

The Delhi Apartment Ownership Act, 1986

February 9, 2013

Preamble

(Act No. 58 Of 1986)

(December 23, 1986)

An Act to provide for the ownership of an individual apartment in a multistoried building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto

Whereas with a view to securing that the ownership and control of the material resources of the community are so distributed as to sub serve the common good, it is expedient to provide for the ownership of an individual apartment in multi-strayed building and of an undivided interest in the common areas and facilities appurtenant to such apartment and interest heritable and transferable and to provide for matters connected therewith or incidental thereto;

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:-

Introduction

Prefatory Notes – **Statement of Objects and Reasons** – The **Delhi Apartment Ownership Bill, 1986** seeks to achieve the object of enabling the conferment of heritable and transferable right in an apartment including its proportionate and undivided interest in land and other common areas. The scarcity of land in Delhi because of very rapid urbanization has led to a vertical growth of buildings. Multi-storied residential buildings, integrated development of commercial institutional and industrial areas and flatted factories have resulted in a marked increase in the number of multi-storied buildings in Delhi containing a number of apartments, sharing land and other common facilities. In the case of flats constructed by agencies like the Delhi Development Authority, while the super-structure is conveyed to the allotted, the land is conveyed to a registered agency and the flotees jointly which apart from separating the ownership of land and super-structures, interposes the registered agency in future transfers of properties. In the case of co-operative societies, difficulties are experienced in obtaining loans in the absence of a mortgage able title in an apartment constructed on indivisible land, the title to which rests in the society. The existing arrangements also involve the intervention of the Government and agencies like the Delhi Development Authority in the litigation or dispute regarding management of common areas which arise between the lessees and the buyers of the apartments. The legislation therefore proposes to meet the persistent demand for statutory recognition of an apartment as a unit of property, capable of transfer and for statutory recognition of an apartment as a unit of property, capable of transfer and for a statutory organisation clothed with adequate powers for management of common areas in multi-storeyed buildings.



Chapter I – Preliminary

1. Short title, extent and commencement –

(1) This Act may be called the **Delhi Apartment Ownership Act, 1986**.

(2) It extends to the whole of the Union territory of Delhi.

(3) It shall come into force on such date as the Administrator may, by notification in the Official Gazette, appoint.

Note – Act came into force w.e.f. 1-12-1987, vide Noti. No. F. 26(6)/76-L & B/Coord, Vol. III/1377, dated 30-11-1987, pub. in Delhi Gaz., Part IV, dated 10-12-1987.

2. Application-

The provision of this Act shall apply to every apartment in a multi-storied building which was constructed mainly for residential or commercial or such other purposes as may be prescribed, by-

(a) Any group housing co-operative society, or

(b) Any other person or authority, before or after the commencement of this Act and on a freehold land, or a lease hold land, if the lease for such land is for a period of thirty years or more:

Provided that, where a building constructed, whether before or after the commencement of this Act, on land contains only two or three apartments, the owner of such building may, by a declaration duly executed and registered under the provisions of the Registration Act, 1908 (16 of 1908), indicate his intention to make the provisions of this Act applicable to such building, and on such declaration being made, such owner shall execute and register a Deed of Apartment in accordance with the provisions of this Act, as if such owner were the promoter in relation to such building.



3. Definitions –

In this Act, unless the context otherwise requires,-

(a) "Administrator" mean the Administrator of the Union territory of Delhi appointed by the President under Article 239 of the Constitution.

(b) "Allotted", in relation to an apartment, means the person to whom such apartment has been allotted, sold or otherwise transferred by the promoter,

(c) "Apartment" means a part of any property, intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors or any part or parts thereof, in a multi-storeyed building to be used for residence or office or for the practice of any profession, or for the carrying on of any occupation, trade or business or for such other type of independent use as may be prescribed, and with a direct exit to a public street, road or

highway, and includes any garage or room (whether or not adjacent to the multi-storeyed building in which such apartment is located) provided by the promoter for use by the owner of such apartment for parking any vehicle or, as the case may be, for the residence of any domestic aide employed in such apartment.

(d) "Apartment number" means the number, letter or combination thereof, designating an apartment.

(e) "Apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment.

(f) "**Association of Apartment Owners**":-

(i) In relation to a multi -storeyed building not falling within sub clause , (ii), means all the owners of the apartments therein,

(ii) In the case of the multi-storeyed buildings in any area, designated as a block, pocket or otherwise, means all the owners of the apartments in such blocks, pocket or other designated area, acting as a group in accordance with the bye-laws,

(g) "Authority" includes any authority constituted or established by or under any law for the time being in force.

(h) "Board" mean the **Board of Management of an Association of Apartment Owners** elected by its members under the bye-laws.

(i) "Bye-laws" means the bye-laws made under this Act,

(j) "Common areas and facilities" , in relation to a multi-storeyed building, means-

(i) The land on which such building is located and all easements, rights and appurtenances belonging to the land and the building,

(ii) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire- escapes and entrances and exits of the building,

(iii) The basements, cellars, yards, gardens, parking areas, shopping centres, schools and storage spaces.

(iv) The premises for the lodging of janitors or persons employed for the management of the property.

(v) Installations of central services, such as, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating and sewerage,

(vi) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus an installations existing for common use,



(vii) Such other community and commercial facilities as may be prescribed, and

(viii) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use,

(k) "Commons expenses" means-

(i) All sums lawfully assessed against the apartment owners by the Association of Apartment Owners for meeting the expenses of administration, maintenance repair or replacement of the common areas and facilities.

(ii) Expenses declared as common expenses by the provisions of this Act or by the bye-laws, or agreed upon by the Association of Apartment Owners,

"Common profits" means the balance of all income, rents profits and revenues from the common areas and facilities remaining after the deduction of the common expenses,

"Competent authority" means-

(i) A Secretary in the Delhi Administration, or

(ii) The Vice-Chairman of the Delhi Development Authority, or

(iii) The Land and Development Officer of the Central Government, who may be authorised by the Administrator, by notification in the Official Gazette, to perform the functions of the competent authority under this Act.

(a) "Deed of Apartment" means the Deed of Apartment referred to in Section 13

(b) "Delhi" means the Union territory of Delhi

(c) "Joint family" means a Hindu undivided family, and in the case of other persons, a group or unit, the members of which are by custom, joint in possession or residence,

(d) "Limited common areas and facilities" means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments,

(e) "Manager" means the Manager of an Association of Apartment Owners appointed under the bye-laws.

(f) "Multi-storeyed building " means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, pocket or otherwise, each containing two or more apartments, with a total of four or more apartments in all such buildings, and includes a building containing two or three apartments in respect of which a declaration has been made under the proviso to Section 2,

(g) "Owner" , in relation to an apartment, includes, for the purposes of this Act, a lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more,

(h) "Person" includes a firm and a joint family, and also includes a group housing co-operative society.



- (i) "Prescribed" means prescribed by rules made under this Act,
- (j) "Promoter" means the authority, person or co-operative society, as the case may be, by which, or by whom, any multi-storeyed building has been constructed.
- (k) "Property" means the land, the multi-storeyed building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

Chapter II – Ownership, Heritability and Transferability of Apartments

4. Ownership of apartments –

- (1) Every person to whom any apartment is allotted, sold or otherwise transferred by the promoter, on or after the commencement of this Act, shall, save as otherwise provided in Section 6, and subject to the other provision of this Act, be entitled to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him.
- (2) Every person to whom any apartment was allotted, sold or otherwise transferred by the promoter before the commencement of this Act, shall, save as otherwise provided under Section 6 and subject to the other provisions of this Act, be entitled, on and from such commencement to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him.
- (3) Every person who becomes entitled to the exclusive ownership and possession of an apartment under sub section (1) or sub section (2) shall be entitled to such percentage of undivided interest in the common areas and facilities may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the value of the apartment in relation to the value of the property.
- (4) (a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners.
- (b) 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.
- (5) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, and any covenant to the contrary shall be void.
- (6) Each apartment owner may use the common areas and facilities in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other apartments owners.
- (7) The necessary work relating to maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto, shall be carried out only in accordance with the provisions of this Act and the bye-laws.



(8) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Board or Manager, to have access to each apartment from time to time during reasonable hours for the maintenance, repairs or replacement of any of the common areas or facilities therein, or accessible there from, or for making emergency repairs therein necessary to prevent damage to the common area and facilities or to any other apartment or apartments.

5. Apartment to be heritable and transferable –

Subject to the provisions of Section 6, each apartment, together with the undivided interest in the common areas and facilities appurtenant to such apartment, shall, for all purpose constitute as a heritable and transferable immovable property within the meaning of any law for the time being in force, and accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings, remedy and to penalty, forfeiture or punishment as any other immovable property or make a bequest of the same under the law applicable to the transfer and succession of immovable property.

Provided that where the allotment, sale or other transfer of any apartment has been made by any group housing co-operative society in favour of any member thereof, the transferability of such apartment and all other matters shall be regulated by the law applicable to such group housing co-operative society.

6. Ownership of apartment subject to conditions –

Where any allotment, sale or other transfer of any apartment has been made, whether before or after the commencement of this Act, in pursuance of any promise of payment, or part payment, of the consideration thereof, the allotted or transferee, as the case may be, shall not become entitled to the ownership and possession of that apartment or to a percentage of undivided interest in the common areas and facilities appurtenant to such apartment, until full payment has been made of the consideration has been made, continue to remain the possession thereof on the same terms and conditions on which he was so inducted into possession of such apartment or part thereof.

7. Compliance with the covenants and bye-laws-

(1) Each apartment owner shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Deed of Apartment, and failure to comply with any of them shall be a ground for action to recover sums due for damages, or for injunctive relief, or both, by the Manager or Board on behalf of the Association of Apartment Owners, or in a proper case, by an aggrieved apartment owner.

8. Right of re-entry –

(1) Where any land is given in lease by a person (hereafter in this section referred to as the lessor) to another person (hereafter in this section referred to as the lessee, which term shall include a person in whose favour a sub lease of such land has been granted), and any multi-storeyed building has been constructed on such lease-hold land by the lessee or by any other person authorised by him or claiming through him, such lessee shall grant in respect of the land as many sub-leases as there are apartments in such multi storeyed building and shall execute separate deeds of sub lease in respect of such land in favour of each apartment owner,-



(a) In the case of a multi-storeyed building constructed before the commencement of this Act, within three months from such commencement, or

(b) In the case of a multi-storeyed building constructed after the commencement of this Act, within three months from the date on which the possession of any apartment in such multi-storeyed building is delivered to him.

Provided that no sub lease in respect of any land shall be granted except on the same terms and conditions on which the lease in respect of the land has been granted by the lessor and no additional terms and conditions shall be imposed by the lessee except with the previous approval of the lessor.

(2) Where the lessee has any reason to suspect that there had been any breach of the terms and conditions of the sub lease referred to in sub section (1), he may himself inspect the land on which the multi-storeyed building containing the concerned apartment has been constructed, or may authorise one or more persons to inspect such land and make a report as to whether there had been any breach of the terms and conditions of any sub-lease in respect of such land and, if so, the nature and extent of such breach, and for this purpose, it shall be lawful for the lessee or any person authorised by him to enter into, and to be in, the land in relation to which such breach has been or is suspected to have been committed.

(3) Where the lessee or any person authorised by him makes an inspection of the land referred to in sub section (1), he shall record in writing his findings on such inspection a true copy of which shall be furnished to the apartment owner by whom such breach of the terms and conditions of sub-lease in respect of the land appurtenant to the apartment owned by him has been committed (hereinafter referred to as the defaulting apartment owner) and where such findings indicate that there had been any breach of the terms and conditions of the sub-lease in respect of such land, the lessee may, by a notice in writing, require the defaulting apartment owner to refrain from committing any breach of the terms and conditions of the sub-lease in respect of such land, or to pay in lieu thereof such composition fees as may be specified in the notice in accordance with such scales of composition fees as may be prescribed.

(4) The defaulting apartment owner who is aggrieved by any notice served on him by the lessee under sub-section (3) may, within thirty days from the date of service of such notice, prefer an appeal to the Court of the District Judge having jurisdiction (hereinafter referred to as the District Court), either challenging the finding of the lessee or any person authorised by him or disputing the amount of composition fees as specified in the notice, and the District Court may, after giving the parties a reasonable opportunity of being heard, confirm, alter or reverse those findings or may confirm, reduce or increase the amount of composition fees or set aside the notice.

(5) Where, on the breach of any terms and conditions of any sub-lease in respect of any land, any composition fees become payable, the defaulting apartment owners shall be deemed to have been guilty of such breach and in default of payment thereof it shall be lawful for the lessee to recover the amount of the composition fees from the defaulting apartment owner as an arrear of land revenue.

(6) Where any composition fees are paid whether in pursuance of the notice served under sub section (3) or in accordance with the decision of the District Court or a higher court on appeal, no further action shall be taken by the lessee for the breach of the terms and conditions of the sub-lease in respect of the land in relation to which payment of such composition fees has been made.

(7) If the defaulting apartment owner omits or fails to refrain from committing any breach of the terms and conditions of the sub-lease in respect of the land or, as the case may be, omits or fails to pay the composition fees in lieu thereof-



(a) In accordance with the notice issued by the lessee under sub section (3), or

(b) Where the findings of the lessee or the person authorised to inspect the land about any breach of the terms and conditions of any sub-lease in respect of the land or the amount of composition fees specified in the notice issued by the lessee are altered by the District Court on appeal or by any higher court on further appeal, in accordance with the decision of the District Court or such higher court, as the case may be, the lessee shall be entitled to , -

(c) Where no appeal has been preferred under sub section (4), within sixty days from the date of service of the notice under sub section (3), or

(d) Where an appeal has been preferred under sub section (4), within sixty days from the date on which the appeal is finally disposed of by the District Court, or where any further appeal is preferred to a higher court, by such higher court,

to exercise the right of re-entry in respect of the undivided interest of the lessee in the land appurtenant to the apartment owned by the defaulting apartment owner, and where such right of re-entry cannot be exercised except by the adjustment of the defaulting apartment owner from his apartment, such right of re-entry shall include a right of eject the defaulting apartment owner from the concerned apartment.

Provided that so such adjustment shall be made unless the defaulting apartment owner has been paid by the lessee such amount as compensation for such adjustment as may be determined in accordance with the prescribed scales of compensation.

(8) No appeal preferred under sub section (4) shall be admitted, unless twenty five per cent of the composition fees specified in the notice served on the defaulting apartment owner has been deposited to the credit of the District Court in savings bank account to be opened by the District Court in any branch of an approved bank.

Provided that the District Court may, on sufficient cause being shown, either remit or reduce the amount of such deposit, and the interest accruing on such deposit, shall ensure to the credit of defaulting apartment owner by whom such deposit has been made.

Provided further that the amount of such deposit together with the interest due thereon shall be distributed by the District Court in accordance with the decision in such appeal, or where any further appeal has been preferred against such decision, in accordance with the decision in such further appeal.

(9) The defaulting apartment owner, who is aggrieved by the amount offered to be paid to him under the proviso to sub section (7) as compensation for adjustment from his apartment may, within thirty days from the date of such offer, prefer an appeal to the District Court and the District Court may, after giving the parties a reasonable opportunity of being heard, maintain, increase or reduce the amount of compensation.

(10) On the adjustment of the defaulting apartment owner from the apartment under sub section (7), the lessee by whom such adjustment has been made may make a fresh allotment of the concerned apartment to any other person on such terms and conditions as he may think fit.

Provided that the consideration for such fresh allotment shall not be more than the amount which has been paid to the defaulting apartment owners as compensation.

(11) Where any lessee omits or fails to take any action either in accordance with the provisions of sub section (2), or sub section (3) or sub section (7) the lessor may, in the first instance, require the lessee by a notice in writing to take action against the defaulting apartment owner



under sub section (2) or sub section (3) or as the case may be, under sub section (7), within a period of ninety days from the date of service of such notice, and in the event of the omission or failure of the lessee to do so within such period, the lessor may himself take action as contained in sub section (2) or sub section (3) or sub section (7), and the provisions of sub section (4) in sub section (6) and sub section (8) to sub section (10) shall, as far as may be, apply to any action taken by him as if such action had been taken by the lessee.

(12) For the removal of doubts, it is declared that no work in any apartment by the owner thereof shall be deemed to be a breach of the terms of the sub-lease in respect of the land on which the multi-storeyed building containing such apartment has been constructed unless the work is prohibited by section 11.

Explanation – In this section “approved bank” means the State Bank of India constituted under Section 3 of the State Bank of India Act, 1955 (23 of 1955), or a subsidiary bank constituted under Section 3 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

9. Purchaser or persons taking lease of apartments from apartment owners to execute an undertaking –

Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, any person acquiring any apartment from any apartment owner by gift, exchange, purchase or otherwise, or taking lease of an apartment owner for a period of thirty years or more, shall,-

- (a) In respect of the said apartment, be subject to the provisions of this Act, and
- (b) Execute and register an instrument in such form, in such manner and within such period as may be prescribed giving an undertaking to comply with the covenants, conditions and restrictions, subject to which such apartment is owned by the apartment owner aforesaid.

10. Benamidar of the apartment to be deemed to be the real owner-

If any apartment is acquired by any person, whether by allotment, sale or otherwise with the consideration thereof paid or provided by another person, the acquirer shall, notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in the Indian Trusts Act, 1882 (2 of 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 real owner of such apartment, and no court shall entertain any claim of the person paying or providing such consideration for title to such apartment on the ground that the acquisition of the apartment was made on behalf of such person or on behalf of someone through whom such person claims.

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Though benami transactions are common in this country and there is nothing per se wrong in a judgment-debtor purchasing property in another man's name, we have to take into account all the circumstances attending the purchase and his subsequent conduct for finding out whether it was part of a fraudulent scheme on his part to prevent the judgment-creditor from realizing the fruits of his decree.



The onus to prove that the purchase is benami is on the person who alleges it.

The Court will presume an ostensible title to be the real title unless a plaintiff who seeks to assert the contrary pleads and proves that the ostensible owner is not the real owner, in other words the onus is on the person who alleges a transaction to be benami to make it out.

11. Certain works prohibited-

No apartment owner shall do any work which would be prejudicial to the soundness or safety of the property or reduce the value thereof or impair any easement of here ditament or shall add any material structure or excavate any additional basement or cellar without first obtaining the consent of all the other apartment owners.

Explanation – In this section, reference to apartment owners shall be construed , in relation to a multi-storeyed building in any block, pocket or other designated area, the apartment owners of the concerned multi-storeyed building in such block, pocket or other designated area.

12. Encumbrances against apartments-

(1) The owner of each apartment may create any encumbrance, only against the apartment owned by him and the percentage of the undivided interest in the common areas and facilities appurtenant to such apartment in the same manner and to the same extent as may be created in relation to any other separate parcel of property subject to individual ownership.

Provided that where any such encumbrance in created, the apartment in relation t which such encumbrance has been created shall not be partitioned or sub-divided.

(2) No labour performed or material furnished with the consent, or at the request of an apartment owner or his agent or his contractor or sub contractor, shall be the basis for a charge or any encumbrance under the provisions of the Transfer of Property Act, 1882 (4 of 1882), against the apartment or property of any other apartment owner not expressly consenting to, or requesting the same, except that such express consent shall be deemed to be given by the other apartment owner in case of emergency repairs thereto.

(3) The labour performed and material furnished for the common areas and facilities, if dully authorised by the Association of Apartment Owners in accordance with the provisions of this Act, or the bye-laws, shall be deemed to be performed or furnished with the express consent of each Apartment owner and shall be the basis for a charge or encumbrance under the Act aforesaid against each of the apartments and shall be subject to the provisions of such section.

(4) In the event of a charge or any encumbrance against two or more apartments becoming effective, the apartment owners of the separate apartments may remove their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance on payment of the fractional or proportional amounts attributable to each of the apartments affected and on such payment, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free of the charge or encumbrance so removed.

Provided that such partial payment shall not prevent the person having a charge or any of the encumbrances from proceeding to enforce the rights, in relation to the amount not so paid, against any other apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment.

(5) On any such payment, discharge or other satisfaction, referred to in sub section (4), the apartment and the percentage of undivided interest in the common areas and facilities



appurtenant thereto shall be free and clear of the charge or encumbrances, so paid, satisfied or discharged.

Chapter III – Deed of Apartment and its Registration

13. Contents of Deed of Apartment-

1) Whenever any allotment, sale or other transfer of any apartment is made, the promoter shall,
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(a) In the case of an allotment, sale or other transfer made after the commencement of this Act, within three months from the date of such allotment, sale or other transfer, or

(b) In the cases of any allotment, sale or other transfer made before the commencement of this Act, within six months from the date of such commencement.

Execute a Deed of Apartment containing the following particulars, namely:-

(i) The name of the allottee,

(ii) Description of the land on which the building and the common areas and facilities are located, and whether the land is free-hold or lease-hold, and if lease-hold, the period of such lease,

(iii) A set of floor plans of the multi-storeyed building showing the layout and location, number of apartments and bearing a verified statement of an architect certifying that it is an accurate copy of the portions of the plans of the building as filed with, and approved by, the local authority within the jurisdiction of which the building is located.

(iv) Description of the multi-storeyed building, stating the number of storeys and basements, the number of apartments in that building and the principal material of which it is constructed.

(v) The apartment number, or statement of the location of the apartment, its approximate area, number and dimension of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification.

(vi) Description of the common areas and facilities and the percentage of undivided interest appertaining to the apartment in the common areas and facilities.

(vii) Description of the limited common areas and facilities, if any, stating to which apartments their use is reserved.

(viii) Value of the property and of each apartment, and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of execution of the Deed of Apartment.

(ix) Statement of the purposes for which the building and each of the apartments are intended and restricted as to use,

(x) The name of the person to receive service of process, together with the particulars of the residence or place of business of such person.



(xi) Provisions as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or any part of the property.

Provided that the competent authority may, if it is satisfied that the promoter was prevented by sufficient cause from executing the Deed of Apartment in relation to any apartment within the period of three months, or six months, as the case may be, permit the promoter to execute such Deed of Apartment within such further period, not exceeding six months, as it may specify.

(2) The promoter shall-

(a) file in the office of the competent authority, and

(b) deliver to the concerned allottee or transferee, as the case may be a certified copy of each Deed of Apartment as registered under Section 14.

(3) Whenever any transfer of any apartment is made by the owner thereof, whether by sale, lease, mortgage, exchange, gift or otherwise, the transferor shall deliver to the transferee the certified copy of the Deed of Apartment delivered to him under sub section (2) after making an endorsement thereon as to the name, address and other particulars of the transferee, to enable the transferee to get the endorsement on the certified copy of the Deed of Apartment registered in accordance with the provisions of Section 14.

(4) Whenever any succession takes place to any apartment or part thereof, the successor, shall, within a period of six months from the date of such succession, make an application to the competent authority for recording such succession on the certified copy of the Deed of Apartment in relation to the concerned apartment, and, if there is any dispute as to the succession to the apartment, the competent authority shall decide the same, and for this purpose, such authority shall have effect of a decree and shall be appealable as if it were a decree passed by the principal civil court of original jurisdiction.

(5) Whenever any succession to an apartment has been recorded by the competent authority under sub section (4) such authority shall send a true copy of such record, to the concerned Registrar for registration thereof in accordance with the provision of Section 14.

(6) For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of, the provisions of any other law, for the time being in force, relating to the transfer of immovable property.

14. Registration of Deed of Apartment –

(1) Every Deed of Apartment and every endorsement thereon relating to the transfer of the apartment shall be deemed to be a document which is compulsorily remittable under the Registration Act, 1908 (16 of 1908) and shall be registered with the Registrar accordingly, and the words and expressions used in this section but not defined in this Act, shall have the meanings respectively assigned to them in the Registration Act, 1908 (16 of 1908).

(2) In all registration offices, a book called "Register of Deeds of Apartments under the Delhi Apartment Ownership Act, 1986" and an Index relating thereto shall be kept in such form and shall contain such particulars as may be prescribed.

(3) Whenever any endorsement on a Deed of Apartment is registered, the concerned Registrar shall forward a certified copy thereof to the compensation authority to enable that authority to make necessary entries in the certified copy of the concerned Deed of Apartment filed with it under sub section(2) of section 13.



(4) Any person acquiring any apartment shall be deemed to have notice of the contents of the Deed of Apartment and the endorsement, if any, thereon as from the date of its registration under this section.

NOTES

The following words used in this section have been defined under Registration Act.

1. "Book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book;
2. "Endorsement" and "Endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act.

Chapter IV – Association of Apartment owners and Byelaws for the Regulation of the affairs of such association

15. Association of Apartment Owners and bye-laws relating thereto.-

(1) There shall be an Association of Apartment Owners for the administration of the affairs in relation to the apartments and the property appertaining thereto and for the management of common areas and facilities.

Provided that where any area has been demarcated for the construction on multi-storeyed buildings, whether such area is called a block or pocket or by any other name, there shall be a single Association of Apartment Owners in such demarcated area.

(2) The Administrator may, by notification in the Official Gazette, frame model bye-laws in accordance with which the property referred to in sub section (1) shall be administered by the Association of Apartment Owners and every such Association shall, at its first meeting, make its bye-laws in accordance with the model bye-laws so framed, and in making its bye-laws the Association of Apartment Owners shall not make any departure from, variation of, addition to, or omission from, the model bye-laws aforesaid except with the prior approval of the Administrator and no such approval shall be given if, in the opinion of the Administrator, such departure, variation, addition or omission will have the effect of altering the basic structure of the model bye-laws framed by him.

(3) The model bye-laws framed under sub section (2) shall provide for the following, among other matters, namely :-

- (a) The manner in which the Association of Apartment Owners is to be formed,
- (b) The election, from among apartment owners, of a Board of Management by the members of the Association of Apartment Owners,
- (c) The number of apartment owners constituting the Board, the composition of the Board and that one-third of members of the Board shall retire annually,
- (d) The powers and duties of the Board,
- (e) The honorarium, if any, of the members of the Board,



- (f) The method of removal from office of the members of the Board
- (g) The powers of the Board to engage the services of a Manager,
- (h) Delegation of powers and duties of the Board to such Manager
- (i) Method of calling meetings of the Association of Apartment Owners and the number of members of such Association which shall constitute a quorum for such meetings,
- (j) Election of a President of the Association of Apartment Owners from among the apartment owners, who shall preside over the meetings of the Board and of the Association of Apartment Owners.
- (k) Election of a Secretary to the Association of Apartment Owners from among the apartment owners, who shall be an ex officio member of the Board and shall keep two separate minutes books, one for the Association of Apartment Owners and the other for the Board, pages of each of which shall be consecutively numbered and authenticated by the President of the Association of Apartment Owners, and shall record, in the respective minutes books, the resolutions adopted by the Association of Apartment Owners or the Board, as the case may be,
- (l) Election of a Treasurer from among the apartment owners, who shall keep the financial records of the Association of Apartment Owners as also of the Board.
- (m) Maintenance, repair and replacement of the common areas and facilities and payment therefor,
- (n) Manner of collecting from the apartment owners or any other occupant of apartments, share of the common expenses
- (o) Resignation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities,
- (p) Restrictions with regard to the use and maintenance of the apartments and the use of the common areas and facilities, as may be necessary to prevent unreasonable interference in the use of each apartment and of the common areas and facilities by the several apartment owners,
- (q) Any matter which may be required by the Administrator to be provided for in the bye-laws for the proper or better administration of the property.
- (r) Such other matters as are required to be, or may be, provided for in the bye-laws.
- (4) The bye-laws framed under sub-section (2) may also contain provisions, not inconsistent with this Act,
 - (a) Enabling the Board to retain certain areas of the building for commercial purposes and to grant lease of the areas so retained, and to apply the proceeds of such lease for the reduction of the common expenses for maintaining the building, common areas and facilities, and if any surplus is left after meeting such expenses to distribute such surplus to the apartment owners as income.
 - (b) Relating to the audit of the accounts of the Association of Apartment Owners and of the Board, and of the administration of the property.
 - (c) Specifying the times at which and the manner in which annual general meetings and special general meetings of the Association of Apartment Owners shall be held and conducted.



(d) Specifying the time at which and the manner in which, the annual report relating to the activities of the Association of Apartment Owners shall be submitted.

(e) Specifying the manner in which the income derived and expenditure incurred by the Association of Apartment Owners shall be dealt with, or as the case may be, accounted for.

16. Insurance –

(1) The Board or Manager-

(a) Shall have, if requested so to do by a mortgage having a first mortgage covering an apartment, the authority to, and

(b) Shall, if required so to do by the bye-laws or by a majority of the apartment owners, obtain insurance for the property against loss or damage by fire or other hazards under such terms and for such amounts as shall be so requested or required.

(2) Such insurance coverage shall be written on the property in the name of such Board or Manager as trustee for each of the apartment owners in the percentages specified in the bye-laws.

(3) The premia payable in respect of every such insurance shall be common expenses

(4) The provisions of sub section (1) to (3) shall be without prejudice to the right of each of the apartment owner to insure his own apartment for his benefit.

17. Disposition of property, destruction or damage –

If within sixty days of the date of damage or destruction to all, or part of any property, or within such further time as the competent authority may, having regard to the circumstances of the case, allow, the Association of Apartment Owners does not determine to repair, reconstruct or re-build such property, then, and in that event,-

(a) The property shall be deemed to be owned in common by the apartment owners,

(b) The undivided interest in the property owned in common, which shall appertain to each apartment owner, shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities,

(c) Any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest in the apartment owner in the property.

(d) The property shall be subject to an action for partition at the suit of any apartment owner in which event, the net proceeds of sale together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided amongst all the apartment owner in the percentage equal to the percentage of undivided interest owned by each apartment owner in the property after paying out, all the respective shares of the apartment owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

18. Action-



(1) Without prejudice to the rights of any apartment owner, action may be brought by the Board of Manager, in either case in the discretion of the Board on behalf of two or more of the apartment owners as their respective interest may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment.

(2) The service of process on two or more apartment owner in any action relating to the common areas and facilities or more than one apartment may be made on the person, designated in the bye-laws to receive service of process.

Chapter V – Common Profits, Common Expenses and other matters

19. Common profits, common expenses and other matters –

(1) 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 of the apartment owners in the common areas and facilities.

(2) Where the apartment owner is not in the occupation of the apartment owned by hi, the common expenses payable by such apartment owner may be recovered from the person in the occupation of the apartment.

20. Apartment owner not to be exempt from liability for contribution by waiver of the use of the common areas and facilities. –

No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use of enjoyment of any of the common areas and facilities, or by the abandonment of his apartment.

21. Common expenses to be a charge on the apartment –

All sums assessed by the Association of Apartment Owners, but unpaid for the share of the common expenses chargeable to any apartment, shall constitute a charge on such apartment prior to all other charges except only-

- (i) The charge, if any, on the apartment for payment of Government and municipal taxes, and
- (ii) All the sums unpaid on a first mortgage of the apartment.

22. Separate assessments .-

(1) Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and its percentage of undivided interest in the common areas and facilities appurtenant (including an apartment in respect of which the provisions of this Act were applied under the proviso to Section 2) shall be deemed to be separate property for the purpose of assessment of tax on lands and buildings leviable under such law and shall be assessed and taxed accordingly, and for this purpose a local authority shall make suitable regulations to carry out the provisions of this section.



(2) Neither the multi-storeyed building nor the property nor the common areas and facilities referred to in sub section (1), shall be deemed to be separate properties for the purpose of the levy of such taxes.

23. Joint and several liability of vendor etc. for unpaid common expenses.-

(1) Upon the sale, bequest or other transfer of an apartment, the purchaser of the apartment or the grantee or legatee or the transferee, as the case may be, shall be jointly and severally liable with the vendor or the transferor for all unpaid assessments against the vendor or transferor for his share, of the common expenses up to the time of the sale, bequest or other transfer, without prejudice to the right of the purchaser, grantee, legatee or transferee to recover from the vendor or the transferor any amount paid by the purchaser, grantee, legatee or transferee therefore.

(2) Any purchaser, grantee, legatee or transferee referred to in sub section (1) shall be entitled to a statement from the Board or Manager setting forth the amount of the unpaid assessment against the vendor or transferor, as the case may be, and such purchaser, grantee, legatee or transferee shall not be liable for, nor shall the apartment be sold subject to a charge for any unpaid share of common expenses against such apartment accrued prior to such sale, bequest or other transfer, in excess of the amount set forth in the statement.

Chapter VI – Miscellaneous

24. Act to be binding on apartment owners, tenants, etc.-

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any contract, undertaking or other instrument and all apartment owners, tenants of owners, employees of owners and tenants, or any other person who may, in any manner, use the property or any part thereof to which this Act applies, shall be subject to the provisions of this Act and the bye-laws and the rules made there under :

Provided that nothing contained in this sub section shall affect the right, title or interest acquired by any allottee or other person in common areas and facilities from any promoter on or before the 28th day of February, 1986.

(2) All agreements, divisions and determinations lawfully made by the Association of Apartment Owners in accordance with the provisions of this Act and the bye-laws shall be deemed to be binding on all apartment owners..

25. Power to exempt stamp duty, registration fee and court fees and power to refund-

(1) The Central Government may, by notification in the Official Gazette, reduce or remit, whether prospectively or retrospectively from a date not clear than the date of commencement of this Act.-

(a) The stamp duty with which, under any law relating to stamp duty for the time being in force, instruments or documents executed by or on behalf of a promoter, apartment owner or Association of Apartment Owners relating to any of the purposes of this Act are respectively chargeable.



(b) Any fee payable by or on behalf of any promoter, apartment owner or Association of Apartment Owners in relation to instruments or documents referred to in clause (a) under any law relating to registration of documents or to court fees, for the time being in force.

And which the Central Government is competent to levy.

(2) The Central Government may refund the amount of any duty or fee paid in pursuance of any law referred to in sub section (I) in such circumstances, to such extent and subject to such terms and conditions, if any, as that Government may, by order, determine..

26. Removal of doubts. –

For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882 (4 of 1882), shall, in so far as they are not inconsistent with the provisions of this Act, apply to the transfer of any apartment, together with its undivided interest in the common areas and facilities appurtenant thereto, made by the owner of such apartment, whether such transfer is made by sale, lease, mortgage, exchange, gift or otherwise, as they apply to the transfer of any immovable property.

27. Power to make rules-

(1) The Central Government may, by notification in the official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) The purposes , other than the purposes specified in Section 2, for which any multi-storeyed building may be utilised,

(b) The type of independent uses, other than the uses specified in clause

(c) of Section 3, which may be made of an apartment,

(c) The community and commercial facilities which may be included in common areas and facilities under sub clause (vii) of clause (j) of Section 3,

(d) The scales of composition fees which may be paid under Section 8 for the breach of the terms and conditions of any lease or sub lease.

(e) The scales in accordance with which compensation, to be paid for the adjustment of an apartment owner from his apartment, shall be determined as required by sub- section (7) of Section 3.

(f) The form of and manner in which, and the period within which, and instrument referred to in clause (b) of Section 9, shall be executed and registered.

(g) The form in which the Register of Deeds of Apartments under the Delhi Apartment Ownership Act, 1986 and the index relating thereto shall be kept and the particulars which such register shall contain as required by sub section (2) of section 14.

(h) Any other matter which is required to be, or may be, prescribed.



(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making and modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Rules – Delhi Apartment Ownership Rules, 1987

1. Short title and commencement –

The Delhi Apartment Ownership Rules, 1987

In exercise of the powers conferred by sub section (1) and (2) of Section 27 of the Delhi Apartment Ownership Act, 1986 (58 of 1986), the Central Government hereby makes the following rules, namely :-

- (1) These rules may be called the Delhi Apartment Ownership Rules, 1987.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions –

In these rules, unless the context otherwise requires –

- (a) "Act" means the Delhi Apartment Ownership Act, 1986 (58 of 1986)
- (b) "Form" means Form appended to these rules
- (c) "Section" means a section of the Act
- (d) Words and expression used in these rules but not defined there in shall have the meaning respectively assigned to them in the Act.

3. Common areas and facilities –

Thus other common areas and facilities in terms of sub clause (vii) of clause (j) of Section 3 shall be such areas and facilities which are provided on the land earmarked for apartments and declared as such in the Deed of Apartment and specified in Form 'A' and shall also include.

- (i) Children's playing areas, swimming pool, tennis courts, badminton courts, areas providing for other sports facilities,
- (ii) Community halls for use of apartment owners on occasions like marriage or other social and like functions,
- (iii) Areas which are for the common use of the apartment owners, forming part of the sanctioned plan under the bye-laws of the authority and
- (iv) Any additional space not counted in the permissible floor space shall also be treated as common area.



4. Compensation to be paid to the sub lessees on eviction –

(1) The compensation payable to the sub lessee under sub-section (7) of Section 8 shall be the proportionate cost of land as declared in the Deed of Apartment together with the cost of construction of the apartment as valued on the date of eviction minus depreciation.

(2) The depreciated value of the cost of construction referred to in sub section (1) shall be assessed by an officer of the Central Public Works Department designated for this purpose and shall be based on approved Department designated for this purpose and shall be based on approved principles of such valuation on payment of the fees prescribed for this purpose.

5. Undertaking to be filed by the person acquiring apartment

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A person acquiring any apartment from any apartment owner by gift, exchange, purchase or otherwise under the provisions of Section 9, shall file and undertaking in Form A, with the competent authority within thirty days of such transfer.

6. Form of Deed Apartment –

The Deed of Apartment shall be executed and registered in accordance with Sections 13 and 14 of the Act in Form B.

7. Form of Book under section 14 (2) and of index thereto.-

(1) The Register of the Deeds of Apartment for the purpose of sub section (2) of section 14 shall be in Form C.

(2) The index to such Register shall be in Form 1.



