

Himachal Pradesh Apartment (Regulation Of Construction And Transfer) Act, 1978

40 of 1978

[12 December 1978]

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An Act to regulate the construction and transfer of apartments in Himachal Pradesh. It is hereby enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-ninth Year of the Republic of India, as follows :- 1. For Statement of Objects and Reasons see R. H. P. Extra, dated 16-9-1978, p. 1193 and for Authoritative Hindi Text see R. H. P. Extra, dated 12-5-1990. 230

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Himachal Pradesh Apartment (Regulation of Construction and Transfer) Act, 1978.
- (2) It extends to the whole of Himachal 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 State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas.

2. Application Of The Act :-

This Act applies only to an apartment, in respect of which the promoter executes and submits a declaration before a competent authority, in such manner as may be prescribed, that he intends to submit the property, wherein the apartment is or is to be located to the provisions of the Himachal Pradesh Apartment Ownership Act, 1978.

3. Definitions :-

In this Act, unless the context otherwise requires,-

- (a) "declaration" means the instrument by which the property is submitted to the provisions of this Act;
- (b) "promoter" means a person who has already constructed or intends to construct apartments for the purpose of selling them to other persons and includes the Government; and
- (c) the expressions "apartment", "building", "competent authority" and "property" shall have the same meanings assigned to them respectively in the Himachal Pradesh Apartment Ownership Act, 1978.

4. General Liabilities Of Promoters :-

Any promoter who intends to sell an apartment shall, on demand by an intending transferee,--

- (a) make full and true disclosure in writing of the nature of his interest in the land and building, if any, in which the apartments are or are to be constructed;
- (b) make full and true disclosure in writing of all encumbrances, if any affecting such land or building;
- (c) disclose and give inspection of the plans and specifications of the entire building of which the proposed apartments form part and furnish copies thereof;
- (d) disclose in writing the nature of fixtures, fittings and amenities which have been or are proposed to be provided;
- (e) disclose in writing the particulars as respect the materials which have been or proposed to be used in the construction of the

building together with the details of all agreements entered into by him with the architects and contractors;

(f) specify in writing the date by which possession of the apartment is to be handed over to such transferee;

(g) 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 addresses of the transferees either actual or intended, the prices paid or charged by or upon them and any other particulars as may be prescribed;

(h) make a full and true disclosure in writing 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, in relation to the land, building and the apartments;

(i) make a full and true disclosure in writing of such other information and documents including true copies of such documents as may be prescribed.

5. Agreement To Precede Advance Payment :-

Notwithstanding anything contained in any other law, a promoter who intends to transfer any apartment shall, before accepting any sum from an intending transferee as advance payment for deposit, enter into a written agreement for sale with such transferee which shall be registered as a document compulsorily registerable under clause (b) of sub-section 17 of the Registration Act, 1908 (16 of 1908): Provided that for the purposes of this section advance payment will not include the earnest money as prescribed under the Himachal Pradesh Housing Board Allotment, Management and Sale of House Plot Regulations, as amended from time to time.

6. No Addition Or Alteration After Disclosure Of Plans, Etc. :-

After the plans, specifications and the nature of the fixtures, fittings, and amenities are disclosed to the intending transferee under section 4, the promoter shall not make any alteration therein---

(i) if it affects a single apartment, without the previous consent in writing of that transferee who intends to take the said 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.

7. Offences By Promoter :-

Any promoter who knowingly makes a false disclosure in respect of any of the matters referred to in clauses (a), (b), (g) or (h) of section 4 or contravenes the provisions of section 6, 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.

8. Offences By Companies :-

(1) If the promoter committing an offence under this Act is a company, every person who at the time when the offence was committed was in-charge of land 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 such punishment as provided in this Act 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 with the consent or connivance of, or is attributable to, any negligence on the part of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other Officer shall 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 a 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.

9. Power To Make Rules :-

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

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly when it is in

session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session 232 in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rules or decides that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. Indemnity :-

No suit or other legal proceedings shall lie against the Government and no suit, prosecution or other legal proceedings shall lie against any officer or servant of the Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

11. Bar To Jurisdiction :-

No Court shall take cognizance of any offence under this Act except on complaint made with the previous sanction of the competent authority.

12. Severability :-

If any provision of this Act or any section, sentence, clause, phrase or words, or application thereof in any circumstances is held invalid, the validity of the remainder of this Act and of the application of any such provision, section, sentence, clause, phrase or word, in any other circumstances shall not be affected thereby.

13. Power To Remove Difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may make such order or do such thing, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.