008) w.e.f. 04.02.2009.](b)"Association of Apartment Owners" means the association competent to contract in its own name and formed in accordance with the provisions made in the bye-law;(c)"building" means a building containing two or more apartments or more than one building, each being a complete unit or each containing two or more apartments comprised in the same property;(d)"common areas and facilities" includes (1)the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building,(2)the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building,(3)the basements, cellars, yards, gardens, parking areas, shopping centres, schools, garages, building or apartment vacant or occupied by a tenant or any other person not being an owner, and transferred or proposed to be transferred to the Association of Apartment Owners and storage spaces,(4)the premises for the lodging of janitors or persons employed for the management of the property,(5)installations of common services, such as, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, sewerage, etc.,(6)the elevators, tanks, pumps, motors, compressors, pipes and ducts and in general all apparatus and installations existing for common use,(7)such other common facilities as may be specially provided for in the Declaration,(8)all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;(e)"common expenses" means expenses of administration, maintenance, repair or replacement of the common areas and facilities and all other sums assessed against the apartment owners by the Association of Apartment Owners;(f)"common profit" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;(g)"Competent Authority" means any person, or any officer not below the rank of a Deputy Magistrate, authorised by the State Government by notification in the Official Gazette to perform functions of the Competent Authority under this Act, for such area as may be specified in the notification, and different persons or officers may be authorised for different functions or for different areas;(h)"Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided;(i)"limited common areas and facilities" means those common areas and facilities which may be designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;(ia)[

"owner", in relation to any property or part thereof or apartment, includes [Substituted, by section 2(1) of the West Bengal Apartment Ownership (Amendment) Act, 1998.](i)any person owning such property or part thereof or apartment, or(ii)any person deemed to be owning such property or part thereof or apartment, or(iii)any promoter, or(iv)a lessee of such property or part thereof or apartment, where the lease is for a period of thirty years or more:Provided that any person who has executed an agreement for purchase or for taking lease for a period of thirty years or more, of any property or part thereof or apartment or has paid the consideration or part thereof, shall be deemed to be owning such property or part thereof or apartment even though the document for purchase or lease of such property or part thereof or apartment has not been registered;](j)"prescribed" means prescribed by rules made under this Act;(k)"property" comprises the land, the building and the common areas and facilities;(l)["promoter" means a person who constructs, or causes to be constructed, a building on a plot of land for the purpose of transfer of such building by sale, gift or otherwise to any other person or to a company, cooperative society or association of persons, and includes [Substituted, by section 2(2) of the West Bengal Apartment Ownership (Amendment) Act, 1998.](i)his assign, if any,(ii)the person who constructs, and the person who transfers by sale, gift or otherwise, the building, if the two are different persons, or(iii)any board, company, corporation, firm or other association of persons, established by or under any law for the time being in force.][* * * *] [Section 3A omitted by section 3 of the West Bengal Apartment Ownership (Amendment) Act, 1998.]

4. An apartment to be transferable and heritable property.

(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.(2)An apartment, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:Provided that no apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be partitioned or subdivided for any purpose whatsoever.(3)Notwithstanding anything contained in the Transfer of Property Act, 1882, or in any other law for the time being in force, but subject to the provisions of section 11 of this Act, any person, (a)acquiring by purchase or by inheritance, or.(b)taking lease of, for a period of thirty years or more, an apartment comprised in a property submitted to the provisions of this Act, shall,(i)in respect of the said apartment, be subject to the provisions of this Act, and(ii)[execute and register an instrument in such form, accompanied by such fee, and in such manner and within such period as may be prescribed, undertaking to comply strictly with the bye-laws and with the covenants, conditions and restrictions as set forth in the Declaration referred to in section 2.] [Substituted, by the West Bengal Apartment Ownership (Amendment) Act, 2003 (West Bengal Act No. 29 of 2003).]

4A. Benamdar of an apartment to be deemed to be the real owner thereof.

Where an apartment is transferred to one person for a consideration paid or provided by another person for his own benefit, the transferee shall, notwithstanding anything in the Transfer of Property Act, 1882, or in the Indian Trusts Act, 1882, or in any other law for the time being in force, be deemed to be the real owner of such apartment, and no court shall entertain any claim of the

person, paying or providing the consideration for title in such apartment on the ground that he did not intend to pay or provide such consideration for the benefit of the transferee and that the transferee is his benamdar, or on any other ground.

5. Common areas and facilities.

(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. (2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall not be altered [without the written consent of all the apartment owners, additions or alterations, if any, is to be expressed subsequently] [Inserted by section 3 of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Bengal Act 28 of 1996).] in an amended Declaration duly executed and registered as provided in this Act. 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. (3) The common areas and facilities shall remain undivided, and no apartment owner or other person shall bring any action for partition or division of any part thereof, unless the property has been withdrawn from the provisions of this Act. (4) Each apartment owner may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners. (5) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the provisions of this Act and the bye-laws made thereunder. (6) The Association of Apartment Owners shall have right, to be exercised by the Manager or the Board of Managers on behalf of the Association, with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary, to have access to each apartment from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other apartments. [xxx] [Sub-section (7) omitted by section 4 of the West Bengal Apartment Ownership (Amendment) Act 1998 (West Bengal Act No. 18 of 1998).]

6. Compliance with bye-laws, covenants, etc.

Each apartment owner shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration. Failure to comply with any of the same shall be a ground for an action to recover 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.

7. Certain work prohibited.

No apartment owner shall do any work which would be periodical to the soundness or safety of the property or would reduce the value thereof or impair any easement or hereditament [or shall add any material structure or excavate any additional basement or cellar without first obtaining the

consent, in writing, of all the other apartment owners]. [Inserted by section 2 of the West Bengal Apartment Ownership (Amendment) Act, 1997 (West Bengal Act No. 36 of 1997).]

8. Encumbrance against apartments.

During the period the property remains subject to this Act, no encumbrance of any nature shall be created against the property. During such period an encumbrance may, however, 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.

9. Common profits and expenses.

The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

10. Contents of Declaration.

(1)[The Declaration referred to in section 2 shall be submitted in such form, accompanied by such fee and in such manner as may be prescribed;] [Substituted by the West Bengal Apartment Ownership (Amendment) Act, 2003 (West Bengal Act No. 29 of 2003).](b)nature of interest of the owner or owners in the property;(c)existing encumbrance, if any, affecting the property;(d)description of each apartment containing its location, [actual built up area,] [Substituted by section 5(1) of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Bengal Act 28 of 1996).] number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;(e)description of the common areas and facilities;(f)description of the common areas and facilities, if any, stating to which apartments their use is reserved;(g)value of the property and each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner [xxx] [Omitted the words for all purposes, including voting by *ibid.*];(h)such other particulars as may be prescribed.(2)The declaration referred to in sub-section (1) may be amended under such circumstances and in such manner as may be prescribed.

10A. A declaration or an instrument to be submitted before the Competent Authority and to be dealt with by him.

(1) Any declaration referred to in section 2 or any amendment thereto or any instrument referred to in sub-section (3) of section 4, shall, in the first instance, be submitted, in duplicate, within fifteen days from the date of its execution, to the Competent Authority.along with copies of site plans, building plans and relevant title deeds [or agreements for purchase or agreement for lease] [Inserted by the West Bengal Apartment Ownership (Amendment) Act, 2008 (West Bengal Act No. 29 of 2008) w.e.f. 04.02.2009.].(2)On receipt of a declaration or an amendment thereto or an

instrument referred to in sub-section (1), the Competent Authority shall, (a)after issuing notice to the parties concerned and after holding such inquiry, if any, as it may consider necessary for the purpose, examine the declaration, the amendment or the instrument, as the case may be, to ascertain whether(i)the property concerned comes within the purview of this Act, and(ii)the declaration, the amendment or the instrument is in order,(b)by an order in writing giving reasons therefor, accept or reject the declaration, the amendment or the instrument, and(c)in case of acceptance, immediately return the declaration, the amendment or the instrument, along with all the enclosures to the owner or owners, as the case may be, for registration, within fifteen days of the date of return,(d)[in case of rejection, forthwith communicate the order of rejection to the owner or owners.] [Inserted by the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Bengal Act No. 21 of 1992).](3)Any person aggrieved by an order of rejection under sub-section (2) may appeal to such appellate authority as the State Government may, by notification in the Official Gazette, appoint, provided that such appeal shall be made within thirty days from the date of such order or within such further period as the appellate authority may allow on sufficient grounds being shown in this behalf. The order of the appellate authority on any such appeal shall be final and shall not be called in question in any court of law.(4)Any order referred to in clause (b) of sub-section (2) or in subsection (3) shall not be called into question in any court of law,

10B. Power to call for records, etc.

Notwithstanding anything in this Act, the State Government may, on its own, call for and examine the records of any proceeding before the Competent Authority or the appellate authority within thirty days from the date of any order made by such Competent Authority or appellate authority, as the case may be, in such proceeding, and make such order thereon as it may think fit.

11. Withdrawal from the provisions of the Act.

(1) All the apartment owners may with the prior permission of the State Government, withdraw a property from the provisions of this Act by an instrument executed to that effect.(2)Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the apartment owners and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.(3)Any encumbrance affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided herein.

12. Instruments of declaration, etc., compulsorily registrable.

(1) All instruments relating to the declaration or any amendment thereto referred to in section 10 or the withdrawal of a property from the provisions of this Act referred to in section 11, or the instrument referred to in sub-section (3) of section 4 shall be deemed to be instruments compulsorily registrable within the meaning of clause (b) of sub-section (1) of section 17 of the Registration Act, 1908.(2)The withdrawal provided for in section 11 shall in no way bar the subsequent re-submission of the property to the provisions of this Act.

13. Bye-laws.

(1) Every property shall be administered in accordance with such bye-laws as may be framed by the Competent Authority with the prior approval of the State Government.(2)The bye-laws shall provide for the following amongst other matters, namely :(a)the manner in which the Association of Apartment Owners is to be formed, the election of a Board of Managers from among the apartment owners, the number of persons constituting the Board, the number of members of such Board to retire annually, the powers and duties of the Board, the honorarium, if any, of the members of the Board, the method of removal from office of members of the Board, the powers of the Board to engage the services of a Secretary or Manager, delegation of powers and duties to such Secretary or Manager;(b)method of calling meetings of the apartment owners and the number to constitute a quorum;(c)election of a President who shall preside over the meetings of the Board and of the Association of Apartment Owners;(d)maintenance, repair and replacement of the common areas and facilities and payments therefor;(e)manner of collecting share of the common expenses from the apartment owners;(f)any other matter considered to be necessary for the administration of the property.

14. Separate assessment.

Notwithstanding anything to the contrary in any other law for the time being in force, each apartment (of a property including its percentage of undivided interest in the common areas and facilities thereof) the owner of which does not own any other apartment in such property shall be deemed to be a separate unit for the purpose of assessment of municipal rates and taxes.

15. Charge for property of common expenses.

All sums assessed by the Association of Apartment Owners for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment prior to all other charges, except charge, if any, on the apartment for payment of municipal rates and taxes.

16. Liability for unpaid common expenses.

Upon the sale of an apartment, the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the latter of his share of the common expenses up to the time of the sale.

16A. Penalty.

(1) If the owner of any apartment [or building] [Inserted by the West Bengal Apartment Ownership (Amendment) Act, 2001 (Act 34 of 2001) (w,e,f, 07.03.2003).] subject to the provisions of this Act, contravenes (a)any of the provisions of [section 2] section- 7 or section 8,(b)any bye-law that may be framed by the Competent Authority, Or(c)any covenant, condition or restriction set forth in the declaration to which he is subject or a party,[or if such owner stands in the way of

submitting the property to the provisions of this Act and does not furnish the particulars or documents as required for execution of Declaration in accordance with the provisions. of section 10A and the rules made under this Act, he shall] [Substituted by section 6 of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Bengal Act 28 of 1996).], at the instance of the Manager or the Board of Managers on behalf of the Association of the Apartment Owners, an aggrieved apartment owner or, in a proper case, the Competent Authority, on conviction before a Magistrate, be liable to a fine which may extend to rupees one thousand or to a term of imprisonment which may extend to six months or to both, and in case of continuing contravention, to additional fine which may extend to rupees fifty for every day during which such contravention continues after conviction for the first such contravention.(2)Any contravention punishable under sub-section (1) may, where prosecution lies or is instituted at the instance of, or by, the Manager or the Board of Managers on behalf of the Association of the Apartment Owners, be compounded by such Association, either before or after the institution of the prosecution, on payment of, for credit to its fund, such sum as it may think fit.(3)The provisions of this section shall apply without prejudice to those of section 6, section 15 and section 16.

16B. [Control and supersession. (1) If the Association of Apartment Owners having right to be exercised by the Manager or the Board of Managers fails to perform its functions under this Act or the bye-laws made thereunder, the Competent Authority may give to it such directions as that Authority considers fit.

(2)If the Competent Authority is of the opinion that the function of the Manager or the Board of Managers is detrimental to the interest of the. Association of Apartment Owners or of the apartment owners or is against the public interest, the Competent Authority may give a notice to the Manager or the Board of Managers, to show cause, why he should not be removed or, as the case may be, it should not be superseded. If the reply of the Manager or the Board of Managers is not considered satisfactory, the Competent Authority May by order remove the Manager or supersede the Board of Managers, as the case may be, and appoint any member from amongst the members of the concerned Association of Apartment Owners or any employee of the State Government or any other person as administrator to perform the functions of the Manager or the Board of Managers, as the case may be, for a period not exceeding six months:Provided that the Competent Authority may, if it considers necessary so to do, by order extend the period of removal of the Manager or supersession of the Board of Managers, as the case may be, for a further period, not exceeding six months at a time, so, however, that the aggregate period of removal or supersession, as the case may be, shall not exceed three years.] [Inserted by section 7 of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Bengal Act 28 of 1996).]

17. Power to make rules.

The State Government may make rules for carrying out the purposes of this Act.

18. Removal of doubts.

For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882, shall, in so far as they are not inconsistent with the provisions of this Act, apply to every apartment together with its undivided interest in the common areas and facilities as those provisions apply in relation to any other immovable property.