

# The Orissa Apartment Ownership Rules, 1992

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### Rule THE-ORISSA-APARTMENT-OWNERSHIP-RULES-1992 of 1992

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The Orissa Apartment Ownership Rules, 1992Published vide Notification No. S.R.O. No. 997/92., Orissa Gazette Extraordinary No. 1155/ 19.8.1992S.R.O. No. 997/92- Whereas the draft of the Orissa Apartment Ownership Rules, 1991, was published in the extraordinary issue No. 1531 of the Orissa Gazette, dated the 19th December, 1991 under the notification of the Government of Orissa in the Housing and Urban Development Department No. 54073-Legis-1-53/91 H. U. D., dated the 18th December, 1991 as S.R.O No. 1304/91, inviting objections and suggestions from all persons or institutions likely to be affected thereby before the expiry of a period of thirty days from the date of publication of the said notification;And whereas, objections and suggestions received by the State Government before the date so specified were duly considered;Now, therefore, in exercise of the powers conferred by Section 24 of the Orissa Apartment Ownership Act, 1982 (Orissa Act 1 of 1982), the State Government do hereby make the following rules, namely :

#### 1. Short title and commencement.

(1)These rules may be called the Orissa Apartment Ownership Rules, 1992.(2)They shall come into force on the date of publication in the Orissa Gazette.

#### 2. Definitions.

(1)In these rules, unless the context otherwise requires-(a)"Act" means the Orissa Apartment Ownership Act, 1982 (Orissa Act 1 of 1984);(b)"Bye-laws" means the bye-laws as referred to under Section 16 of the Act ;(c)"Form" means a form appended to these rules;(d)"Instrument" means the instrument as referred to in Sub-clause (ii) of Clause (b) of Sub-section (3) of Section 5 of the Act.(2)All other words and expressions used but not defined in these rules unless the context otherwise requires, shall have the same meaning as respectively assigned to them in the Act.

### **3. Execution of an Instrument.**

(1)The Instrument shall-(a)be executed in Form-A by the apartment owner within thirty days from the date of execution of the deed of purchase or mortgage, lease, gift, exchange or otherwise as the case may be, under which such apartment owner acquires interest in such apartment; and(b)be signed and verified by such apartment owner in the presence of a Magistrate or any other officer competent to administer oath.(2)The officer appointed under Clause (i) of Section 3 of the Act shall be the competent authority in respect of the buildings constructed or to be constructed by the private apartment owners.(3)The apartment owner after execution of the instrument under Sub-rule (1) furnish the same to the competent authority for acceptance of the instrument, who shall make an endorsement of his acceptance on the body of the instrument certifying the fact of its acceptance under his dated signature and official seal and return the same to the apartment owner for registration.(4)After the registration of the instrument, the owner shall report in writing to the competent authority the fact of its registration and also furnish a copy of the registered instrument to competent authority.(5)Where an appeal is preferred under Sub-section (4) of Section 13 of the Act, the State Government shall call for the relevant record from the competent authority and after hearing the parties, shall by an order giving reasons therefor, allow or dismiss the appeal and after such disposal of the appeal, the State Government shall forthwith return the records along with a copy of its order on appeal, to the competent authority.(6)When an instrument is accepted on appeal by the State Government, the competent authority on getting back the records from the State Government shall, make an endorsement of acceptance on the body of the instrument.

### **4. Submission of declaration.**

(1)The declaration referred to in Section 12 shall be executed in Form-B in the same manner and within the same period as laid down for execution of an instrument in Sub-rule (1) of Rule 3 by the sole owner or all the owners, as the case may be.(2)The procedure and other matters laid down in Sub-rules (2) to (6) of Rule 3 shall mutatis mutandis apply to matters relating to the acceptance of the declaration, preferring of an appeal in case of rejection of acceptance of the declaration, disposal of the appeal and submission of a copy of registered declaration to the competent authority.

### **5. Amendment of declaration under Sub-section (2) of Section 12.**

- A declaration may be amended under any of the following circumstances, namely:(a)When there is a bona fide mistake in the declaration;(b)When there is, subsequent to the submission of a declaration, any alteration in the description of nature of the property or building or any part thereof to which such declaration relates; or(c)When the competent authority suggests that an amendment is necessary for carrying out the purposes of the Act.

### **6. Manner of amendment of a declaration.**

(1)Where under any of the circumstances specified in Rule 5 any amendment is to be made in the declaration some owner or all the owners, as the case may be, shall submit to the competent

authority a fresh declaration in Form-B, superscribed "Amended Declaration" incorporating therein the amendments suggested in place of the portion or portions to be amended. Such fresh declaration shall be accompanied by an application in Form-C stating clearly the circumstances necessitating such amendment.(2)Fresh declaration referred to in Sub-rule (1) shall be signed and verified by the sole owner or all the owners, as the case may be, and submitted in the same manner as provided under Rule 4 and thereafter, the provisions contained in Sub-rules (3) to (6) of Rule 3 shall mutatis mutandis apply for the acceptance or rejection of the amended declaration.(3)On and from the date of registration of an amended declaration under the Registration Act, 1908, the relevant original declaration shall stand amended to the extent as modified by the amended declaration.

## **7. Suo motu action by competent authority under Section 14.**

(1)Where it comes to the notice or the competent authority that the sole owner or all the owners of buildings which are required to be governed by the provisions of the Act have not executed and/or registered the declaration/ instrument/bye-law, the competent authority shall give a notice in writing to the sole owner or all the owners of the concerned building(s) asking them to show cause within thirty days from the date of issue of notice as to why an order should not be passed by him directing the sole owner or all the owners, as the case may be, to execute and register the declaration/instrument/bye-law.(2)On receipt of a reply to the notice referred to in Sub-rule (1), the competent authority shall, after hearing the party or parties concerned, pass such orders as it may deem fit.(3)Orders passed by the competent authority under Sub-rule (2) shall be communicated in writing to the sole owner or all owners, as the case may be.(4)Where the order, of the competent authority requires the sole owner or all the owners, as the case may be, to execute and register a declaration setting out the particulars referred to in Section 12 the competent authority shall fix such time-limit not exceeding thirty days for submission of a copy of the registered document referred to above.(5)Any person aggrieved by an order of the competent authority may prefer an appeal to the State Government within the time-limit prescribed under Sub-section (2) of Section 14.(6)In the event of non-compliance of the order of the competent authority or the order of the State Government on appeal, the sole owner or all the owners, as the case may be, shall, on conviction, be liable to pay the fine as laid down in Section 23 of the Act.

## **8. Discharge of function of the Association of the Apartment Owners.**

(1)The suggestion regarding the discharge of the functioning of the Association to the apartment owners by the competent authority shall be made by an application signed by, more than two-thirds of the owners of the apartment of a property.(2)Before any application is made to the competent authority to discharge the functions of the Association of apartment owners, a resolution shall be passed at a meeting of the Association attended to, by more than two-thirds of the members of the Association agreeing to make such an application to the competent authority. The said resolution shall have force only when it is signed by more than two-thirds of the members of the Association attending its meeting.(3)On receipt of the application under Section 17, the competent authority shall make such enquiry as he may think fit and after satisfying himself that discharging the functionings of the Association of apartment owners will be in the interest of all the apartment owners of a property, he may discharge the functions of the Association of the apartment owners

with the prior approval of the State Government and for such period as may be directed by the State Government. Form A [See Sub-rule (1) of Rule 3] Instrument executed by the apartment Owner(s) under Sub-clause (ii) of Clause (b) of Sub-section (3) of Section 5 of the Orissa Apartment Ownership Act, 1982. I/We.....aged.....years, son of/wife of.....resident of.....hereby declare that I/we, am/are the present owner of apartment No..... on the.....floor of the apartment building No.....situated at in the city/town/village of.....within the Police station of in the district of.....(Commonly known as.....Apartment Scheme) which forms part of a property already submitted to the provisions of the Orissa Apartment Ownership Act, 1982, under a declaration executed in conformity with the provisions of the said Act and registered in the Office of the Registrar/Sub-registrar.....in Book No.....Voucher No.....Pages.....to.....bearing No.....of the year.....

**2. I/We further declare that I/We acquire ownership in the said apartment under a deed of transfer registered in the Office of the Registrar/Sub-registrar.....in Book No.....Voucher.....No.....Pages.....No.....of the year.....a copy of the 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 assignees 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 16 of the said Act and with the covenants, conditions and restrictions set forth in the said declaration.**

In witness whereof I/We have set out hands this.....day of.....19.....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. Sole owner/owners of the said apartment (1) Shri/Smt. ....(2) Shri/Smt. ....(3) Shri/Smt. and so on in the presence of.....(1) and (2) Solemnly affirm before me this.....day of.....

Place : Date : Signature of the Magistrate or any person competent to administer oath  
Seal

Form B [See Sub-rule (1) of Rule 4 and Sub-Rule (1) of Rule 6] Declaration under Section 2 read with Section 12 of the Orissa Apartment Ownership Act, 1982. From.....[Sole owner/owners of the building (s)] To The Competent Authority,.....(Appointed by the Government of Orissa under Clause (i) of Section 3 of the Orissa Apartment Ownership Act, 1982). Sir, In pursuance of Section 2 of the Orissa Apartment Ownership Act, 1982, read with

Sub-section of Section (i) 12 of the said Act, I/We hereby declare that I/We, am/are the owner/owners of the.....property/building situated at.....city/town/village.....in the district of.....and do hereby further declare that I/We submit the said property/comprising building or ..... buildings containing.....number of apartment, together with the common areas and facilities meant for.....(use) purpose to the provisions of the Orissa Apartment Ownership Act, 1982 (Orissa Act I of 1984 and all amendments thereto).

**2. Authenticated copies of the site plan, layout plan and building plan, prepared by.....and sanctioned by are appended herewith and marked respectively as Annexures "A, B, C". The relevant title deed is also appended herewith and marked as Annexure "D".**

**3. I/We.....do hereby furnish further the following particular as required under Sub section (1) of Section 12 of the said Act.**

(A)Description of the land on which the buildings and the improvements are or are to be located are the status of the land (freehold or lease-hold).(B)Description of the building stating the number of storeys and basement, the number of apartments and the principal materials of which it is or is to be constructed.(C)Description of the apartment, number of each apartment along with its location, approximate area, number of rooms, immediate common, area to which it has access and other necessary information for its proper identification.(D)Description of common areas and facilities.(E)Description of the limited common areas and facilities along with the details of apartments which their use is reserved.(F)Details of the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities pertaining to each apartment and its owner for all purposes including voting.(G)The statement that the apartment and the percentage of undivided interest are not encumbered in any manner whatsover on this (day.....day of.....(month) 19.....(H)Statement indicating the purposes for which the building paid each of the apartment area intended and restricted as to use.(I)The name and address of the person to receive service of process.(J)Percentage of votes by the apartment owners which shall be determinative of whatever to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property.(K)The method by which the declaration may be amended.(L)Other relevant details.

**4. I/We do hereby further declare covenants and undertake as follows :**

(i)that each apartment constitutes a single unit transferable and heritable as such, but mine/ours shall not be partitioned or subdivided for any purpose, whatsoever;(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 each apartment;(iii)that common areas and facilities, general or restricted, shall remain undivided and that i/We shall not bring any action for partition or division thereof so long as the property remains submitted to the provisions of the Act;(iv)that the percentage of undivided interest in the general or restricted common areas or

facilities as expressed in the declaration shall not be altered except with the consent of all of us expressed in an amended declaration duly executed and registered as provided in the 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 properly/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 I/We shall not do anything which would be prejudicial to the soundness and safety of the property or reduce the value thereof impair any easement or hereditament not shall and any material structure or excavate any additional basement or cellar;(viii)that I/We shall not sell, otherwise transfer or rent out my/our apartment for any purpose other than residential;(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 I/We shall strictly comply with the provisions of the said Act and the bye-laws made thereunder and shall pay my/our share of 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 or the competent authority;(x)I/We further, declare, covenant and undertake that I/We shall not construct any illegal/unauthorised structure in common areas and facilities and if any thing has been done contrary to this undertaking that thing shall be demolished in accordance with law and the cost of such demolition shall be recovered from me/us.In witness whereof I/We have set out hands this.....days of.....19.....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.....Sole owner or all the owners of the property(1)Shri/Smt(2)Shri/Smt(3)Shri/Smtin the presence of ... (1).....and(2).....solemnly affirmed before me this.....day of.....

Place :Date : Signature of the Magistrate or any personcompetent to administer oath

Seal

Form C[See Sub-rule (1) or Rule 6]Application for amendment of declaration submitted under Sub-section (2) of Section 12 of the Orissa Apartment Ownership Act, 1982.From[Sole owner/owners of the building (s)]ToThe Competent Authority,(Appointed by the Government of Orissa under Clause (i) of Section 3 of the Orissa Apartment Ownership Act, 1982) I/We, the applicant (s), namely of sheweth :

**1. That on.....the applicants submitted a declaration in respect.....of under Sub-section (i) of Section 12 of the Orissa Apartment Ownership Act, 1982.**

**2. That is necessary in the following circumstances to amend the said declaration, namely :**

(a).....(b).....(c).....

**3. That a fresh declaration incorporating therein the amendments to be affected is submitted alongwith this application.**

**4. That in the circumstances stated in Paragraph (2) thereof the following amendment(s) may be allowed, namely :**

(i)the entire"....."appearing in.....of the declaration to be amended/be substituted by the entries".....(ii).....(iii).....(iv).....The applicant(s) pray(s) that the amendments 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 on.....

Signature (s)

(1) Shri/Smt.....

Place:

(2) Shri/Smt.....

Date:

(3) Shri/Smt.....

In the presence of

(1).....

and

(2).....