

Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance)

Bill

(U.P. Act NO. of)

[Proposed to be Enacted in the Fifty year of the republic of India]

REVISED ACT (DRAFT)

to provide for the ownership of an individual apartment in a building 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.

CHAPTER I

PRELIMINARY

Short title and commencement

1. This Act may be called the Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Act,.....
2. It extends to the whole of the state of Uttar Pradesh
3. It shall be deemed to have come into force on.....

Application

2. (1) The provisions of this Act shall apply to every apartment in any building constructed or converted into apartment and land attached to the apartment, whether freehold or held on lease excluding shopping malls and multiplexes.
- (2) This Act, shall also apply to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering a declaration setting out the particulars referred to in Section-12.

Definitions

3. In this Act, unless the context otherwise requires,—
 - (a) "allottee" in relation to an apartment, means the person to whom such apartment has been allotted, sold or otherwise transferred by the promoter;
 - (b) "apartment" means a part of any property, intended for any type of independent use, including enclosed spaces located on one or more floors or any part or parts thereof, in a building to be used for residential or official purposes or for the purpose of practicing any profession, or for carrying on any occupation, trade or business (excluding shopping malls and multiplexes) or for such other use as may be prescribed, and with a direct exit to a public street, road or to a common area leading to such street, road and includes any garage or room (whether or not adjacent to the building in which such apartment is located) provided by the promoter for use by the owner of such apartment for parking or, as the case may be, for the residence of any domestic aide employed in such apartment;
 - (c) "apartment number" means the number, letter or combination thereof, designating an apartment;

(d) "apartment owner" means the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the 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;

(e) "association of apartment owners",—

means all the owners of the apartments therein, acting as a group in accordance with the bye-laws;

(f) "board" means the Board of Management of an Association of Apartment Owners elected by its members under the bye-laws;

(g) "building" means a building constructed on any land, containing four or more apartments, or two or more building 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.

Explanation : An independent house constructed in a row with independent entry and exit, whether or not adjoining to other independent houses, shall not constitute a building.

(h) "bye-laws" means the bye-laws made under this Act;

(i) "common areas and facilities" means—

(i) the land on which the 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, parks, gardens, community centers and parking areas of common use;

(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, cable pipe line (TV, gas, electricity etc.) rain water harvesting system, compressors, ducts and in general all apparatus and installations existing for common use;

(vii) such other community and commercial facilities as may be specified in the bye-laws; and

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

(j) "common expenses" means—

(i) expenses of administration, maintenance, repair or replacement of the

common areas and facilities, utilities, equipments and machineries and all other sums assessed against the owners of apartment by the Association of Apartment Owners.

(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;

(k) "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;

(l) "competent authority" means any person or authority authorised by the government by notification to perform the functions of the competent authority under this Act for such areas as may be specified in the notification;

(m) "declaration" means declaration referred to in section 12 of the Act;

(n) "deed of apartment" means the Deed of Apartment referred to in section 14;

(o) "government" means the Government of Uttar Pradesh;

(p) "independent areas" means the areas which have been declared but not included as common areas for joint use of apartments and may be sold by the promoter without the interference of other apartment owners;

(q) "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;

(r) "local authority" means the Development Authority established under the Uttar Pradesh Urban Planning and Development Act, 1973 or Controlling Authority established under the Uttar Pradesh (Regulation of Building Operations) Act, 1958 or Special Area Development Authority established under the Uttar Pradesh Special Area Development Authorities Act, 1986 or the Uttar Pradesh Housing and Development Board established under the Uttar Pradesh Housing and Development Board Act, 1965 or the Industrial Area Development Authority established under the Uttar Pradesh Industrial Area Development Authorities Act, 1976 or the Uttar Pradesh Cooperative Housing Federation established under the Uttar Pradesh Cooperative Housing Societies Act, 1965 or the Municipal Corporation constituted under the Uttar Pradesh Municipal Corporations Act, 1959 or the municipality established under the Uttar Pradesh Municipalities Act, 1916, having jurisdiction over the site of property;

(s) "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;

(t) "manager" means the Manager of an Association of Apartment Owners appointed under the bye-laws;

(u)"person" includes a firm and a joint family, and also includes a group housing co-operative society;

(v)"prescribed" means prescribed by rules made under this Act;

(w)"promoter" means a person, company, firm, Association or co-operative society, as the case may be, by which, or by whom the building has been constructed;

(x)"property" means the land, the building, and 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, which have been, or are intended to be submitted to the provisions of this Act.

CHAPTER II

DUTIES AND LIABILITIES OF PROMOTERS

General liabilities of promoter

4. (1) Any promoter who intends to sell an apartment, shall, on being so required by an intending purchaser or the Competent Authority, make a full and true disclosure in writing of-

(a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed;

(b) all encumbrances, if any, on such land or building, and any right, title, interest or claim of any person in or, over such land or building;

(c) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;

(d) detail of all common areas and facilities as per the approved lay-out plan or building plan;

(e) the nature of fixtures, fittings, and amenities, which have been or proposed to be provided;

(f) the details of the design and specifications of works or and standards of the material which have been or are proposed to be used in the construction of the building, together with the details of all structural, architectural drawings, layout plans, no objection certificate from Fire Department, external and internal services plan of electricity, sewage, drainage and water supply system etc. to be made available with the Association;

(g) all outgoings, including ground rent, municipal or other local taxes, water and electricity charges, revenue assessments, maintenance and other charges, interest on any mortgage or other encumbrance, if any, in respect of such land, building and apartments;

(h) such other information and documents as may be prescribed.

(2) Every promoter shall,

(a) specify in writing the date by which, construction of the apartment is to be completed subject to force majeure clause and intimation sent to such purchaser;

(b) declare the penalty for delay in completion of the building and also

penalty in the event of non-payment of installment by the purchaser;

(c) declare the conditions for cancellation or withdrawal of allotment and the extent of compensation either way in the event of violations of any of the conditions.

(d) give on demand by the intending purchaser, on payment of photocopying charges, true copies of the documents referred to in this section.

(3) Where a building or apartment is proposed to be constructed by a promoter, the Jal Sansthan or the Uttar Pradesh Power Corporation Limited or the local authority, may supply water and electricity respectively on a temporary basis on intimation of approval of the plan by the prescribed sanctioning authority;

Provided that the Jal Sansthan or the Uttar Pradesh Power Corporation Limited or the local authority may, on an intimation from the prescribed sanctioning authority, disconnect the supply of water and electricity as the case may be, if the promoter proceeds with the construction of building contrary to the approved plan, except for such deviations as are within the permissible limits.

"Provided further that no such disconnection of supply of water and electricity, as the case may be, shall be made by the Jal Sansthan or Uttar Pradesh Power Corporation Limited or Local Authorities without first giving a show cause notice and providing opportunity of hearing for intended disconnection and also recording reasons in writing thereof."

(4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into, the promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by authorised Architect or Engineer after proper declaration and intimation to the owner.

Provided that with due permission of the prescribed sanctioning authority the promoter may make major changes in the plans and specification subject to owner first obtaining written consent in writing from all those persons with whom he has entered into written agreement for sale.

(5) An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned:

Provided that part completion certificate may also be obtained by the promoter after a building block has been completed in all respects.

Provided further that where completion certificate is not obtained within the prescribed time limit, regular water, power and telephone connection shall not be given by the respective authority or agency.

(6) After the completion certificate from the prescribed sanctioning authority is obtained by the promoter alongwith all necessary clearances such as fire, electrical safety, earth-quake resistant no objection certificate and structural

soundness certificate from any reputed institution notified by the government, the promoter shall be deemed to have been absolved of any kind of liability whatsoever against any hazard or failure after three years from the date of issue of the completion certificate of the building or obtaining the structural soundness certificate, whichever is later.

(7) The promoter shall maintain the common areas and facilities till the Association is formed in accordance with the conditions laid down in sub section (2) of section-16 and shall be entitled to levy proportionate maintenance charges as specified in the declaration.

CHAPTER III

RIGHTS AND OBLIGATIONS OF APARTMENT OWNERS

**Rights
Apartment
Owners**

of 5. (1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to the other provisions of this Act, be entitled to the exclusive holding and possession of the apartment so allotted, sold or otherwise transferred to him.

(2) Every person who becomes entitled to the exclusive holding and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.

(3) (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 apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.

(4) The common areas and facilities shall not be transferred and 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.

(5) 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 apartment owners.

(6) The necessary work relating to maintenance, repair and modification or relocation 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.

(7) 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 therefrom, or for making emergency repairs therein necessary to prevent damage to the common

areas and facilities or to any other apartment or apartments.

(8) 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.

Certain works prohibited

6. 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 or heriditament or shall add any material structure or excavate any additional basement or cellar or alter the external facade without first obtaining the consent of all the apartment owners.

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

CHAPTER IV

OWNERSHIP, HERITABILITY AND TRANSFERABILITY OF APARTMENTS

Apartment to be heritable and transferable

7. Each apartment, together with the undivided interest in the common areas and facilities appurtenant to such apartment, shall, for all purposes, constitute 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 manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings, remedies 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 or association in favour of any member thereof, the transferability of such apartment and all other matters shall be regulated by the law, which may provide a transfer fee at a maximum rate of 2 percent but not less than 1 percent in any case of the sale value, applicable to such group housing co-operative society or association whosoever maintains the common areas and facilities. The transfer fee shall not be leviable in case of heritability.

Ownership of apartment shall be subject to conditions

8. 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 allottee 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 thereof together with

interest, if any due thereon, and where any such allottee or transferee has been inducted into the possession of such apartment or any part thereof in pursuance of such allotment or transfer, he shall, until the full payment of the consideration has been made continue to remain in possession thereof on the same terms and conditions on which he was so inducted into possession of such apartment or part thereof.

Right of re-entry

9. (1) Where any land is given on 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 building has been constructed on such 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 building and shall execute separate deeds of sub-lease in respect of such land in favour of each apartment owner within three months from the date on which the possession of apartment in such 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 building containing the concerned apartment has been constructed, or may authorize 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 finding 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 owner 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 arrears 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 realised.

(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—

(i) in accordance with the notice issued by the lessee under sub-section (3), or

(ii) where the finding 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,—

(a) 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

(b) 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 ejectment of the defaulting apartment owner from his apartment, such right of re-entry shall include a right to eject the defaulting apartment owner from the concerned apartment:

Provided that no such ejectment shall be made unless the defaulting

apartment owner has been paid by the lessee such amount as compensation for such ejection 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 ejection 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 ejection of the defaulting apartment owner from the apartment under sub-section (7), the lessee by whom such ejection 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:

(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) to 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 hereby 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 building containing such apartment has been constructed unless the work is prohibited by section 11.

Purchase or person taking lease of apartments from

10. Notwithstanding anything contained in the Transfer of Property Act, 1882 (Act No. 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 from an apartment

- apartment owners execute undertaking** owner for a period of thirty years or more, shall—
- to an** (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.
- Encumbrances against apartments** 11.(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 is created, the apartment in relation to which such encumbrance has been created shall not be partitioned or sub-divided.
- (2) No cost incurred either on labour and/or on material 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 (Act No. 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 the case of emergency repairs thereto.
- (3) The cost incurred either on labour and/or on material for the common areas and facilities, if duly 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 referred to in sub-section (2) against each of the apartments and shall be subject to the provisions of sub-section (4).
- (4) If the apartment owner makes payment of the fractional or proportional cost, attributable of his apartment and incurred as aforesaid in sub-section (2) and (3), his apartment and the undivided interest in the common areas and facilities adjunct thereto shall be free of such charge for encumbrance.
- Provided that such partial payment shall not prevent the person having a charge or any of the encumbrance 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.

CHAPTER V
DECLARATION OF BUILDING AND DEED OF APARTMENT

**Contents
Declaration**

of 12. (1) A Declaration shall be submitted by a promoter in the office of the competent authority in respect of a building constructed after the commencement of this Act in such form, period and in such manner as may be prescribed and shall contain full and true particulars of the following, namely: -

(a) description of the land on which the building and improvements are, or are to be located, and whether the land is free hold or lease hold;

(b) description of the building stating the number of storeys and basements, the number of apartments and principal materials of which it is or is to be constructed;

(c) the number of each apartment and a statement of its location, approximate area, number of rooms and the immediate common area to which it has access and any other data necessary for its proper identification;

(d) description of the common areas and facilities;

(e) description of the common areas and facilities if any, stating to which apartments, their use is reserved;

(f) value of the property and of each apartment, and the percentage of undivided interest in the common areas and the facilities appertaining to each apartment and its owner for all purposes, including voting;

(g) particulars of encumbrances, if any, on the property of apartment and its undivided interest at the date of the declaration;

(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.

**Registration of Deed
of Apartment**

13. No promoter or an apartment owner shall transfer possession of any apartment constructed after the commencement of this Act without executing an appropriate transfer deed and also getting it registered under the provisions of Registration Act, 1908 and it shall also be incumbent for such promoter or apartment owner to annex a true copy of the declaration made under section 12 of the Act to such deed of transfer.

CHAPTER VI
**ASSOCIATION OF APARTMENT OWNERS AND BYE-LAWS FOR THE
REGISTRATION OF THE AFFAIRS OF SUCH ASSOCIATION**

**Association
apartment owners
and bye-laws relating
thereto**

of 14 (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 of 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) It shall be the joint responsibility of the promoter and the apartment owners to form an Association. The promoter shall get the Association registered immediately after at least 50% of the apartments have been handed over to the owners by the promoter by way of sale, transfer or possession, provided the building has been completed alongwith all infrastructure services and completion certificate obtained from the local authority.

(2) (a) In a case, where an association of the apartments owners of a building has not been formed, on the intended date of execution of a deed of apartment in favour of prospective apartment owner, it shall be obligatory for a prospective apartment owner to become member of the association within a period of 4 weeks on receipt of a written notice intimating him about the formation of such association.

(2) (b). Where an association of an apartment owner exist on the intended date of transfer of an apartment, it will be obligatory for the prospective apartment owner to become member of such association before execution of a deed of an apartment in his favour.

(3) The government may by notification in the gazette frame model bye-laws in accordance with which property referred to in sub-section (1) shall be administered by the Association of Apartment Owners and the 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 competent authority.

(4) The model bye-laws framed under sub-section (3) 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 of Apartment Owners;
 - (j) election of a President of the Association of Apartment Owners from among the apartment owners, who shall preside over the meeting 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 the 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 Competent Authority 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.
- (5) The bye-laws framed under sub-section (3) may also contain provisions, not inconsistent with this Act,—
- (a) enabling the Board to retain certain area 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.

Insurance

15 (1) The Board or Manager-

(a) shall have, if requested so to do by a mortgagee 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 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.

Disposition of property, destruction or damage

16. 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 of the apartment owner in the property;

d) the property shall be subject to an action for partition at the suit of any apartment owners 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 owners 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 extent sufficient for the purpose and all charges on the undivided interest in the property owned

by each apartment owner.

Action

17 (1) Without prejudice to the rights of any apartment owner, action may be brought by the Board or 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 owners 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 VII

COMMON PROFITS, COMMON EXPENSES AND OTHER MATTERS

Common profits, common expenses and other matters

18.(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 him, the liability to pay the common expenses payable in respect of such apartment shall be the joint and several liability of the apartment owner and the person in occupation of the apartment.

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

19. 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.

Common expenses to be a charge on the apartment

20. (1) 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.

(2) The Association of Apartment Owners may approach the Competent Authority with a request for recovery of amount lying unpaid for a period of more than 12 months and which is due towards the common expenses payable in respect of an apartment, and the Competent Authority, on being satisfied, shall take appropriate action for its recovery as arrears of land revenue.

Separate assessments

21. (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 to such apartment shall be deemed to be separate property for the purpose of

assessment of tax on lands and building 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 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.

Committee to cut off, withhold, curtail or reduce essential supply or service

22. (1) The Committee constituted by the board or board of managers of an association of apartment owners may, after due notice of not less than seven days, for just and sufficient cause, cut off, withhold, or in any manner curtail or reduce, any essential supply or service enjoyed by an apartment owner;

Explanation : In this section, essential supply or service includes the supply of water, electricity, lights in passages and on stair cases, and lifts, and conservancy of sanitary service.

(2) If an apartment owner is aggrieved by an action under sub-section (1), he may prefer an appeal within a period of 15 days from the receipt of the notice to the Competent Authority, which shall after affording sufficient opportunity to the parties, shall pass such orders as deemed fit.

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

23. (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 assessment 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 or legatee or transferee thereof.

(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 be 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 VIII

MISCELLANEOUS

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

24 (1) 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 provision of this Act and the bye-laws and the rules made thereunder :

Provided that nothing contained in this sub-section shall effect the right, title or interest acquired by any allottee or other person in common areas and facilities from any promoter on or before the date of commencement

of the Act.

(3) All agreements, decisions 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.

Power to exempt stamp duty, registration fee, court fee and power to refund

25 (1) The government may, by notification in the Gazette, reduce or remit, whether prospectively or retrospectively from a date not earlier 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, an 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, which the government is competent to levy,

(2) The government may refund the amount of any duty or fee paid in pursuance of any law referred to in sub-section (1) in such circumstances, to such extent and subject to such terms and conditions, if any, as the government may by an order determine.

Offences

26. (1) If any promoter :

(a) Transfers by way of sale or otherwise any land appurtenant to a building and such land was originally shown as common areas and facilities such as park, open space, path ways, circulation areas, etc. in the plan approved by the prescribed sanctioning authority, or

(b) Illegally makes construction in contravention of the plan approved by the prescribed sanctioning authority beyond compoundable limits;

he shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine not less than one lac rupees, which may extend to five lac rupees or with both.

Explanation : Above punishment shall not exonerate the promoter from his liability to restore the status of common areas and facilities as per the approved plan.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the First Class to pass on any person convicted of an offence under this Act, a sentence of imprisonment or fine or both as provided in the relevant section of this Act, in exercise of powers under section 29 of the said Code.

(3) If the owner of an apartment which is subject to the provisions of Chapter III contravenes-

(a) the provisions of section -5, or

(b) any bye-laws made under the provisions of this Act,

he shall, on conviction, be punishable with fine not less than ten thousand rupees which may extend to Fifty thousand rupees and in case of a continuing contravention, to an additional fine which may extend to one thousand rupees for every day during which such contravention continues after the conviction.

(4) No court shall take cognizance of an offence under this section, except:

(a) On a complaint of the Board, if a decision has been taken by it by majority as per the bye laws of the Association of the Apartment owners' and

(b) The Competent Authority has granted permission in writing for initiation of proceedings under this section, on an application by the Board which shall also accompany a certified copy of the resolution referred to in (a) above.

**Offence
Companies**

by 27. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in clause (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this section-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

Exemptions

28 (1) Nothing in section 28 and 29 of this Act shall apply, if the promoter is-

(a) a local authority or any other statutory body constituted for the

development of land or housing; or

(b) a company or a body wholly owned or controlled by the government created for development of land or housing or promotion of industry.

(2) No suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government in respect of anything which is in good faith done or intended to be done by or under this Act.

Removal of doubts

29. For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882 (Act No. 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.

Power to Make Rules

30. The government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Overriding effect of this Act

31.(1) The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force;

(2) Save as otherwise expressly provided in sub-section (1) the provisions of this Act, shall be in addition to, and not in derogation of any other law for the time being in force.

Power to exempt

32. If the government is of the opinion that the operation of any provisions of this Act causes any undue hardship, it may exempt, by a general or special order, any class of person or areas from the provisions of this Act.

Removal of difficulties

of 33.(1) The government may, for the purpose of removing any difficulty, by a notified order, direct that the provisions of this Act, shall, during such period, as may be specified in the order, have effect subject to such adaptation whether by way of modification, addition or omission, as it may deem necessary or expedient.

(2) No order made under this section shall be called in question in any court on the ground that no such difficulty existed or was required to be removed.

Repeal

34. The Uttar Pradesh Ownership of Flats Act, 1975 is hereby repealed.