

ANDHRA PRADESH APARTMENTS (PROMOTION OF CONSTRUCTION AND OWNERSHIP) ACT, 1987

29 of 1987

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STATEMENT OF OBJECTS AND REASONS In order to meet the increasing pressure on urban land resources due to rapid urbanisation and to secure effective mortgageable title to individual buyers of flats, the Government of India have suggested to the State Government to undertake legislation somewhat on the lines of the Maharashtra Apartment Ownership Act, 1970. This Government have therefore referred the matter to the then Andhra Pradesh State Law Commission which in its Eighteenth Report recommended for undertaking legislation on the lines of the said Maharashtra Act with suitable modifications in order to regulate the promotion of construction and sale of apartments in multistoried buildings on ownership basis and to provide for the transferability and heritability by the individual purchaser of not only the particular apartment but also the fractional interest to it in the common areas and facilities. The Government have examined the said report of the Law Commission and decided to undertake legislation. This Bill seeks to give effect to the above decision. (Vide Bill No. 3 of 1987). The following Act of the Andhra Pradesh Legislative Assembly which was reserved by the Governor on the 5th February, 1987 for the consideration and assent of the President received the assent of the President on the 15th May, 1987 and the said assent is hereby first published on the 23rd May, 1987 in the Andhra Pradesh Gazette for general information.

CHAPTER 1

PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force in such areas and on such dates as the Government may, by notification, appoint, and different dates may be appointed for different areas.

2. Application of the Act :-

The provisions of this Act, excepting Chapter III, shall apply to every property and the provisions of Chapter III shall not apply to any property, unless the sole owner or all the owners thereof submit the same to the provisions of that chapter by duly executing and registering a declaration as hereinafter provided.

3. Definitions :-

In this Act, unless context otherwise requires-

(a) "Apartment" means a part of the property including one or more rooms or enclosed spaces located on any one of the floors consisting of a unit in a building, intended to be used for residence, office, practice of any profession or for carrying on any occupation, trade or business or for any other independent use and with a direct exit to a public street, road or highway or to a common area leading to such street, road or highway.

(b) "Association of apartment owners" means all the apartment owners acting as a group in accordance with the provisions made by it in the byelaws.

(c) means a building containing five or more apartments, or two or more buildings, each containing two or more apartments, with a total of five or more apartments for all such buildings, and comprising a part of the property.

(d) "Common areas and facilities" unless otherwise provided in the Declaration, means:

(i) the land on which the building is located;

(ii) foundations, columns, girders, beams, supports, main walls, roofs including terraces, halls, corridors, lobbies, stairs, stairway,

fireescapes and entrances and exits of the building.

(iii) Basements, cellars, yards, gardens, parking areas, Childrens play ground and storage spaces;

(iv) the premises for the lodging of janitors or caretakers 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, airconditioning and incinerating:

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

(vii) such other community and commercial facilities as may be provided for in the building plan and Declaration;

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

(e) "Common expenses" means

(i) all sums lawfully assessed against the apartment owners by the association of apartment owners;

(ii) expenses of administration, maintenance, repairs or replacement of the common areas and facilities.

(iii) expenses agreed upon as common expenses by the association of apartment owners;

(iv) expenses declared as common expenses by the provisions of this Act or by the Declaration or the bye laws.

(v) Premium for insurance coverage of the property.

(f) "Common profits" means the balance of all income, rents, profits and other income from the common areas and facilities remaining after the deduction of the common expenses;

(g) "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.

(h) "Declaration" means the instrument by which the property is submitted to the provisions of Chapter III, as provided by Section 2

and such declaration as may be lawfully amended, from time to time.

(i) "Government" means the State Government.

(j) "Limited Common areas and facilities" means those common areas and facilities designated in the Declaration as reserved for the use of certain apartment or apartments to the exclusion of the other apartments.

(k) "Notification" means a notification published in the Andhra Pradesh Gazette and the word "notified" shall be construed accordingly.

(l) "Prescribed" means prescribed by rules made by the Government under this Act;

(m) "Promoter" means a person, who has already constructed or constructs a building of apartments for the purpose of selling some or all of them to other persons;

(n) "Property" means the land, the building and the common areas and facilities, including the land proposed for construction of one or more buildings of apartments.

CHAPTER 2

DUTIES AND LIABILITIES OF PROMOTERS

4. . :-

(1) Any promoter who intends to sell an apartment, shall, on being so required by an intending transferee, make a full and true disclosure in writing of-

(a) his title to the land on and the building, in which the apartments are, or are 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 the local authority as the case may be or the Urban Development Authority of the entire building of which the apartment forms part;

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

(e) the particulars in respect of the designs and the materials which have been or are proposed to be used in the construction of the building, together with the details of all agreements entered into by him with the architects Engineers and Contractors;

(f) all outgoings, including ground rent if any, municipal or other local taxes, taxes on income, water and electricity charges, revenue assessment, interest on any mortgage or other encumbrance, if any, in respect of the land, building and apartments;

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

(2) Such promoter shall also

(a) specify in writing the date by which possession of the apartments is to be handed over to such transferee.

(b) supply in writing a list of all the apartments which have already been taken or agreed to be taken, together with their distinctive numbers, names and address of the transferees, either actual or intended, the prices paid or agreed to be paid therefor and any other particulars as may be prescribed.

(c) transfer the open spaces earmarked for parks, playgrounds, market places and for other common use free of cost to the Government through a registered gift deed.

(3) The promoter shall give on demand by the intending transferee true copies of the documents referred to in this section.

(4) An Apartment may be transferred by the promoters to any person only after obtaining the required certificate of completion and the certificate of fitness for occupation from local authority concerned.

(5) The water works department and the Electricity Board may supply water and electricity respectively on a temporary basis on production of the plan approved by the local authority or the Urban Development Authority concerned as the case may be:

Provided that if the promoters proceed with the construction of the building contrary to the sanctioned plan, the supply of water and electricity may be cut off on an intimation from the local authority or the Urban Development Authority, as the case may be, to the water works department or to the authorities of the Electricity Board.

(6) The promoter and the apartment owners are responsible for the provision and fixation of fire prevention devices, ground and overhead water tank hydrants and wetrisers etc., as may be prescribed.

5. Agreement to precede advance payment :-

A promoter who intends to transfer any apartment shall before, accepting any sum of money as advance payment or deposit, which shall not exceed twenty percent of the price, enter into a written agreement of sale with the intending transferee and the same shall be registered as a document compulsarily registerable under clause (b) of subsection (1) of section 17 of the Registration Act, 1908.

6. No alterations after disclosure of plans etc :-

(1) After the plans, specifications and the nature of the fixtures, fittings, amenities and common areas as sanctioned by the local authorities or Urban Development Authority concerned are disclosed to an intending transferee under section 4 and a written agreement of sale is entered into under section 5, the promoter shall not make any additions and alterations therein:

(i) if it affects any apartment, without the previous consent in writing of the transferee who intends to take that apartment; and

(ii) if it affects more than one apartment, without the previous consent in writing of all the transferees who intend to take those apartments.

(2) Any of the additions or alterations referred to above shall be carried out only with the prior approval of the local authority or the Urban Development Authority concerned.

7. Promoter to convey title according to agreement :-

A promoter shall, on payment or tender of the amount due in respect of the price, execute a proper conveyance of the apartment in accordance with the agreement executed under section 5 and give possession of the apartment to the transferee after discharging all encumbrances unless the apartment is sold subject to encumbrances.

(2) Notwithstanding anything contained in any other law for the time being in force, no right or title shall accrue to any person in respect of any apartment unless the right or the title is properly conveyed in accordance with the provisions of this Act by means of

executing an agreement referred to in section 5 and a conveyance referred to in sub-section(l) of this section.

CHAPTER 3

SPECIAL FACILITIES

8. An apartment to be transferable and heritable property :-

(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

(2) Each apartment, together with its undivided interest in the common areas and facilities, shall for all purposes constitute heritable and transferable immovable property:

Provided that the percentage of undivided interest in the common areas and facilities appurtenant to the apartment shall not be partitioned or subdivided for any purpose whatsoever unless the property is withdrawn from the provisions of this Chapter.

9. Common areas and facilities :-

(1) Each apartment owner shall be entitled to the percentage of undivided interest in the common areas and facilities as expressed in the Declaration. Such percentage shall be computed by taking as basic, the value of the apartment in relation to the value of the property, and such percentage shall also reflect the limited common areas and facilities.

(2) The percentage of undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall not be altered without the consent of all the apartment owners expressed in an amended Declaration duly executed and registered as provided in this Act. The percentage of undivided interests 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 either instrument.

(3) Each apartment owner may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartments owners.

(4) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions

or improvements thereto shall be carried out in accordance with the provisions of this chapter and bye-laws.

(5) The association of apartment owners shall have an irrevocable right, to be exercised by the manager or the board of managers on behalf of the association, with such assistance as the manager or the board of managers, as the case may be, consider necessary, to have access to any apartment from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other apartments.

10. Compliance with bye-laws and Covenants :-

Each apartment owner shall comply with the covenants, conditions and restrictions set forth in the Declaration and the bye-laws. Failure to comply with any of the same shall be a ground for action to recover sums due, for damages or other relief, at the instance of the Manager or board of managers on behalf of the association of apartment owners or in a proper case, by an aggrieved apartment owner.

11. Certain works prohibited :-

No apartment owner shall add any material structure or excavate any additional basement or cellar or do any other work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement or hereditament.

12. Encumbrances against apartments :-

During the period the property remains subject to this chapter an encumbrance may be created against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto but not against the property as such.

13. Common profits and expenses :-

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

14. Contents of Declaration :-

(1) The declaration referred to in Section 2 shall be submitted in the office of the competent authority in such form 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 the principal materials of which it is or is to be constructed.

(c) the number of each apartment and a statement of its location, approximate areas, 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) an undertaking by the promoter to the effect that he will abide by the provisions of this Act and the Rules made thereunder and that he will transfer undivided share in the land along with apartment to any person;

(i) 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.

15. Common ownership :-

After due compliance with the provisions of Sections 5 and 7, the property shall be deemed to be owned in common by the apartment owners and the undevied interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undevied interest previously owned by such owner in the common areas and facilities.

16. . :-

(Omitted by Ord. 7 of 1993 w.e.f 31-10-1993.)

17. Instruments of declaration etc. compulsorily registerable :-

All instruments relating to the declaration or any amendment thereto referred to in Section 14shall be deemed to be instruments compulsorily registerable within the meaning of clause (b) of sub-section (1) of Section 17 of the Registration Act, 1908. and shall accordingly be registered.

18. Bye-laws :-

(1) The administration of every property shall be governed by bye-laws as amended from time to time and a true copy of the bye-laws and the amendments thereto, if any shall, as soon as they are made be filed with the competent authority and be annexed to the Declaration, provided that no such bye-laws or amendments thereto shall take effect until copies thereof duly filed with the competent authority.

(2) The bye-laws shall provide for the following matters, namely:

(a) the manner in which the association of apartment owners is to be formed, the election of a board of managers from among the apartment owners, the number of persons constituting the board, the number of members of such board to retire annually, the powers and duties of the board; the honorarium, if any of members of the board; the method of removal from the office of members of the board; the powers of board to engage the services of a manager and delegation of powers and duties to such manager;

(b) method of calling meetings of the apartment owners and the quorum for such meeting;

(c) election of a President and who shall preside over the meetings of the Board and of the association of apartment owners;

(d) election of a secretary who shall keep a minutes book wherein resolution shall be recorded;

(e) election of a treasurer who shall keep the financial records and books of account;

(f) manner of collecting from the apartment owners their share of the common expenses;

(g) maintenance, repair and replacement of the common areas and facilities and payments therefor;

(h) any other matter considered to be necessary for the administration of the property.

19. Separate assessment :-

Each apartment and its percentage of undivided interest in the common areas and facilities shall be deemed to be a separate property for the purpose of assessment of tax on lands and buildings under any law for the time being in force.

20. Charge on property for common expenses :-

All sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment with precedence over other charges, except charges, if any, for payment of Government and Municipal Taxes and all sums remaining unpaid on a first mortgage of the apartment;

Explanation For the purposes of this section, Government shall include the Central Government.

21. Manager to cut off, withhold, curtail or reduce essential supply or service :-

The manager 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 or sanitary service.

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

Upon the sale of any apartment, the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the later for his share of the common expenses upto the time of the sale without prejudice to the purchasers right to recover from the vendor the amount paid by him.

23. Insurance :-

The manager or board of managers of an association of apartment owners if required by the Declaration or the bye-laws or by a majority of the apartment owners, shall have authority to, and shall obtain insurance coverage for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required. Such insurance shall be in the name of the Manager or the board of managers of the association of the apartment owners as trustee for each of the apartment owners in the percentage established in the declaration.

24. Prohibition of selling, leasing and misuse of common areas and facilities :-

The promoters or the owners of apartments shall not sell or lease out or misuse any common areas and facilities.

25. Owners of apartments to provide fire preventive devices :-

Every owner of an apartment in a building consisting of a ground floor, together with three or more floors on it shall be required to provide all the fire preventive devices in consultation with the Director General of Fire Services in the manner prescribed.

26. Electricity, water and drainage connections only after completion of apartments :-

Every owner of an apartment shall be entitled to have electricity water and drainage connection on a permanent basis only on payment of such fee as may be prescribed and on the production of a certificate from the competent authority to the effect that the apartment has been constructed in accordance with the sanctioned plan.

27. Provision of Over head tanks :-

Every owner of the apartment shall provide an over head tank in the manner prescribed.

CHAPTER 4

Miscellaneous

28. Offences :-

Any promoter or owner of the apartment who without reasonable excuse fails to comply with or contravenes any provisions of Section 2, Section 4, Section 5, Section 6, Section 7, Section 14, Section 17, Section 24, Section 25 or Section 27 shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both

29. Offence committed by Companies :-

(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 containing 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 sub-section (1), where an offence under this Act has been committed by 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.

30. Indemnity :-

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.

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

(1) All apartment owners, their tenants and employees or any other person that may in any manner use the property or any part thereof shall be subject to this Act, and to the Declaration and bye-laws of the association of the apartment owners.

(2) All agreements, decisions, and determinations lawfully made by the association of apartment owners in accordance with the voting percentage specified in the Declaration or bye-laws shall be

deemed to be binding on all the apartment owners.

32. Act to override other laws :-

The provisions of the Transfer of Property Act, 1882, (Central Act 4 of 1882) shall in so far as they are not inconsistent with the provisions of this Act apply to every apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment as those provisions apply in relation to any immovable property, and the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law.

33. Power to make rules :-

(1) The Government may, by notification, make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this Act shall, immediately after it is made, be laid before the Legislative Assembly of the State if it is in session and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session, or in two successive sessions, and if before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the rule, or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, 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.

34. Power to remove difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order, published in the Andhra Pradesh Gazette, make such provisions not inconsistent with the provisions of this Act as appear to them to be necessary or expedient for the removal of the difficulty.

Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

35. Act not to apply to Housing Board :-

Nothing in this Act shall apply to the Andhra Pradesh Housing Board constituted under the Andhra Pradesh Housing Board Act, 1956(Act 46 of 1956).

