

Madhya Pradesh Prakoshtha Swamitva Adhiniyam, 2000

15 of 2001

[01 May 2001]

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An Act to provide for the ownership of an individual apartment in a building together with 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 enforcement of obligations on promoters and apartment owners and to provide for matters connected therewith or incidental thereto. Be it enacted by the Madhya Pradesh Legislature in the Fifty-first Year of the Republic of India as follows :-- 1. Received the assent of the President on 1st May, 2001; Published in the Madhya Pradesh Rajpatra (Asadharan) dated 9-5-2001 at pp. 582 (26-46).

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Madhya Pradesh Prakoshtha Swamitva Adhiniyam, 2000.

(2) It extends to the whole of Madhya Pradesh.

(3) This section shall come into force at once. The remaining provisions of this Act shall come into force in such area 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 :-

The provisions of this Act shall apply to every apartment in any building constructed (or converted into apartments) by a promoter before or after the commencement of this Act on freehold land or land held on lease :

Provided that where a building constructed, whether before or after the commencement of this Act, contains only two apartments, the owner of such building may, by a declaration duly executed and registered under the provision of the Registration Act, 1908 (No. 16 of 1908), indicate his intention to make the provision of this Act applicable to such building, and on such declaration being made, such owner shall execute and register in respect of each apartment a deed of apartment in accordance with the provisions of this Act, as if such owner were the promoter in relation to such building and a certified copy of the declaration shall be filed in the office of the Competent Authority within three months of its execution.

3. Definitions :-

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" (which may be called block, chamber, dwelling unit flat, lot, premises, suite, tenement, unit or by any other name), means a separate and self-contained part of any property, including one or more rooms or enclosed spaces, located on one or more floors (or any part of parts thereof) in a building or in a plot of land, used or intended to be used for residence, office, shops, showrooms or godowns or for carrying on any business, industry, occupation, profession or trade, or for any other type of 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 and includes any garage or room (whether or not adjacent to the building in which such apartment is located) provided by the promoter for the use by the owner of such apartment for parking any vehicle or, as the case may be, for the residence of any domestic servant employed in such apartment:

Provided that the number and sizes of the apartments in a building shall be in conformity with municipal regulations :

Provided further that if a basement, cellar, garage, room, shop or storage space is sold separately from any apartment it shall be treated as an independent apartment and not as part of any other apartment or of the common areas and facilities;

Explanation.-- Notwithstanding that provision is made for sanitar washing, bathing or other conveniences as common to two or more apartments, the apartments shall be deemed to be separate and self contained;

(c) "Apartment number" means the number, letter or combination thereof, designating the apartment;

(d) "Apartment owner" means the person owning an apartment and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the deed of apartment;

Explanation.-- A member of a co-operative housing society of the tenant co-partnership type, or an allottee under a hire purchase agreement, will be deemed to be an owner entitled to membership of the association.

(e) "Association" means an association consisting of all the apartment owners in a building acting as a group in accordance with the bye-laws, if two or more buildings are grouped together by the promoter in the deeds of apartments, a single association shall be formed for all the apartments, in the buildings so grouped. Membership will be extended to allottees under a hire purchase agreement. Associate membership will be extended to the promoter and to person in occupation, whether under a tenancy, lease, licence from the owner or otherwise, but they will not be entitled to become a member of the board or to have any voting rights in matters concerning ownership of apartments or disposition of property;

(f) "Board" means the board of management of an association elected by its members from among the apartment owners under the bye-laws;

(g) "Building" means a building constructed on any land containing four or more apartments, or two or more buildings with a total of

four or more apartments or any existing building converted into apartments, and includes a building containing two apartments in respect of which a declaration has been made under the proviso to Section 2;

(h) "Bye-laws" means the bye-laws of an association made under this Act;

(i) "Common areas and facilities" in relation to a building means all parts of the building or the land on which it is located and all easements, rights and appurtenances belonging to the land or the building, which are neither in the exclusive possession of an apartment owner in terms of his deed of apartment, nor are handed over or intended to be handed over to the local authority or other public service agency. This will include the limited common areas and facilities;

(j) "Common expenses" means:--

(i) all sums lawfully assessed against the apartment owners by the association for meeting the expenses of administration, maintenance, repair or replacement of the common areas and facilities;

(ii) expenses, declared by the provisions of this Act or by the bye-laws or agreed upon by the association, as common expenses;

(iii) Government and municipal taxes including ground rent and property tax, which is not assessed separately for each apartment;

(k) "Common profits" means the balance of all income, rent profits and revenues from the common areas and facilities, remaining after the deduction of the common expenses;

(l) "Competent Authority" means the officer or authority who or which may be vested by the State Government, by notification in the Official Gazette, with executive powers for implementing the provisions of this Act and rules made thereunder, for such areas as may be specified in the notification, under the general guidance, superintendence and control of the State Government :

Provided that the State Government may notify as Competent Authority more than one officer or authority and distribute the work among them in the manner deemed fit;

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

(n) "Land" means a portion of the surface of the earth, comprising the ground or soil and everything under it or over it, and things which are attached to the earth (such as buildings, structures and trees), things which are permanently fastened to the earth or to

things attached to the earth, easements, rights and appurtenances belonging to them and benefits arising out of them and includes the sites of villages, towns and cities;

(o) "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 apartments to the exclusion of the other apartments;

(p) "Local authority" means a Municipal Corporation, Municipal Council or an authority for any other area so notified by Government;

(q) "Majority" or "majority of apartment owners" means the apartment owners with fifty one percent, or more of the votes in accordance with the percentages assigned in the deeds of apartments for voting purposes;

(r) "Person" includes company, firm, co-operative society, joint family and an incorporated body of persons;

(s) "Promoter" 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 apartments, 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 person, the term includes both of them. Any development authority and any other public body so notified by the Government are deemed to be promoters in respect of the allottees in buildings constructed by them on land owned by them or placed at their disposal by Government.

Explanation.-- A person who acts as described above will be deemed a promoter, even if :--

(a) he styles himself as builder, coloniser, contractor, developer, estate promoter or by any other name; or

(b) 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 or any other person;

(t) "Property" means the land, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, and includes every specie of right and interest in land which a person can have to the exclusion of other persons, such as possession, use and enjoyment free from interference, right of disposition, franchises and hereditaments.

4. Ownership Apartments :-

(1) Every person, to whom an apartment is allotted, sold or otherwise transferred by the promoter, either before or after the commencement of this Act, shall be entitled, save as otherwise provided in Section 7 and subject to the other provisions of this Act, on and from such commencement, or on such allotment, sale or transfer, as the case may be, to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him :

Provided that an apartment which is occupied by a tenant shall not be allotted, sold or otherwise transferred to a person other than such tenant, unless it has first been offered to him on market value and refused by him, or fails to give reply within one month and in such case the new owner will be deemed to have given such apartment on tenancy to him.

(2) Every person who becomes entitled to the exclusive ownership and possession of an apartment under sub-section (1) 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 the ratio of the built up area of the apartment to the total built up area of all the apartments of the building. In respect of limited common areas and facilities reserved for the use of certain apartments to the exclusion of other apartments, such percentage shall be the ratio of the built up area of those apartments for which the use is reserved. The actual built up area should be taken into account for the calculation of the percentage and any different area which may be stated in the agreement between the promoter and the person taking the apartment, shall be ignored :

Provided that if all or any of the apartments is put to any non-residential use, the percentage shall be as prescribed.

(3) The apartment owners shall own in common the common areas and facilities. Neither the promoter nor the association shall have any ownership right in the common areas and facilities. The association shall be vested with the management and maintenance of the common areas and facilities.

(4) The percentage of the undivided interest of an 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.

(5) The percentage of 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 creating the encumbrance.

(6) 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.

5. Common Areas And Facilities :-

(1) 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.

(2) The necessary work relating to the maintenance, repairs or replacement of the common areas and facilities and the making of any additions or improvements thereto, shall be carried out only in accordance with the provisions of this Act and the bye-laws.

(3) The association shall have the irrevocable right to be exercised by the board 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.

6. Apartment To Be Heritable And Transferable :-

Subject to the provisions of Section 7, an apartment, together with the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, shall constitute for all purposes a heritable and transferable immovable property within the meaning of any law for the time being in force. An apartment owner may transfer his apartment together with the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or any other manner whatsoever, in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings or remedies, and to

penalty, forfeiture or punishment, as any other immovable property or he may make a bequest of the same under the law applicable to the transfer and succession of immovable property. The promoter shall neither impose any condition on such transfer in the agreement of sale nor collect any amount for acquiescing to such transfer :

Provided that, where the apartment is in possession of a person on the basis of a hire purchase agreement, the transfer of possession of the apartment shall be regulated by the hire purchase agreement and the transferor shall be jointly and severally liable with the transferee for the instalments yet to be paid :

Provided further that, where the apartment is in possession of a member of a housing co-operative society of the tenant co-partnership type the transfer of possession of the apartment shall be regulated by the laws, rules and bye-laws applicable to such society :

Provided also that where the building is on leasehold land the transfer shall be subject to the terms and conditions of the lease.

7. Ownership Of Apart Subject To Conditions :-

Where an allotment, sale or other transfer of an 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 shall not become entitled to the ownership of that apartment or to the percentage of undivided interest in the common areas and facilities appurtenant to such apartment until full payment has been made of the consideration along with any amounts in respect of common expenses and payment of Government and municipal taxes incurred by the promoter before the formation of the association, together, with interest if any due thereon. If there is a dispute about the amount payable by the allottee to the promoter, the dispute shall be decided by the Competent Authority, but the allottee will be entitled to possession without waiting for the dispute to be decided. If after final payment as aforesaid has been made, any expenses are incurred by the promoter for providing any requirement imposed by the Government or the local authority, such fire-fighting equipment, it shall be recoverable from the apartment owners. Where any such allottee has been inducted into the possession of such apartment or any part thereof on certain terms and conditions in pursuance of such allotment, sale or other

transfer he shall continue to remain in possession thereof on the same terms and conditions. If a person has entered into a hire-purchase agreement with the promoter and has been inducted into the possession of an apartment on certain terms and conditions, he shall continue to remain in possession thereof on the same terms and conditions.

8. Compliance With Covenants And Bye-Laws :-

An apartment owner shall comply strictly with this Act the rules and 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 board on behalf of the association, or in proper case, by an aggrieved apartment owner, before the competent authority.

9. Purchasers Or Lessees To Execute Undertaking :-

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

(a) in respect of the said apartment, be subject to the provision of this Act; and

(b) execute within three months and register an instrument, in such form and in such manner 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, and file certified copy thereof in the office of the competent authority.

10. Prohibition Of Benami Transaction :-

No person shall enter into any benami transaction :

Provided that if an apartment is purchased by a person in the name of his wife or unmarried daughter it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

11. Certain Works Prohibited :-

No apartment owner shall do any work which would be prejudicial

to the soundness or safety of the property or reduce the value thereof or impair any easement or hereditament or shall or shall add any material structure or excavate any additional basement or cellar, without first obtaining the consent of all the other apartment owners.

Explanation.-- Where there is more than one building in the association, reference to the other apartment owner in the section, is only to the other apartment owners in the concerned building.

12. Sub-Lease And Its Breach :-

(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 leasehold 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 a separate deed of sub-lease in respect of such land in favour of each apartment owner within three months from the date on which possession of an apartment is given to him, and execute a document transferring the management of the common areas and facilities to the association within three months of its being formed, and file certified copies of the instruments in the office of the Competent Authority. In the case of a building constructed before the commencement of this Act, such deeds of sub-lease and such document of transfer shall be executed within three months of the commencement of this Act. Thereafter the powers and functions of the lessee shall be exercised by the association in respect of apartment owners who are the sub-lessees :

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 :

Provided further that the lessee shall not withhold consent to, or collect any amount for acquiescing to the apartment owner executing a transfer of the sub-lease and endorsement on the deed of apartment in favour of a transferee but where the lessor is Government it may levy such transfer fee as may be prescribed.

(2) Where the lessee has any reason to suspect that there has been

any breach by the apartment owner (hereinafter referred to as the defaulting apartment owner) of the terms and conditions of the sub-lease, in respect of the land appurtenant to the apartment, he may inspect such land or may authorise one or more person, to inspect such land and make a report as to whether there has been any breach of the terms and conditions of any sublease 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 defaulting apartment owner) and where such findings indicate that there has 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 such breach, 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 competent authority, either challenging the findings of the lessee or any person authorised by him, or disputing the amount of composition fees as specified in the notice. The Competent Authority may, after giving the parties a reasonable opportunity of being heard, confirm, alter or reverse those findings or may confirm or reduce the amount of composition fees or set-aside the notice.

(5) Where there is a default in the payment of any composition fees, it shall be lawful for the lessee to recover the amount of composition fees from the defaulting apartment owner as an arrear of land revenue.

(6) Where any composition fees are paid, whether in pursuance of the notice served under sub-section (3) or in accordance with the decision of the Competent Authority, no further action shall be taken by the lessee for the breach in relation to which payment of such composition fees has been made.

(7) Where any lessee omits or fails to take any action under sub-section (2) or (3), the lessor may, by a notice in writing, require the lessee to take action against the defaulting apartment owner

under sub-sections (2) and (3) 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 under sub-section (2) or (3), and the provisions of sub-sections (4), (5) and (6) shall, as far as may be apply to any action taken by him as if such action had been taken by the lessee.

(8) 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 and conditions 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.

(9) Where the building is not constructed on leasehold land the promoter will not be required to grant a sub-lease to any apartment owner or execute a document transferring the management of the common areas and facilities to the association, but on the execution of a conveyance and the deed of apartment the title to the apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be deemed to be transferred to the concerned apartment owner and the right of management of the common areas and facilities to the association. The provision of the other sub-sections of this section shall apply, as if the words "sub-lease" and "lessee" and "sub-lessee" refer to the "deed of apartment", "association" and "apartment owner" respectively.

13. Encumbrances Against Apartments :-

(1) An apartment owner may create any encumbrance only against the apartment owned by him and the percentage of 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 has arisen or has been created against the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto, such apartment and undivided interest shall not be partitioned or sub-divided.

(2) No labour performed or material furnished with the consent or on the request of an apartment owner or his agent or his contractor or sub-contractor, shall be the basis of a charge or encumbrance under the provisions of the Transfer of Property Act, 1882, against

the apartment or any other 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 an apartment owner in the case of emergency repairs to his apartment.

(3) The labour performed and material furnished for the common areas facilities, if duly authorised by the association of the board 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 against each of the apartments and shall be subject to the provisions of sub-section (4).

(4) In the event of a charge or encumbrance against two or more apartments becoming effective, an apartment owner may remove his apartment from the charge or encumbrance by making payment of the proportional amount attributable to his 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 thereafter be free and clear of the charge or encumbrance so paid discharged or satisfied :

Provided that such part payment shall not prevent the person having a charge or encumbrance from proceeding to enforce the rights, in relation to the amount still outstanding, against any other apartments not so freed of the charge or encumbrance.

CHAPTER 3

DEED OF APARTMENT AND ITS REGISTRATION

14. Deed Of Apartment :-

(1) Whenever any allotment, sale or other transfer of an apartment is made by the promoter to the allottee, the promoter and the allottee shall be the party in the first part and the party in the second part respectively, within three months from the date of such allotment, sale or other transfer, execute a deed of apartment containing the following particulars, namely :--

- (a) the name, address and other particulars of the allottee;
- (b) description of the land on which the building and the common areas and facilities are located, and whether the land is freehold or leasehold and if leasehold the period of such lease, and the postal address of the property;
- (c) a floor plan of the building showing the lay-out and location of the apartment and bearing the verified statement of an architect

certifying that it is an accurate copy of the portion of the plans of the building as filed with and approved by the local authority within the jurisdiction of which the building is located;

(d) description of the building, stating the number of storeys and basements, the number of apartments in that building and the principal materials of which it is constructed;

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

Provided that the number and areas of the apartments should be in conformity with the municipal building regulations;

(f) description of the common areas and facilities appurtenant to such apartment;

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

(h) value of the property and of the apartment and the percentage of undivided interest respectively in the common areas and facilities and the limited common areas and facilities, if any, appurtenant to such apartment, and a statement that the apartment and such undivided interest are not encumbered in any manner whatsoever on the date of execution of the deed of apartment;

(i) statement of the purpose for which the building and each of the apartments are intended and restricted as to use;

(j) the name of the person to receive service of process, together with the residence or place of business of such person; and

(k) any further details which the parties to the deed of apartment may deem desirable to set forth :

Provided that if the Competent Authority 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, it may permit the promoter to execute such deed of apartment within such further period, not exceeding six months as it may specify. The Government may grant further extension if it is satisfied that is necessary :

Provided further that in the case of an allotment, sale or other transfer made before the commencement of this Act, the promoter shall execute the deed of apartment within three months of such commencement or within the period of extension granted by the Competent Authority or Government :

Provided also that the non-execution of a lease between the lessor and the lessee, or the alleged breach of any conditions of the

original agreement regarding allotment between the promoters and the allottee shall not be considered sufficient cause for the promoter not executing the deed of apartment in favour of the allottee.

(2) If the apartment is allotted under hire-purchase, the promoter and the hire-purchaser shall execute instead of a deed of apartment hire-purchase agreement.

(3) The promoter shall file in the office of the competent authority, and deliver to the concerned allottee a true copy of the deed of apartment or the hire-purchase agreement as registered under Section 17.

(4) Whenever any transfer of any apartment is made by the owner thereof, whether by sale, lease mortgage, exchange, gift or otherwise, the transferor shall deliver to the transferee the certified copy of deed of apartment delivered to him under sub-section (3) after making an endorsement thereon as to the name, address and other particulars of the transferee, to enable the transferee to get such enforcement registered in accordance with the provisions of Section 17.

(5) The execution of the deed of apartment vests the apartment owner with the exclusive ownership and possession of the apartment together with the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, as a heritable and transferable property in terms of Sections 4 and 6 of this Act. On execution of a document transferring the management of the property and the common areas and facilities to the association, it is vested with the management of the property and the common areas and facilities, but will not be the owner of the property or the building or the common areas and the facilities.

(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.

(7) The provision of Section 230-A of Income Tax Act for the production of Income Tax clearance certificate prior to the execution or the registration of any conveyance, shall apply to the execution of deeds of apartment.

(8) In the absence of any agreement to the contrary, the stamp duty and the registration fee for a deed of apartment or an endorsement thereon or a sub-lease shall be borne by the allottee, the transferee or the sub-lessee as case may be unless it is

remitted by a notification under Section 40.

15. Enforcement Of Transfer :-

(1) If the promoter or the apartment owner as the case may be fails to execute a deed of apartment or an endorsement thereon under sub-section (1) or (4) of Section 14 within three months, or does not comply with sub-section (3) or (4) of Section 14 within three months of the execution of the deed of apartment or the endorsement thereon or with sub-section (1) of Section 12 within three months of the date on which possession of the apartment is given or, where the Competent Authority or Government has granted extension of time under the first proviso to sub-section (1) of Section 14 within such extended period the Competent Authority may either on a competent or suo motu, impose a penalty upto a maximum of five thousand rupees or five percent of the price of the apartment whichever is greater for each apartment for which there is a default together with a further minimum penalty for each apartment of one hundred rupees for every day for which the default together with a further minimum penalty for each apartment of one hundred rupees for every day for which the default continues and the penalty may be recovered as an arrear of land revenue. This penalty shall be in addition to any action under the Stamp Act, 1899 (No. 2 of 1899) or the Registration Act, 1908 (No. 16 of 1908). If such penalty is imposed, no penalty shall be imposed for the same reason under any other enactment :

Provided that it will be incumbent on the promoter to execute the sub-lease only after the lease is executed in his favour, but the deed of apartment will have to be executed without waiting for the execution of the lease, as envisaged by the third proviso to sub-section (1) of Section 14.

(2) On the failure of the promoter to execute the deed of apartment within the time stated 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 stated in sub-section (1), the transferee may make an application to the Competent Authority.

(4) On the failure of the lessee to execute a sub-lessee within the period stated in sub-section (1), the apartment owner may make an application to the Competent Authority.

(5) The application under sub-section (2), (3) or (4) as the case

may be, shall be in the prescribed form in writing for a certificate to be produced before the concerned Registration Officer for enforcing the registration of the transfer. After making such enquiry as may be necessary and satisfying itself that the occupation certificate has been obtained from the Appropriate Authority and that the applicant has done what he is required to do under the agreement, the Competent Authority shall issue a certificate to the appropriate Registration Officer that it is a fit case for enforcing registration and direct the applicant to present the deed of apartment, the endorsement on the deed of apartment or the sub-lease as the case may be, though not executed by the other party, for unilateral execution of registration.

(6) After the instrument alongwith the certificate issued by the Income-Tax Officer and Competent Authority is presented for registration the Registration Officer shall cause a summons to be issued to the other party. If he fails to appear in compliance with the summons, the execution of the instrument shall be deemed to be admitted by him and the Registration Officer shall proceed to register the instrument. If he appears but denies the execution of the instrument, if the Registration Officer, is satisfied giving him a reasonable opportunity of being heard is satisfied that he has failed to execute the instrument without sufficient cause shall proceed to register the instrument. Notwithstanding anything contained in the Transfer of Property Act, 1882 or the Registration Act, 1908, the registration of the instrument under this sub-section shall be sufficient to vest the property in the applicant.

16. Recording Of Succession :-

(1) Whenever any succession takes place to an apartment or part thereof, the successor shall within a period of six months from the date of such succession, make an application to the Competent Authority for recording such succession, on the certified copy of the deed of apartment and if there is any dispute as to the succession to the apartment, the Competent Authority shall decide the same.

(2) Whenever any succession to an apartment has been recorded by the competent authority under sub-section (1) such authority shall send a true copy of such record to the concerned register for registration thereof in accordance with the provisions of Section 17.

17. Registration Of Deed Of Apartment :-

(1) Every declaration under the proviso to Section 2, every

instrument under Section 9, every sub-lease and every document transferring management of common areas and facilities to an association under Section 12, every deed of apartment and every endorsement thereon and every hire purchase agreement relating to an apartment and a set of floor plans for every building of apartments under Section 14, and every record of succession under Section 16 shall be deemed to be documents which are compulsorily registrable under the Registration Act, 1908 and shall be registered with the Registrar accordingly, and 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) The promoter shall file in the appropriate Registration Office with the draft deed of apartment in respect of every building a set of all floor plans of the building showing the layout, location numbers and dimensions of apartments and bearing the verified statement of an architect or a licence holder duly authorised by the local body certifying that it is an accurate copy of the plans of the building as filed with and approved by the local authority within the jurisdiction of which the building is located, or such licence holder of a Municipal Body authorised to do.

(3) In all registration Offices a book called Register of deeds of apartments under the "Madhya Pradesh Prakoshtha Swamitva Adhiniyam" and an index relating thereto shall be kept in such form and shall contain such particulars as may be prescribed.

(4) 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 (3) of Section 14.

(5) A person acquiring an 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.

CHAPTER 4

ASSOCIATION AND REGULATION OF ITS AFFAIRS

18. Formation Of Association :-

(1) After obtaining occupation certificate for the building and within three months of one third of the apartments being allotted sold or otherwise transferred the promoter shall make an application to the

Competent Authority for the registration of association, with the persons who have taken apartments as members. If the promoter fails to make such application, the apartment purchasers can make such application. There shall be an association, with the apartment owners as its members for the administration of the affairs in relation to the apartments and the property and for management, maintenance and upkeep of the property, the common areas and facilities and common services :

Provided that in respect of an apartment meant for sale but not yet sold, the promoter shall be an associated member of the association and when such apartment is later allotted, sold or otherwise transferred the allottee shall become a member of the association and the promoter shall cease to be associate member of the association in respect of such apartment:

Provided further that formulation of the association shall be without prejudice to the liability of the promoter for breach of any municipal regulation regarding sanction of building plans and the obtaining of completion and occupation certificates.

(2) The association shall be registered with the Competent Authority. The Competent Authority shall ascertain whether the majority of the apartment owners desires the association to function as a co-operative society or as a limited company. The Competent Authority shall register the association accordingly, either as a co-operative society under the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) or as a limited company under the Companies Act. The Competent Authority will have all the functions of a registrar under the respective Act for the association.

(3) The association will be responsible for the administration and management of the property and maintenance and upkeep of the common areas and facilities and common services. The rights and duties of a promoter shall devolve on the association as soon as the possession of the apartments is handed over to the apartment owner.

19. Co-Operative Society As Association :-

(1) When a tenant co-partnership co-operative housing society has granted each member the rights of exclusive occupation of a particular apartment in a building belonging to it and no member is without an apartment for occupation the society by a resolution passed at its general body meeting may decide to transfer the

ownership of each apartment to the member already having the right of the exclusive occupation and to convert itself into a service co-operative housing society for the management of the common areas and facilities. The society shall execute separate deeds of apartments in favour of each member. Thereafter the society shall be deemed to be the association and its management committee shall be deemed to be the board.

(2) When a tenant ownership co-operative housing society has granted each member separate parcels of land in the layout plan for exclusive occupation and construction of residential house and no member is without a parcel of land for occupation the society by a resolution passed at its general body meeting may decide to transfer the ownership right of each parcel of land to the member already having the right of occupation and to convert itself into a service co-operative housing society for the management of the common areas and facilities. The society shall execute in favour of each member of conveyance of the parcel of land already in his exclusive occupation. Thereafter the society shall be deemed to be the association and its management committee shall be deemed to be the board.

(3) When a service co-operative housing society has been formed by the apartment owners for the management of common areas and facilities such society shall be deemed to be the association and its Managing Committee shall be deemed to be the board.

20. Powers And Functions Of An Association :-

An association shall have the following powers and functions :--

- (a) under Section 5, right of access to apartment;
- (b) under Section 18, responsibility for the administration and management of the property and maintenance and upkeep of the common areas and facilities and common services;
- (c) under Section 22, right to become member of a federal association;
- (d) under Section 23, power to repair, reconstruction or rebuilding of the property which is damaged or destroyed;
- (e) under Section 24, power to take action relating to the common areas and facilities or on behalf of two or more apartment owners;
- (f) under Section 26, responsibility for assessment of the share in the common expenses chargeable to each apartment;
- (g) under Section 30, liability for any breach of law in respect of the common areas and facilities;

- (h) under Section 31, power to recover amounts from apartment owner or other persons and right to apply to Collector for recovery of unpaid amount as an arrear of land revenue;
- (i) under Section 32, the duty to collect Government and municipal taxes from the apartment owners for remittance to Government or local authority;
- (j) under Section 33, the duty to arrange for insurance.

21. Bye-Laws :-

(1) The administration of the affairs of the association and the management of the property and the common areas and facilities and services shall be governed by the bye-laws of the association. The association, at its first meeting shall make its bye-laws in accordance with the model bye-laws prescribed under this Act and no departure from variation of addition to or omission from the model bye-laws shall be made 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 shall have the effect of altering the basic structure of the model bye-laws. No bye-law and no amendment of the bye-laws shall be valid unless approved by the Competent Authority and registered with it.

(2) The model bye-laws prescribed under the Act shall provide for the following among other matters, namely :--

- (a) the manner in which the association is to be formed;
- (b) the composition of a board of management;
- (c) the election of the members of the board with provision 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) method of calling meetings of the association and of the board and the number of members of the association or the board who shall constitute a quorum for such meeting;
- (h) election of a president of the association who shall preside over the meetings of the association and of the board;
- (i) election of a secretary to the association, who shall keep two separate minutes book one for the association and the other for the board, and shall record in the respective minutes book the resolutions adopted by the association or the board, as the case may be;

- (j) election of a treasure, who shall keep the financial records and books of accounts of the association;
- (k) maintenance, repair and replacement of the common areas and facilities and payment therefor;
- (l) manner of collecting from the apartment owners or any other occupants of apartments, their share of the common expenses;
- (m) engagement and removal of persons employed for the administration, management, maintenance, repair and replacement of the property and the common areas and facilities;
- (n) regulations with regard to the use and maintenance of the apartments and the common areas and facilities, with such restrictions thereon as may be necessary to prevent unreasonable interference in the use thereof by other apartment owners;
- (o) the regulation of transfer or partition of an apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment subject to the provisions of this Act and such terms and conditions as may be specified in the bye-laws;
- (p) the name of the person to receive service of process in any action against the association or the board or more than one apartment owner, together with the residence or place of business of such person;
- (q) the manner in which the bye-laws may be amended;
- (r) any matter which may be required by the Government to be provided for in the bye-laws for the proper or better administration of the property;
- (s) such other matters as are required to be, or may be provided for in the bye-laws.

(3) The bye-laws framed under sub-section (1) may also contain provisions not inconsistent with the Act :--

- (a) enabling the board to retain certain areas of the building for commercial purposes and to grant lease of the areas so retained and to apply the proceeds of such lease for the reduction of the common expenses for maintaining the building and the 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 account of the association and of the administration of the property;
- (c) specifying the times at which and the manner in which annual general meetings and special meetings of the association 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 shall be submitted;

(e) specifying the time at which and the manner in which the annual report relating to the activities of the association shall be submitted;

(f) specifying the manner in which the income derived and expenditure incurred by the association shall be dealt with, or as the case may be, accounted for.

22. Federal Association :-

Any group of associations which so desire may form a federal association. Such federal association will be deemed to be a Federal Co-operative Society under the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961).

23. Disposition Of Property On 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 does not determine to repair, reconstruct or rebuild such property, then :--

(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 in the common areas and facilities previously owned by such owner;

(c) an encumbrance affecting the apartment shall be deemed to be transferred in accordance with the existing priority to the percentage of undivided interest of the concerned 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, after first paying out all charges on the property, shall be considered as one fund and the respective share therein of an apartment owner will be equal to his percentage of undivided interest in the property.

24. Action :-

(1) Without prejudice to the rights of any apartment owner, action may be brought by the board in its discretion on behalf of two or more of the apartment owners as their respective interests 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 of more than one apartment, may be made on the person designated in the bye-laws to receive service of process.

25. Control And Supersession :-

(1) If an association is not performing its functions, the Competent Authority may give its suitable directions.

(2) If the Competent Authority is of the opinion that the functioning of the board is detrimental to the interest of the association or of the apartment owners or against public interest, the Competent Authority may give the board a notice to show-cause why it should not be superseded. If the reply of the board is not considered satisfactory, the Competent Authority may supersede the board and appoint an administrator to perform the functions of the board and the association for a period not exceeding six months. If the affairs of the association need further time for improvement, the period of the administrator may be extended from time to time but not more than three years in all.

CHAPTER 5

COMMON PROFITS, COMMON EXPENSES AND OTHER MATTERS

26. Common Profits, Common Expenses And Other Matters :-

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

(2) Where an apartment owner is not in the occupation of his apartment, the common expenses payable by such apartment owner may be recovered from the person in the occupation of the apartment, whether or not such person holds a tenancy, lease, licence or agreement from the apartment owner or is purchaser, grantee, legate or other transferee.

(3) The apartment owner, or the person in occupation as the case may be, is liable to pay the common expenses, irrespective of

whether or not the deed of apartment or the endorsement thereon has been executed under sub-section (1) or (4) and registered under Section 17, or the certified copy of the deed of apartment has been delivered to the apartment owner, or as the case may be, the transferee.

(4) In respect of apartments not yet allotted, sold or otherwise transferred, the promoter, who shall be an associate member of the association, shall be liable to pay the common expenses, as if he is a person in occupation of such apartment. The promoter shall not be liable to the association or to the Government or the local authority, for any dues accrued in respect of an apartment after the possession is handed over.

(5) The promoter may collect amounts from the apartment owners before the formulation of the association, towards the common expenses or towards the sinking fund for replacement of fixed assets or for payment of Government or municipal taxes or stamps duty or registration fees for the deed of apartment or other conveyance. The promoter shall be liable to account for such amounts and shall within three months of the formulation of the association, transfer the surplus amount in his hands to the association or to the apartment owners, as the case may be.

27. No Waiver Of Liability :-

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

28. Common Expenses A Charge :-

All sums assessed by the association 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 :-

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- (a) the charge, if any, on the apartment for payment of Government and municipal taxes;
- (b) all sums unpaid on a first mortgage of the apartment;
- (c) any instalments due but unpaid under the hire-purchase agreement; and
- (d) arrears of ground rent and other charges payable to the lessor.

29. Liability On Transfer Etc. :-

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

(2) Any purchaser, grantee, legatee or transferee referred to in sub-section (1) shall be entitled to a statement from the board setting forth the amount of unpaid assessment against the vendor or transferor, as the case may be, and such purchaser, grantee, legatee or transferee shall not be liable 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 such statement. The apartment shall not be sold subject to a charge in excess of the amount set forth in such statement.

30. Liabilities Under Other Laws :-

(1) The promoter shall be liable to Government and to the local authorities for breach of any laws, in respect of the property and the common areas and facilities, till such time as association is formed, and in respect of each apartment, till the date on which possession is given to the apartment owner. Thereafter each apartment owner will be liable in respect of the apartment owned by him and the association will be liable in respect of the common areas and facilities. The association will not be liable for breaches committed by an apartment owner.

(2) The liabilities of the promoter under sub-sections (4) and (5) of Section 26, sub-section (3) of Section 32 and sub-section (1) of this section, which accrued before possession of an apartment was given to an apartment owner or before an association was formed, will continue against him, even after possession of an apartment is given or the association is formed.

31. Recovery :-

It shall be lawful for the association to recover any amount chargeable or recoverable under Section 12, 26, 28, 29 or 32 from an apartment owner or any purchaser, grantee, legatee or other transferee from him or from any person in occupation of the

apartment. If any sum assessed by the association is not paid on demand, the association may apply to the Collector for its recovery as an arrear of land revenue. The Collector, if satisfied that the association has made reasonable efforts to recover such sum but failed, may recover it from the apartment owner or any purchaser, grantee, legatee or other transferee from him or from any person in occupation of the apartment, as an arrear of land revenue.

32. Separate Assessments :-

(1) Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and the percentage of undivided Interest in the common areas and facilities appurtenant to such apartment shall be deemed to be a separate property for the purpose of assessment of tax on lands and buildings leviable under such law and shall be assessed and taxed accordingly; and for this purpose a local authority shall make suitable regulations to carry out the provisions of this section.

(2) Neither the building nor the property nor the common areas and facilities shall be deemed to be a separate property of the association for the purpose of the levy of such taxes.

(3) An apartment owner shall be liable for payment of the taxes under sub-section (1) from the date he is given possession of the apartment and the promoter shall be liable for the taxes only up to such date.

(4) The association shall be liable for the collection of Government and municipal taxes including the ground rent from the apartment owners and for its remittance to the Government or local authority. If the association fails to do so, the Competent Authority may take action against the association for its failure and the amount due may be recovered as an arrear of land revenue from the concerned apartment owners.

33. Insurance :-

The board,--

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

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

(2) Such insurance coverage shall be written on the property in the

name of such boards as trustee for each of the apartment owners in the percentage specified in their deeds of apartment.

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

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

CHAPTER 6

AUTHORITIES UNDER THE ACT

34. Powers And Duties Of Competent Authority :-

(1) The Competent Authority shall have the following powers and duties :--

(a) to decide, under Section 7, dispute about the amount payable by an allottee to a promoter;

(b) to decide, under Section 8, the action for recovery of sums as damages or injunctive relief or both;

(c) to decide under sub-section (4) of Section 12 appeals against notice given by the lessee to apartment owner regarding a breach of the terms and conditions of the sub-lease or regarding the amount of the composition fees demanded in lieu thereof;

(d) to permit, under the first proviso to sub-section (1) of Section 14, further time to the promoter to execute deeds of apartments;

(e) to receive, under the proviso to Section 2, Section 9, sub-section (1) of Section 12, sub-section (3) of Section 14 and sub-section (4) of Section 17, the certified copies of declarations, instruments of undertaking, deeds of sub-lease, documents of transfer of management, deeds of apartments and endorsement thereon, and hire-purchase agreements;

(f) to impose penalty for delay in or failure to execute instrument as specified in sub-section (1) of Section 15;

(g) under sub-section (5) of Section 15, to issue certificate to Registration Officer;

(h) under Section 16, to decide dispute as to succession to an apartment and to record succession, on the certified copy of the deed of apartment and to send true copy thereof of the concerned registrar for registration;

(i) to register, under sub-section (2) of Section 18, the association of apartment owners either as a Co-operative society or as a limited company, after ascertaining the desire of the majority;

(j) under sub-section (1) of Section 21, to approve and register the

bye-laws of an association, any deviation from the model bye-laws and amendments to the bye-laws;

(k) to allow, under Section 23, further time beyond sixty days to an association to repair, reconstruct or rebuild a property which is damaged or destroyed;

(l) under Section 25, to give direction to an association, to supersede the board and to appoint an administrator;

(m) to resolve disputes between an association and a member thereof;

(n) to ensure the annual audit of the accounts of an association;

(o) to receive audit reports on the accounts and the annual reports on the working of an association;

(p) to ensure compliance by promotes, associations and apartment owners of the obligations under the Act, rules or bye-laws, by issue of suitable directions;

(q) to issue directions to associations and apartment owners consistent with the Act, rules and bye-laws;

(r) any other function which the Government may by notification entrust to the Competent Authority.

(2) In discharging his functions under the Act, the Competent Authority will have the powers of a Civil Court under the Code of Civil Procedure, 1908 (No. 5 of 1908), while trying a suit, in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation;

(b) receiving evidence on affidavits;

(c) requiring the discovery and production of documents;

(d) subject to the provision of Sections 123 and 124 of Indian Evidence Act, 1872 (No. 1 of 1872), requisitioning any public record or document or copies of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matters which may be prescribed by Government.

35. Appellate Authority And Appeals :-

(1) The State Government by notification in the official Gazette, may appoint an officer or an authority as Appellate Authority, with the power to decide appeals against the orders of the Competent Authority, under the general guidance, superintendence and control of the State Government :

Provided that the State Government may notify as Appellate Authority more than one officer or authority and distribute the work among them in the manner deemed fit.

(2) 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 an Appellate Authority in such form and manner as may be prescribed.

(3) The Appellate Authority, after giving an opportunity to be heard to the parties and to the Competent Authority, may pass such order as deemed fit, either confirming, modifying or setting-aside the order of the Competent Authority, and record its reasons in writing. The order of the Appellate Authority shall be final unless revised by the State Government.

(4) In discharging its functions, the Appellate Authority shall have all the powers under the Code of Civil Procedure, 1908 (No. 5 of 1908) of a Civil Court while deciding an appeal.

36. Revision :-

The Government may, either suo motu or on application within sixty days from any party aggrieved by any order, call for the record of any case disposed of by the Competent Authority, or Appellate Authority for the purpose of satisfying itself as to the correctness, legality or propriety of any proceedings or of any order made therein and may pass such order in relation thereto as it may deem fit :

Provided that no order adverse to any person shall be passed without giving him an opportunity to show cause against such proposed order :

Provided further that no revision application will be entertained when an appeal has been or could have been filed against the order.

37. Bar Of Jurisdiction :-

No Civil Court shall have any jurisdiction to entertain or decide any question relating to matters arising under this Act or the rules made thereunder every order passed by the Competent Authority subject to appeal or revision, every order passed by the Appellate Authority subject to revision and every order passed by the Government in revision, shall be final and shall not be questioned in any Court of law.

38. Act Binding On Apartment Owners Etc. :-

(1) The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any contract, undertaking or other instrument, and all apartment owners, tenants, or their employees or any other person who may in any manner use the property or any part thereof to which this Act applies, shall be subject to the provisions of this Act and the rules and bye-laws made thereunder: Provided that nothing contained in this sub-section shall affect the right, title or interest acquired by any allottee or other person on common areas and facilities from any promoter before the commencement of this Act.

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

39. Penalty For Breach :-

If a promoter of an association or an apartment owner contravenes any provision of this Act or the rules, or commits a breach of any bye-laws of the association or of the terms and conditions of the deed of apartment or does anything detrimental to the health or safety of the public the competent authority issue, either suo motu or on an application from the association or any person affected a notice to show cause why penalty should not be levied, and if no sufficient cause is shown levy for each breach or contravention of penalty for each apartment upto a maximum of one percent of the price of the apartment or one thousand rupees, whichever is greater and further minimum penalty for each apartment of one hundred rupees for each day that the breach or contravention continues. If the penalty is not paid it may be recovered as an arrear of land revenue.

40. Powers To Exempt Or Refund Stamp Duty Etc. :-

(1) The Government may, by notification in the Official 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, apartment owner or association relating to any of the purposes of this Act, are respectively chargeable;

(b) any fee payable by or on behalf of a promoter, apartment owner or association in relation to instrument or documents referred to in clause (a) under any law relating to registration of documents or to Court-fees, for the time being in force, and which the Government is competent not 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 order determine.

41. 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 the transfer of any apartment together with the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, made by the apartment owner, whether such transfer is made by sale, lease, mortgage, exchange, gift or otherwise, as they apply to the transfer of any immovable property.

42. Powers To Make Rules :-

(1) The Government may, subject to the condition of previous publication by notification in the Official Gazette make rules to carry out the provisions of this Act.

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

(a) the manner in which the percentage of undivided interest of each apartment in a building parts of which are put to non-residential use, should be determined, under the proviso to sub-section (2) of Section 4;

(b) the scales of composition fees which may be paid under sub-section (3) of Section 12 for the breach of the terms and conditions of any lease or sub-lease;

(c) the form and manner in which an instrument referred to in clause (b) of Section 9 shall be executed and registered;

(d) the form in which the register of deeds of apartments and the index relating thereto shall be kept and the particulars which such

register shall contain as required by sub-section (3) of Section 17;
(e) the model bye-laws of the association of apartment owners under sub-section (1) of Section 21;
(f) powers of a Civil Court which may be conferred on the Competent Authority under sub-section (2) of Section 34;
(g) the form and manner in which an appeal against an order of the Competent Authority has to be preferred to an Appellate Authority, under sub-section (2) of Section 35; and
(h) any other matter which is required to be or may be prescribed.

43. Repeal And Savings :-

- (1) The Madhya Pradesh Prakoshtha Swamitva Adhiniyam, 1976 (No. 17 of 1976) is hereby repealed.
- (2) Notwithstanding such repeal anything done or any action taken or purported to have been done or taken under or in pursuance of the Act so repealed shall in so far as, it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in pursuance of the corresponding provisions of this Act.