

Bihar Apartment Ownership Act, 2006

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Bihar Apartment Ownership Act, 2006

AN ACT to provide for the ownership of an individual Apartment in a multi-storied building and of an undivided interest in the common areas and facilities appurtenant to such Apartment and to make such payment and interest heritable and transferable and for matters connected therewith or incidental thereto. WHEREAS it is expedient to provide for giving ownership of an individual Apartment in a building and to make such Apartment heritable and transferable property and to provide for the matters connected with the purposes aforesaid; Be it enacted by the Legislature of the State of Bihar in the Fifty seventh year of the Republic of India as follows :-

CHAPTER 1

PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called "Bihar Apartment Ownership Act, 2006."
(2) It shall extend to the whole of the State of Bihar. (3) This Act shall come into force at once.

2. Application Of The Act :-

The provisions of this act shall apply to every Apartment in a multi-storied building which was constructed for residential or commercial or such other purposes such as office, practice of any profession, occupation, trade or business for any other type of independent

uses before or after the commencement of this Act and on a free hold 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 any 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) and as amended from time to time, 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: Provided further, that the sole owner or all the owners of the land may submit such land to the provisions of this Act with the condition that he or they shall grant a lease of such land to the Apartment owners, terms and conditions of the lease being disclosed in the declaration to be made in this regard either by annexing a copy of the instrument of lease to be executed to the declaration or otherwise: Provided that the state government may exempt by general or special order any such owner from submitting such building to the provisions of this Act.

3. Definition :-

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, initially by the promoter but not yet sold or transferred: (b) "Apartment" means a part of the property, provided by the promoter/developer in a multi-storied building 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-storied 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 for business or such other type of independent use as may be prescribed, and with a direct exit to a public street, road or highway or to a Common area leading to such street, road or highway, and includes basement, cellar, any garage or room (whether or not adjacent to the multi-storied building in which such Apartment is located) provided by the promoter for use by the owner of such an Apartment for parking any vehicle or as the case may be for the residence of any domestic aide employed in such an Apartment. (c) "Apartment number" means the number, letter or combination thereof, which is the designation of the

Apartment in the Deed of Apartment. (d) "Apartment owner" means an allottee to whom an Apartment has been finally transferred or sold by the Promoter and who as a result of which owns the Apartment and has an undivided interest in the Common areas and facilities appurtenant to such Apartment in the manner/percentage specified in the deed of Apartment; Explanation - An allottee becomes an Apartment owner only after payment of the entire consideration together with interest thereon, if any due, and the Apartment finally transferred or sold to him by the Promoter subject to provision of Section-11. Besides this, the Apartment Owner should have a Deed of Apartment executed and registered in his favour whereas merely an Allottee is not required to do so; (e) "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 existing bank constituted under Section - 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or a corresponding existing bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980). (f) "Association of Apartment owners" means the association of all the Apartment owners of a multi storied building acting as a group and termed as such in accordance with the bye-laws and Deed of Apartment and competent to contract in its own name. Explanation- A member of a co-operative housing society or an allottee under a hire purchase agreement will be deemed to be an owner entitled to membership of the association. (g) "Board" means the Board of Manager of an Association of Apartment Owners elected by its members under the bye-laws. (h) "Bye-laws" means the bye-laws of an association of Apartment owners made under this Act. (i) "Common areas and facilities" in relation to a 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 foundation, columns girders, beams, supports, main wall, roofs, halls, corridors, lobbies, stairs, stair-ways, fire escapes, and entrances and exit of the building. (iii) The basements, cellars, yards, gardens, open areas, shopping centers, schools and storage spaces. (iv) The premises for the lodging Gatekeeper or the person employed for looking after the property. (v) Installation of central services, such as, power, lights, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating, and sewerages. (vi) The

elevators, tanks, pumps, motors, fans, compressor, ducts and in general, all apparatuses and 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. (j) "Common expenses" means.- (i) All sums lawfully assessed against the Apartment owners by the Association of Apartment owners; (ii) Expenses of administration maintenance, repair or replacement of Common areas & facilities; (iii) Other 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 Deed of Apartment or the Bye-laws. (k) "Common profits" means the balance of all incomes, rent, profits and revenues from the Common areas and facilities remaining after the deduction of Common expenses. (l) "Competent Authority" means the officer or authority who or which maybe vested by the state Government, by notification in the official gazette with executive powers to perform duties and functions of the competent Authority and for implementing the provisions of the Act and the rules made there under for such areas as may be specified in the notification under the general guidance, superintendence & control of the State Government: Provided that the State Government may notify more than one officer or Authority as competent authority and distribute the work among them in the manner as it may deem fit. (m) "Deed of Apartment" means the instrument by which the property is submitted to the provisions of this Act as hereinafter provided. (n) "Government or State Government" means the Government of the State of Bihar. (o) "Local Authority" means Municipality, Municipal corporation or Regional Development Authority or any other area so notified by the government or constituted under the Bihar Regional Development Authority Act, 1981; The Bihar & Orissa Municipal Act, 1942 and the Patna Municipal Corporation Act- 1951; as amended time to time. (p) "Manager" means the manager of an Association of Apartment Owners appointed under the bye-laws. (q) "Multi Storied Building" means a building constructed containing four or more Apartments, or two or more buildings in any area designated as 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. (r) "Promoter or Developer" means - the

person who constructs or causes to be constructed a building consisting of Apartments or converts an existing building or a part thereof into Apartment for the purpose of selling all or some of the Apartments to other persons, and includes his assigns. Where the person who constructs or converts a building and the person who sells are different persons, the terms include both of them. Any development authority and any other public body so notified by Government are deemed to be the Promoters in respect of the allottees in building constructed by them on land owned by them or placed at their disposal by Government : Explanation - Any such person, who acts in the manner described above, will be deemed to be a promoter, in that capacity also if. (i) he designates himself as builder, colonizer, contractor, developer, estate promoter or by any other name or (ii) he claims to be acting as the holder of a power of attorney of the owner of the land on which the building is constructed. (s) "Proprietor/ Owner" means - the person who is the actual owner of the land on which the Apartment building is to be constructed and has the right, title and interest over the proposed land and it also includes the successor and legal heirs of the owner of land. If the land owner is State Government/ Government of India/ public undertaking/ Co-operative society/ Trust etc., the concerned authority shall be termed as Proprietors / Owners. (t) "Prescribed" means prescribed by rules made under this Act. (u) "Property" means the land, the multi-storied building, all improvement and structure thereon and all easements, right and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith. (v) "Revenue Authority" means the authority that is competent for collection of rent of land, building etc. from owners of the plot of land/ Apartments. (w) "Reserved or limited Common areas and facilities" means those Common areas and facilities which are designated in writing by the Promoter before the allotment, sale or transfer of any other Apartment, and kept as reserved for use of certain Apartment or remain allotted to any Apartment and to the exclusion of other Apartment. (x) "Service charges" means expenses incurred on salary to guard and sweeper, and energy charges for Common area lighting and pumping of water and operation of lift, cost of diesel/ Mobil etc. for running the generator, and Annual Maintenance Charges (AMC) for lift, intercom and generator etc. payable monthly.

CHAPTER 2

OWNERSHIP, HERITABILITY AND TRANSFERABILITY OF APARTMENTS

4. Benamidar Of An Apartment Shall Be Deemed To Be The Real Owner There Of :-

Where an Apartment is transferred to one person for consideration paid or provided by any other person for his own benefit, the transferee shall, notwithstanding any thing in the Transfer of Property Act, 1882 or in any other law for the time being in force, be deemed to be the real owner of such Apartment, and no court shall consider any claim of the person, paying and providing the consideration for title in such Apartment on the ground that he/she did not intend to pay or provide such consideration for the benefit of the transferee and that the transferee is his benamidar, or on any other ground.

5. The Developer/ Promoter And Owner To Execute And Get Registered Document Of Transfer :-

(1) Where the Developer/ Promoter is not the owner of the land over which the Apartment is to be built, the Developer/ Promoter and the Owner shall execute and register an agreement stating all the terms and conditions of the agreement including the portion of the building and land to be shared by the Developer/ Promoter and the Owner. The agreement document shall also include that after the completion of construction of the building project the respective share owner i.e.; developer/ promoter and the land owner, shall be absolute owner of their respective shares and they will be entitle to sell/ transfer their shares separately. (2) The final sale/ lease of the Apartment along with the Common areas and facilities shall be executed and registered by the Developer/ Promoter or the Owner, as the case may be, as per sub-section 5.1. in favour of the prospective Apartment Owner.

6. Compliance With The Covenants And Bye-Laws :-

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 inductive 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.

7. General Liabilities Of Promoter :-

(1) Notwithstanding anything in other law, a promoter who intends to construct or constructs a block or building of Apartment, all or some of which are to be taken or are taken on ownership basis,

shall, in all transaction with persons intending to take or taking one or more of such Apartment, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned, a copy of which should also be filed with the Competent Authority for information, including the full particulars about their identity, address etc. (2) A Promoter, who constructs or intends to construct such block or building of Apartment, shall - (a) make full and true disclosure of the nature of his title to the land on which the Apartment are constructed, or are to be constructed, such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than seven years standing; (b) make full and true disclosure of all encumbrances on such land, including any title, interest or claim of any party in or over such land. (c) give inspection on seven days notice or demand, of the plans and specification of the building, such as specifications relating to structural safety against earthquake and fire safety, built or to be built on the land; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force; (d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided; (e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the building, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements entered into by him with the architects and contractors regarding the design, materials and construction of the buildings; (f) specify in writing the date by which possession of the Apartment is to be handed over (and he shall hand over such possession accordingly); (g) prepare and maintain a list of Apartment with their numbers already taken or agreed to be take, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the Apartment are taken or agreed to be taken; (h) state in writing, the precise nature of the organization of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organization of persons who have taken or are to take the Apartment; (i) not allow persons enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a Apartment until such completion

certificate has been duly given by the local Authority); (j) make a full and true disclosure of all outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); (k) make a full and true disclosure of such other information and document; in such manner as may be prescribed; and given on demand true copies of such of the documents referred to in any of the clauses of this subsection as may be prescribed at a reasonable charge therefor. (l) display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c), at the site and permit inspection thereof to persons intending to take or taking one or more Apartment. (m) when the Apartment are advertised for sale, disclose inter alia in the advertisement the following particulars, namely :- (i) the extent of the carpet area of the Apartment including the area of the balconies which should be shown separately; (ii) the price of the Apartment including the proportionate price of the Common areas and facilities which should be shown separately, to be paid by the purchaser of Apartment and the intervals at which the installments thereof may be paid; (iii) the nature, extent and description of the Common areas and facilities; (iv) the nature, extent and description of limited Common areas and facilities, and; (v) the Fire Safety & Earthquake resistant provisions as per the norms laid down in law;

8. General Liabilities Of Allottee :-

(1) The Promoter would execute an agreement with an Allottee setting out the terms and conditions of construction, payment schedules and other requirements under Section 7 of the Act and every Allottee who has executed an agreement to take an Apartment shall pay at the proper time and place the price, his proportionate share as amended time to time of the Municipal taxes, water and electricity charges, ground rent (if any) and other public charges in accordance with his agreement with the promoter; and where a co-operative society or a company of persons taking the Apartment is to be constituted, co-operate in the formation of such society or company, as the case may be. (2) Any person who has executed an agreement to take an Apartment and who, without reasonable excuse, fails to comply with or contravenes sub-section 8.1 shall, on conviction, be punished with fine which may extend to two thousand rupees.

9. Common Profit And Expenses :-

(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 Common expenses payable by such Apartment owner may be recovered from the person in the occupation of the Apartment. (3) Common profits can be used for major repair/ up-gradation of Common facilities in future.

10. 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 11, and subject to the other provisions 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 11 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 as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basic, 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 byelaws. (8) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Board of 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 areas and facilities or to any other Apartment or Apartments.

11. 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 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 interests 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.

12. Apartment To Be Heritable And Transferable :-

Subject to the provisions of Section 11, each Apartment, together with the undivided interest in the Common areas and facilities appurtenant to such Apartment, shall, for all purposes 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 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 proceeding, 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.

13. Purchasers Or Persons Taking Lease Of Apartments From Apartment Owners To Execute An Undertaking :-

Notwithstanding anything contained in the Transfer of Property Act, 1982 (4 of 1882), or in any other law of 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 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.

14. 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 or hereditament or shall add any material structure or excavate any addition 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-storied building in any block, pocket or other designated area, the Apartment owners of the concerned multi-storied building in such block, pocket or other designated area.

15. Encumbrance 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 is created, the Apartment in relation to 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 the case of emergency repairs thereto. (3) The labour performed and material furnished for the Common areas and facilities, if duly authorized by the Association of Apartment Owner 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 sub-section (4) (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 amount 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 or 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 encumbrance, so paid, satisfied or discharged.

16. Promoter To Take Steps For Formation Of Co-Operative Society Or Company :-

As soon as a minimum number of persons required to form a Co-operative Society or a company have taken Apartments, the

promoter shall within the prescribed period submit an application to the Registrar for registration of the organization of persons who take the Apartments as a Co-operative Society, or as the case may be, as a company; and the promoter shall join, in respect of the Apartments which have not been taken, in such application for membership of a Co-operative Society or as the case may be, of a company.

17. Offences By Promoter :-

(1) Any promoter who knowingly makes a false disclosure in respect of any of the matters referred to in clauses (a), (b), (c), (g), (i) or (j) of Section (2) or contravenes the provisions of this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both. (2) a promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in Section 10 shall, on conviction be punished with imprisonment for a term which may extend to four years, or with fine, or with both; (3) A Promoter who constructs a building in violation of plans and specifications, approved by the Local Authority or BRDA Act notified by the Local Authority shall on conviction be punished with imprisonment for a term which may extend to ten years or with fine, or with both;

18. Act Not To Apply To The State Government, Housing Board, Etc. :-

Nothing contained in this Act shall apply to the State Government or to The Bihar State Housing Board constituted under The Bihar State Housing Board Act, 1982 [Bihar Act 57 of 1982, published in Bihar Gazette (Extra-ordinary) dated 08-10-1983].

CHAPTER 3

DEED OF APARTMENT & ITS REGISTRATION

19. Contents Of Deed Of Apartment :-

(1) Whenever any sale or other transfer of any Apartment is made, the Promoter shall - (a) in the case of any sale or other transfer made after the commencement of this Act, within three months from the date of such, sale or other transfer, or (b) in the case of any 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 names of the person (s) to whom the Apartment has been sold or transferred; (ii) description of the land on which

the building and the Common areas and facilities are located, and whether the land is freehold or lease-hold, the period of such lease; (iii) a set of floor plans/ structural details of the multi-storied building showing the lay-out and location, number of Apartments and bearing a certified statement of an Architect/ Structural Engineer certifying that it is an accurate copy of the portions of the plans of the building as filed with, an approved by, the local authority within the jurisdiction of which are building is located; (iv) description of the multi-storied building, stating the number of storeys and basements, the number of Apartments in that building and the principal materials 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 interests appertaining to the Apartment in the Common areas and facilities; (vii) description of the Reserved or 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 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 Process, together with the particulars of the residence or place of business of such person; (xi) provision 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 get the Deed of agreement registered in accordance with Section 20 and 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 Apartments as registered under Section 20 within one month of registration. (3) Whenever any transfer of any Apartment is made by the Apartment 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 19.2 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 20. (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 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 the powers of a Civil court, while trying a suit, and its decision 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 16.4, such authority shall send a true copy of such record, to the concerned Registrar for registration thereof in accordance with the provisions of Section 20. (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,

20. 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 registrable 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 meaning respectively assigned to them in the Registration Act, 1908. (2) In all registration offices, a book called "Register of Deeds of Apartment under the Bihar Apartment Ownership Act, 2006" 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 competent 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) (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.

21. Enforcement Of Transfer :-

(1) If the Promoter of the Apartment as the case may be, fails to execute a deed of Apartment or an endorsement thereon, within six months of the date on which possession of the Apartment is given or where the competent authority or the State Government has granted extension of period, on expiry of such extended period, the competent authority may either on a complaint or suo moto impose a penalty up-to maximum of Two thousand five hundred per Apartment and also may impose minimum penalty for each Apartment of fifty rupees for every day subject to maximum of Rs. Twenty Thousand if the default continues, and the penalty may be recovered as arrears of land revenue. This penalty shall be in addition to any action under the Stamp Act or Registration Act 1908. (2) On the failure of the Promoter to execute the Deed of Apartment within the time stated above in sub-section (1) the allottee may make an application to the competent Authority. (3) On the failure of the Apartment owner to make an endorsement of the transfer of an Apartment on the Deed of Apartment within the time agreed upon, the Promoter may make an application to the competent Authority. (4) The application under sub-section (2) and (3) as the case may be, shall be given in prescribed form in writing in the office of the competent authority of the area for certificate to be produced before the Registration officer for enforcing the registration of the transfer. After making such enquiry as may be necessary and satisfying itself that the applicant has done what he is required to do under the agreement, the competent Authority shall issue a certificate to the concerned Registration Officer within a period of two month from the date of application that it is a fit case for enforcing registration and shall further direct the applicant to present the Deed of Apartment though not executed by the other party, for unilateral execution & registration. The registering Authority shall register the instrument. Notwithstanding anything contained in The Transfer of Property Act, 1882 or the Registration Act, the registration of the instrument made under this section shall be sufficient to vest the property with the applicant. Service charges of Rs. two thousand five hundred along with each application shall be charged by the competent authority whoever is defaulter i.e., Promoter/ Owner/ Allottee.

22. Recording Of Succession :-

(1) Whenever any successor gets an Apartment or part thereof, by succession, the successor shall within a period of six months from the date of such succession, make an application to the Local Authority and Revenue Authority for recording such succession on the certified copy of the deed of Apartment and if there is a dispute as to the succession of the Apartment, the local authority shall decide the same. (2) Whenever any succession of an Apartment shall be recorded by the local Authority and Revenue Authority under sub-section (1) and such authority shall send a true copy of such record to the concerned Registrar for necessary recording in the records according to the provisions of the Registration Act.

CHAPTER 4

ASSOCIATION OF APARTMENT OWNERS AND BYE-LAWS FOR THE REGULATION OF THE AFFAIRS OF SUCH ASSOCIATION

23. 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 of multistoried 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 Competent authority 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 Competent Authority and no such approval shall be given if in the opinion of the Competent Authority, such departure, variation, addition or omission will have the effect of altering the basic structure of the model bye laws framed by him. In case the Competent Authority has not framed model bye-laws, the Association of Apartment Owners shall frame bye-laws in accordance with Section 23.3. (3) The model bye-laws framed by the Competent Authority or the bye-laws framed by Association of

Apartment Owners incase no model bye-law is framed under sub-section (2) it 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 members of the Association of Apartment Owners; (c) the number of Apartment owners, constituting of a 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 who shall constitute a quorum for such meanings; (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 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 therefore; (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 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 for the following:- (a) enabling the Board to retain areas of the building for commercial purpose 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) to specify 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) to specify 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

24. Insurance :-

(1) The Board or Manager - (a) shall have, if requested so to do by a mortgages 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 damages 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 premium 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.

25. 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 times 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 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 incumbrances 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 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 owners in the percentages equal to the percentage of undivided interest owned by each Apartment owner in the property after paying out, all the respective shares of the payment by the owners to the extent sufficient for the purpose and all charge on the undivided interest in the property owned by each Apartment owner.

26. Action :-

(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.

27. 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 to such apartment (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 building livable 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-storey building nor the property nor the common areas and facilities referred to in sub-section 27.1, shall be deemed to be separate properties for the purpose of the levy of such taxes.

28. Charges On Property For Common Expenses :-

All sums assessed by the Association of Apartment Owners for the share of the Common expenses chargeable on any Apartment shall be first charge on such Apartment for the payment of Municipal rates and taxes prior to all other charges, except other statutory charges.

29. Liability For Unpaid Common Expenses On The Sale Of An Apartment :-

The purchaser of the Apartment shall be jointly and severally liable with the vendor for all unpaid assessment against the latter for his share of the Common expenses up to the time of sale.

30. Section 30 :-

If the Association of Apartment Owners, having right to be exercised by the Manager or the Board of Managers fails to perform its functions under this Act or the Rules made there under, the Competent Authority may give such direction as he may consider proper.

31. Power To Make Rules :-

The State Government by notification in Official Gazette may make rules for carrying out the provisions of this Act.

CHAPTER 5

AUTHORITIES UNDER THE ACT

32. Powers And Duties Of The Competent Authority :-

(1) The competent authority shall have the following powers and duties: (a) to permit further time to the promoter to execute Deed of Apartment; (b) to receive the certified copies relating to Deed of Apartment instruments or undertaking, deeds of lease, document of transfer of Apartment and management and endorsements thereon and hire purchase agreement; (c) to impose penalty upon developers, promoters, Apartment owners for any delay or failure to execute instruments in favour of purchasers of Apartments, to issue certificate to Registration officer; (d) to direct association of Apartment owners repair damaged property and to, allow further time to an association of Apartment owners to repair, reconstruct or rebuild a property which is damaged/ destroyed; (e) to ensure compliance, by the promoters, Association of Apartment Owners of the obligations under the Act, Rules or Bye-Laws, by issuance of proper directions; (f) to issue directions consistent with the Act, Rules and bye-laws to the Associations of Apartment owners; (g)

any other function which the government may by notification entrust to the competent authority; and (h) Three percent in registration charge would be payable to concerned authority. (2) In discharging his function under the Act, the competent Authority will have the powers of a Civil Court under the Code of Civil procedure 1908 while trying a suit.

33. Appellate Authority And Appeals :-

(1) The Commissioner of the Division will be the Appellate Authority who will hear appeals against the orders of the Competent Authority. (a) Any person aggrieved by any order of the Competent Authority under this Act, may, within a period of thirty days of the Communication of the order to him, prefer an appeal to the Appellate Authority in such form and manner as may be prescribed. (b) The Appellate Authority, after giving opportunity to be heard to the parties, may pass such order, as Appellate Authority shall deem fit, either confirming, modifying or setting aside the order of the Competent Authority, and shall record its reasons in writing. The order of the Appellate Authority shall be final and conclusive. (c) In discharging its functions, the Appellate Authority shall have all the powers under the Code of Civil Procedure 1908 while deciding an appeal.

34. Control :-

If an association of Apartment owners, Manager or Board of Managers is not performing its function, the Competent Authority may give suitable directions.

35. No Waiver Of Liability :-

No Apartment owner may exempt himself/ herself from liability for his/ her contribution towards the Common expenses, by waiver of use or enjoyment of any of the Common areas and facilities or by the abandonment of his/ her Apartment.

36. Act To Be Binding On Apartment Owners :-

All Apartment owners, tenants of such owners, employees of owners and tenants or any other person who may in any manner use property or any part thereof submitted under the provisions of this Act, shall be subject to this Act and to the Deed of Apartment and the bye-laws of the Association of Apartment owners adapted pursuant to the provisions of this Act. All agreements decision and determination law-fully made by the Association of Apartment owners in accordance with the Deed of Apartment or bye-laws shall be deemed to be binding on all Apartment owners.

37. Removal Of Doubts :-

For the removal of doubts it is hereby declared that the provisions of the Transfer of property Act, 1882, shall, in so far as they are not inconsistent with the provisions of this Act, apply to every Apartment and its undivided interest in the Common areas and facilities appurtenant to such Apartment as those provisions apply in relation to any immovable property, and notwithstanding anything contrary to any contract the provisions of this Act shall take effect.

38. Repeal And Savings :-

(1) The Bihar Apartment Ownership Act, 2004 (Bihar Act 6, 2004) is hereby repealed. (2) Notwithstanding such repeal, any thing done or any action taken in exercise of any power conferred by or under the said "The Bihar Apartment Ownership Act, 2004" shall be deemed to have been done or taken in exercise of powers conferred by or under this Act as if this Act was in force on the day on which such things was done or action taken.