

E-FILING NO - EF-HCK-2024-033960

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

WP(C) No Of Year 2024

111.00 PUBLIC INTEREST LITIGATION

PETITIONER(S)

1. ANANDA PADMANABHAN

VS

RESPONDENT(S)

1. UNION OF INDIA AND OTHERS

MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

COURT

FILING NATURE: URGENT
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GOVERNMENT PLEADER
SHRI.C.M.NAZAR, SC, KERALA REAL ESTATE REGULATORY AUTHORITY
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BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

WP(C) No Of Year 2024 PETITIONER : ANANDA PADMANABHAN V/S

RESPONDENT: UNION OF INDIA

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			Sd/-

E-VERIFIED

JOHNSON GOMEZ

K/474/1992

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM WP(C) No. /2024

IN THE MATTER OF

PETITIONER ANANDA PADMANABHAN
RESPONDENT UNION OF INDIA & OTHERS

SYNOPSIS

- 1. The Petitioner is an Advocate practicing in the High Court of Kerala and other Tribunals and the District Judiciary, within the state of Kerala. He is a member of Society of Construction Law Kerala Chapter, a not for profit organization aiming to promote, educate, study and research in the field of Construction Law. The Kerala Chapter of the Society has conducted a research in the common property management of Condominium type of properties and has proposed amendments to the Kerala Apartment Ownership Act 1983, (hereinafter referred to as the KAOA). The Petitioner was a member of the sub committee, conducting the study regarding the reasons of failure in implementing KAOA. He was also the organizing team for conducting a seminar in the MKD Hall in KHCAA, Golden Jubilee Chamber Complex on 11th February 2023. The subcommittee of the Kerala Chapter has also prepared a report on the basis of the observation made by the experts during the seminar.
- 2. The Petitioner also experienced a real life situation, when he purchased an apartment in an apartment building Named Paul Alukkas Eco Paradise. The Apartment budding was registered under RERA, but the provisions of KAOA were not complied with by the Promoter. There is no agency to ensure that the objectives provided in the preamble of the KAOA is not implemented in the State, ever since it was enacted in the year 1983. Since most of the apartments were already sold by the promoter, it is almost

impossible to achieve ownership over individual apartments and to make such apartments heritable and transferable property, as promised under the Act. The Petitioner realized that this is not a situation affecting the Petitioner alone, but severely hundreds of apartment owners are facing similar problems due to the non implementation of the KAOA. Hence, the interference of the Court is necessary to save the situation, hence this public interest litigation was deemed, appropirate.

- 3. The Petitioner on further research came to the following conclusions:
 - a. Section 2 of the KAOA,is the local law as provided under Section 11(4) (e) and (f), and Section 17 of the RERA, insofar as the State of Kerala is concerned.
 - b. KAOA is a State Legislation, while RERA is a central legislation.
 - c. The power to legislation can be traced from Entry 6 and 7 of the Concurrent List of Schedule VI of the Constitution of India.
 - d. The Presidential Assent is not obtained for the state legislation KAOA.
 - e. Section 2 of the KAOA, requiring the Sole Owner or all the Owners to execute and register declaration, for the purpose of the application of the Act is repugnant to the provisions of RERA and the same to the said extent is unconstitutional and void.
 - f. The condition in section 2 of KAOA, that the Sole Owner or all the Owners to execute and register declaration, for the purpose of the application of the Act, is an impossible condition and violates Section 56 of the Indian Contract Act.
 - g. The State Government is vested with the power to remove difficulties in giving effect to the provisions of the Act, by passing an order under Section 27 of KAOA.

h. Clause 20 of Annexure A (Standard Form of the Agreement for Sale) of the Kerala RERA Rules, 2018, obligates the Promoter to ensure compliance with KAOA. Annexure A is a standard form of Agreement for Sale, as prescribed under Section 13 of RERA. In Spite of the contractual obligation to comply with clause 20, if the promoter fails to execute and register the declaration for the purpose of application of KAOA, the judgment of the Hon'ble Supreme Court in *Supertech Limited Versus Emerald Court Owner Resident Welfare Association & Ors. (Civil Appeal No. 5041 of 2021)* would apply and it is to be deemed that all real estate properties in the nature of apartment buildings are governed by the provisions of KAOA. Therefore the competent authority is appointed under KAOA can take further steps treating that the provision of KAOA is applicable to such real estate properties with the State of Kerala, to which RERA applies.

Hence, this Writ Petition, in the nature of Public Interest Litigation may be admitted and necessary corrective actions may be taken in accordance with law.

Dated this the 4th day of April 2024

E-Verified Johnson Gomez Counsel for the Petitioner



E-FILING NO - EF-HCK-2024-033960

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM WP(C) No Of Year 2024

PETITIONER(S)

1. ANANDA PADMANABHAN

AGED 29 YEARS

S/O N. VISWANATHAN NAIR, RESIDING AT 6D, ECO PARADISE, STADIUM LINK ROAD, KALOOR, KOCHI , PIN-682018

VS

RESPONDENT(S)

1. UNION OF INDIA

UNION OF INDIA, REPRESENTED BY THE MINISTRY OF HOUSING AND URBAN AFFAIRS, NIRMAN BHAWAN, MAULANA AZAD ROAD, NEW DELHI

2. THE STATE OF KERALA

REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF HOUSING, SECRETARIAT, THIRUVANANTHAPURAM

, PIN -695501

, PIN-110011

3. THE SECRETARY TO THE GOVERNMENT

DEPARTMENT OF LAW, SECRETARIAT, THIRUVANANTHAPURAM

, PIN -695501

4. THE CHAIRMAN

KERALA -RERA AUTHORITY, 6TH FLOOR, TRINITY CENTRE, TC NO. 14/4354, OPP 6TH FLOOR, TRINITY CENTRE, TC NO. 14/4354, OPP CHAITHANYA EYE HOSPITAL, KESAVADASAPURAM, PATTAM P.O., THIRUVANANTHAPURAM

, PIN -695004

5. THE CONFEDERATION OF REAL ESTATE DEVELOPERS' ASSOCIATIONS OF INDIA
REPRESENTED BY ITS CHAIRMAN, 2ND FLOOR, HOUSE OF CREDAI, STADIUM LINK RD, ABOVE ICICI BANK,
KALOOR, KOCHI, ERNAKULAM, KERALA

, PIN -682017

6. THE SECRETARY

APARTMENT OWNERS APEX ASSOCIATION, J.M.MANOR, KALOOR,

, PIN -682017

MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA BY JOHNSON GOMEZ, SANJAY JOHNSON, ANN MARIA SEBASTIAN, JOHN GOMEZ, SANJITH JOHNSON, ARUN JOHNY, DEEBU R., ABIN JACOB MATHEW PUTHEN PURAYIL, KILIKOLLOOR PO., KOLLAM - 4.

PIN - 0



MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA (PUBLIC INTEREST LITIGATION)

STATEMENT OF FACTS

a. About the Parties in the Proceedings.

- a. The Petitioner is a lawyer practicing before the High Court of Kerala and other Tribunals and District Judiciary. The Petitioner is a member of the Society of Construction Law (Kerala Chapter) and has also participated in the programs organized by the Society. He had some exposure to construction and real estate laws.
- b. The Respondent No.1 is the State of Kerala, Represented by the Secretary, Department of Housing. The Competent Authorities appointed under the KAOA, are working in this Department.
- c. The Respondent No.2 is the Inspector General of Registration, Department of Registration. The provisions of the Registration Act are applicable to the limited extent of regulating the execution and registration of the Declaration and Deed of Apartment in the local Sub Registrar Office. The Sub Registrar Offices in the State are under this Department.
- d. The Respondent No.3 is the Chairman, Kerala Real Estate Regulatory Authority, which is the appropriate regulatory authority designated as per the RERA, for the state of Kerala.
- e. The Respondent No.4 is The Confederation of Real Estate Developers' Associations of India (CREDAI). It is the apex body of organized Real Estate Developers Associations,

representing over 20,000 Real Estate Developers across 21 States and 220 cities in India. The CREDAI was set up in 1999 to create a policy framework conducive to the growth of Housing and Real Estate. CREDAI Kerala represented by Secretary General CREDAI which is the Kerala chapter of the apex body representing 20,000 private Real Estate Developers across 21 State-level Chapters and 220 Cities in India. CREDAI is a not-for-profit company registered under Section 25 of the Companies Act 1956.

f. The Respondent No.5 is the Apartment Owners Apex Association, a not for profit organization. The members of the said Association are the office bearers of the Apartment Owners Associations working for the welfare of the Apartment Owners of Apartment Buildings.

b. About the Petitioner

a. The Petitioner is an Advocate practicing in the High Court of Kerala. He is a member of the Society of Construction Law (Kerala Chapter). The Society is affiliated with the Indian branch of the organization, headquartered in the United Kingdom. Society works to promote public benefits, education, study, and research in the field of construction law. The Kerala Chapter conducted research on the common property management of condominium types of properties (or apartment Building) and suggested amendments to the Kerala Apartment Ownership Act 1983 (hereinafter referred to as KAOA). The Petitioner was one of the members of the sub-committee, which conducted a study regarding the reason for the failure to

implement the KAOA, in the State. The Petitioner was also part of the organizing team of the society, which conducted a seminar, titled 'Review of the Kerala Apartment Ownership Act 1983' in the MKD Hall in KHCAA Golden Jubilee Chamber Complex on February 11, 2023. The Society submitted a report to the government, containing suggestions for amendment to the KAOA, based on the findings of the Sub-Committee and the presentation made by the experts.

- b. The Petitioner experienced a real-life situation, following exposure to the academic understanding of condominium management, when he purchased an Apartment himself. The Petitioner purchased an Apartment (6D, Paul Alukkas Eco Paradise, Stadium Link Road, Kaloor, Ernakulam 682018), in an Apartment Building, named 'Eco Paradise.'
- c. The Petitioner entered into an Agreement for Sale dated 21/02/2022, along with his mother Mrs. Deepa Nair with the builder of the said Apartment building M/s Paul Alukkas Developers Pvt. Ltd. The Builder agreed to sell "1.89% equivalent to 40.46 Sq.Mtr. undivided share, right, title, interest in Schedule A land together with Apartment No. 6B bearing Door No. 44/3882 A24 (Old No. 35/1617 D24) of Kochi Municipal Corporation measuring 158.39 Sq. Mtr. The Super Built Area (102.26 Sq. Mtr Carpet Area) along with a garden area having 12.63 Sq.Mts. in the building known as 'Eco Paradise' and usage right of one covered car parking marked as 31 on the basement floor.

- d. The Builder of the Project has executed sale deed in favor of the Petitioner and his mother Mrs. Deepa Nair as per Sale Deed No. 1260/2022 of Ernakulam SRO. A true copy of the Sale Deed No. 1260/2022 of Ernakulam SRO dated 28.05.2022 is produced herewith and marked as <u>Exhibit P1</u>.
- e. In Ext. P1, it is mentioned that the Occupancy Certificate of the building was obtained from the Cochin Municipal Corporation on 30-07-2021 and the project was registered with Respondent No. 3 in accordance with the provision of the Real Estate Regulation and Development Act (hereinafter referred to as 'RERA'), 2016 as it was an ongoing project. The Respondent No. 3 has issued registration under Section 3 of the RERA vide registration number K-RERA/PRJ/089/2021 dated 10-02-2021 for the project.
- f. The Petitioner came to know that in spite of the fact that Real Estate Projects consisting of Apartment Buildings are registered under the RERA are not submitted to the Provisions of Kerala Apartment Ownership Act-1983 (Hereinafter referred to as 'KAOA'). It has also come to his notice that there is no regulatory mechanism to compel the Promoters of the Apartment Building to submit a declaration in accordance with Section 2 of the KAOA. He has also come to know that not even a single Apartment Building has been submitted to the provisions of the KAOA, even after 31 years of the act coming into force. He also found that Section 2 of the KAOA is repugnant to the provisions of the RERA, and the former is void to a great extent. The Petitioner found that judicial intervention

is the only method by which the provisions of the KAOA could be made compatible. Hence this Public Interest Litigation has become necessary.

- g. The Petitioner had not voiced any grievances against the promoters of his Apartment Building. The Petitioner's promoters, like others, have not made any Declaration under the KAOA. There is no regulatory mechanism in existence that compels them to do so. As a natural consequence, the Petitioner's promoters also did not execute and register the declaration, as was done by other promoters. Consequently the Apartment along with the proportionate undivided title in common areas were transferred to the apartment owner, in violation of Section 17 of RERA. They also did not resort to the local law (namely, KAOA) in the matter of title transfer.
- h. It has been pointed out that the Petitioner's Promoter does not stand alone, as none of the apartment buildings in the State have been submitted to the provisions of the KAOA after its enactment about 31 years ago. The Petitioner does not have any private interest in the matter other than attempting to implement a law, through court intervention which has been designed to provide exclusive Ownership for the Apartment in an Apartment building, and protect the interest of the Apartment Owners in the state, generally.

About Kerala Apartment Ownership Act (KAOA)

i. The KAOA was enacted by the Kerala State Legislature as (Act 5 of 1984). The statement of objects and reason is relevant for further discussion in this writ petition; therefore, the same is extracted below:

"Lands have become dear in the principal towns and cities in the State and consequently independent house-sites in such areas are beyond the means of even people having moderate income. Provision of house sites for construction of independent houses also results in un-economic urban land utilization. Further, there is scarcity of lands utilization. Further, there is scarcity of lands in the cities for house constructruction purposes. Therefore, it has become necessary to construct apartments (flats) in a single building. To promote the construction of such buildings it is necessary to provide for the Ownership of such individual Apartments and to make such Apartments heritable and transferable property. So that the residents of such buildings can secure loans from institutions the Life Insurance Corporation of India. But, there is no law in the State which enables the occupants of the Apartments to acquire Ownership and marketable title to their Apartments.

The Bill seeks to enact a law for the purpose.

j. Similarly, the preamble of the KAOA may also be relevant for the discussions in this writ petition; therefore, the same is extracted below.

PREAMBLE - Whereas it is expedient to provide for the Ownership of an individual Apartment in a building and to make such Apartment heritable and transferable property, and

- to provide for such matters connected with the purposes aforesaid.
- k. A closer analysis of the Statement and Objects would go to show that a different type of immovable property is created by the KAOA. This type of property provides for not only exclusive ownership in apartment buildings but also undivided title in the common areas. The important feature of the Apartment is that it will be heritable and transferable property. We will find that Section 26 of the KAOA, regarding the application of the TP Act, also provides for preservation of this type of property. Section 14 (2) of KAOA, on the other hand, provides for the consequence of non application of the KAOA

Section 26. Application if Transfer of Property Act.

For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882 (Central Act 4 of 1882), shall in so far as they are not inconsistent with the provisions of this Act, apply to every Apartment together with its undivided interest in the common areas and facilities appurtenant to such Apartment, as those provisions apply in relation to any immovable property, and the provisions of this Act shall take effect notwithstanding anything to the contrary in any contract.

Section 14 Exclusion from provisions of Act

1 xxx

(2) Upon the exclusion of the property from the provisions of this Act, the property shall be deemed to be owned in common by the Apartment Owners, and the undivided interest in the property owned in common which shall apertian to each Apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

1. The KAOA was enacted for the purpose of condominium management or the management of apartment buildings, where apartments are owned by the Apartment Owners.. It is a concept that originated in the west, followed by Maharashtra and a few other Western states. An understanding of the history and features of similar laws in other parts of the world may be helpful in interpreting the provisions of the KAOA.

c. IMPORTANCE OF CONDOMINIUM OWNERSHIP HOUSING THROUGH THE LENS OF UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

- a. The International perspective on condominium ownership is crucial to understanding the legal context in the case of the Petitioner put forth. The United Nations Economic Commission for Europe has developed Guidelines titled 'Condominium Ownership of Housing for Countries in Transition' ("Guidelines").
- b. These Guidelines define the concept of a 'Condominium' and the application of 'Condominium Ownership' to various forms of real property, including multi-flat residential buildings, buildings with mixed-use purposes, and various connected buildings for residential, mixed, or non-residential use. The

Guidelines emphasize the importance of 'jointly owned parts', which include shared property and infrastructure serving multiple units within a condominium. They advocate the establishment of an 'owner association', stressing the mandatory membership of all condominium unit owners.

c. The introduction of these guidelines underscores the success of condominium Ownership in Western Europe and North America and its relevance to countries in transition. Naturally, the countries in transition include India and the state of Kerala, which have similar laws as the KAOA. These guidelines address the challenges and solutions associated with condominium ownership with the ultimate goal of ensuring owner satisfaction and effective housing market operations in countries undergoing transition. A true copy of the Guidelines on Guidelines on the Management and Ownership of Condominium Housing published by the United Nations Organisation is produced as **Exhibit P2.**

d. <u>HISTORY OF CONDOMINIUM MANAGEMENT LAWS IN INDIA</u>

a. The History of condominium management laws in India can be traced back to the enactment of specific legislation in various states. In Maharashtra, the state legislature responded to the acute shortage of housing and growing issues surrounding the promotion, construction, sale, management, and transfer of ownership-based flats in several areas. This led to the Maharashtra Ownership Flats (Regulation of the Promotion of

Construction, Sale, Management, and Transfer) Act of 1963 ("Maharashtra Act"). This statute addresses the general responsibilities of Apartment building Promoters, outlines the rights of allottees, and provides provisions for the management of common properties through the formation of an Association of Allottees. Notably, Section 10 of the Maharashtra Act is of particular significance, and the relevant portion is extracted below for reference;

b. 10. Promoter to take steps for formation of co-operative society or company 10.[(1)] As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the Promoter shall within the prescribed period submit an application to the Registrar for registration of the organization of persons who take the flats as Co-operative society or,: as the case may be, as a company; and the Promoter shall join, in respect of the flats which have not been taken, in such application for membership of a Co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the Promoter to dispose of the remaining flats in accordance with the provisions of this Act: Provided that, if the Promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the Competent Authority may, upon receiving an application from the persons who have taken flats from the said Promoter, direct the District Deputy

Registrar, 1961. Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society:

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants, request and giving the concerned Promoter a reasonable opportunity of being heard.]. [(2)] If any property consisting of building is constructed or to be constructed [and the Promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing and registering a Declaration as provided by that Act] then the Promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

c. Section 10(2) of the Maharashtra Act makes reference to the Maharashtra Apartment Ownership Act of 1970 (hereinafter referred to as MAOA). This Section specifies that if a property comprises one or more buildings, whether already constructed or planned for construction, and the Promoter subjects such property to the provisions of the Maharashtra Apartment Ownership Act of 1970 by executing and registering the required declaration, then the Promoter must duly inform the registrar as defined in the Maharashtra Cooperative Act. In such cases, it is not legally permissible.

d. A comparison of Sections 11(4)(e) of the RERA Act and Section 10 of the Maharashtra Act reveals that local laws governing the formation of associations and the transfer of title to common property rights correspond to the respective state's Apartment Ownership Laws and applicable regulations. A true copy of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act of 1963 is produced herewith and is marked as Exhibit P3.
A true copy of the Maharashtra Apartment Ownership Act 1970 is produced herewith and is marked as Exhibit P4.

e. THE HURDLES IN ENFORCEMENT OF Apartment OWNERSHIP LAWS IN INDIA: A COMPARISON

a. As mentioned in the previous paragraph, Maharashtra was the pioneering State in India to enact condominium management laws in the form of the Maharashtra Act of 1963 and the MΛΟΛ. Several other states, such as Uttar Pradesh and Kerala have also adopted similar statutes, with minimal alterations specific to their regions. Nevertheless, it is worth noting that most of these states, including Kerala, have not implemented a law that precisely mirrors the Maharashtra Act. The Apartment Ownership Laws in India, including those in the state of Kerala, encountered several legal challenges, primarily stemming from provisions related to the Act's application to Apartment projects. Many state Apartment Ownership laws enforces the rights of Apartment Owners in two different ways:

- (1) Dependent on Execution and Registration of a Declaration
- (2) Execution of Deed of the Apartment by the Promoter.
- b. Dependent on Execution and Registration of a Declaration:
 In some states, the rights of Apartment Owners are contingent upon the execution and registration of a declaration. This declaration typically signifies the intent to submit property to the provisions of the respective Apartment Ownership Act.
- c. Execution of Deed of Apartment by the Promoter: Another way of securing the rights of Apartment Owners is the execution of a Deed of Apartment by the Promoter. This deed promulgates essential particulars related to the Apartment and its Ownership, and it often needs to be executed and registered in accordance with the legal requirements outlined in the relevant Apartment Ownership Act.

APPLICATION OF THE APARTMENT OWNERSHIP ACT. DEPENDENT ON EXECUTION AND REGISTRATION OF A DECLARATION

d. Provisions concerning the application of Apartment Ownership laws vary across different states and display notable distinctions. In states such as Maharashtra, Karnataka, and Kerala, for instance, the Act mandates the execution and registration of a declaration by either the sole owner or all owners involved, as a prerequisite for bringing a property under the purview of the Apartment Ownership Act. The specific provisions within the Apartment Ownership Act for these states are presented below for easy reference.

- i. Maharashtra
- ii. Karnataka
- iii. Kerala
- e. It is worth emphasizing that in Maharashtra and Karnataka, corresponding statutes already exist, regulating the promotion, construction, sale, and other aspects of Apartment Buildings or Condominiums. In the case of Maharashtra, it was the Maharashtra Act, and for Karnataka, it was the Karnataka Apartment Ownership Act of 1972 (hereinafter referred to as KARAOA).
- f. Notably, the High Court of Karnataka has examined the question of the application of the KARAOA and the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1972. This issue was discussed in the order dated 8th September 2021 in CRP No. 96/2021, in the case of SHANTHARAM PRABHU v. MR K DAYANAND RAI. A true copy of the 'LiveLaw' report titled 'Once An Apartment is Subjected To Karnataka Apartment Ownership Act, Karnataka Ownership Flats Act Won't Apply: High Court' is produced herewith and is marked as **Exhibit P5**. A true copy of the Judgment dated 8th September 2021 in CRP No. 96/2021, in the case of SHANTHARAM PRABHU v. MR K DAYANAND RAI passed by the Karnataka High Court is produced hereith and is marked as **Exhibit P6**.

f. APPLICATION OF THE APARTMENT OWNERSHIP ACT NOT DEPENDENT ON EXECUTION AND REGISTRATION OF DECLARATION

- a. A Detailed analysis of the provision regarding the application regarding the Apartment Ownership Act with reference to the states of Delhi, Gujarat and Uttar Pradesh and also the scheme of the said statutes, in order to understand the approach adopted by these states, insofar the rights of Apartment Owners are concerned would be helpful.
- b. Section 2 of the Delhi Apartment Ownership Act 1986 ("Delhi Act") reads as follows;
 - 2. Application.—The provisions of this Act shall apply to every Apartment in a multi-storeyed building which was constructed mainly for residential or commercial such other purposes as may be prescribed, by—
 - (a) any group housing co-operative society; or
 - (b) any other person or authority, 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), 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.

 c. Section 2 of the Uttar Pradesh Apartment (Promotion Of Construction, Ownership And Maintenance) Act, 2010 reads as follows;

2- Application

The provisions of this Act shall apply to all buildings having four or more Apartments in any building constructed or converted into Apartment and land attached to the Apartment, whether freehold or held on lease excluding shopping malls and multiplexes.

- d. Several distinctive characteristics of the Apartment Ownership Laws in Delhi, Gujarat, and Uttar Pradesh stand out. In the context of the Delhi Act, the rights of Apartment Owners for exclusive Ownership and possession of their Apartments do not hinge on the execution and registration of a declaration by either the sole owner or all Owners. The exception lies in cases involving buildings with only two or three Apartments, as stipulated in the Proviso to Section 2 of the Delhi Act.
- e. Section 13 of the Delhi Act is significant, as it pertains to the Deed of Apartment, which must be executed by the Promoter. This deed must include specific particulars outlined in Clause 13(1)(b)(i) to (xi). The Act requires that for allotments, sales, or transfers occurring after the Act's commencement, the Deed of Apartment must be executed and registered within three months from the date of such transactions. In cases of

- allotments, sales, or other transfers made prior to the commencement of the Act, the execution and registration must occur within six months from the commencement date. Importantly, the Delhi Act safeguards all rights available to Apartment Owners and the association of Owners.
- f. Turning to the Gujarat Ownership Flats Act of 1973, this legislation consists of three parts. Part I focuses on the regulation and promotion of the construction, sale, management, and transfer of Ownership of flats. Part II addresses the provision for the Ownership of Apartments, and Part III encompasses general provisions, including offenses committed by Promoters.
- g. Section 10 of the Gujarat Ownership Flats Act, 1973, is particularly significant as it outlines the Promoter's obligations regarding the formation of the Association of Allottees. Section 10(2) assumes importance as it pertains to the execution of a declaration and Deed of Apartment in accordance with Part II of the Act. Section 10 of the Gujarat Ownership Flats Act 1973 is being extracted as follows;

Section 10. Promoter to take steps for formation of cooperative society or company.

(1) As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the Promoter shall within the prescribed period submit an application to the Registrar for registration of the organization of persons who take the flats, as a co-operative society or, as the case may be, as a company; and the Promoter shall join, in

respect of the flats which have not been taken, in such application for membership of a co-operative society or, as the case may be, of a company. Nothing in this section shall affect the right of the Promoter to dispose of the remaining flats in accordance with the provisions of this Act.

- (2) If any property consisting of building or buildings is constructed or to be constructed and the Apartment takers propose to submit the Apartments to the provisions of Part II by executing Declarations and Deeds of Apartments as required by that Part, then the Promoter shall inform the Registrar accordingly, and in such cases it shall not be lawful to form any co-operative society or company and each Apartment owner shall be entitled to the exclusive Ownership and possession of his Apartment as provided in Part II.
- h. Coming to the state of Uttar Pradesh, it is notable that it has two distinct types of Apartment Ownership Laws. First, the Uttar Pradesh Ownership of Flats Act, 1975 which was later repealed vide Section 34 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act of 2010. This transition from the earlier Act to the 2010 Act signifies a paramount shift in the legal landscape, reflecting evolving norms and requirements in the management, ownership, and maintenance of apartments. The latter Act, the Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act of 2010, likely incorporates modern provisions and addresses the changing dynamics of Apartment

Ownership and Management, emphasizing the need for updated regulations and protections for Apartment Owners and associations. This transition underscores the state's commitment to adapt and provide a robust legal framework to safeguard the interests of Apartment Owners while promoting responsible construction, Ownership, and maintenance practices.

g. <u>COMPARING KERALA'S APARTMENT OWNERSHIP LAWS</u> <u>WITH APARTMENT OWNERSHIP LAWS OF OTHER</u> <u>STATES.</u>

- a. The KAOA shares similarities with Apartment Ownership Laws in Maharashtra, Haryana and Karnataka. However, Kerala did not have a corresponding law to regulate the development and sale of flats. Additionally, unlike states such as Delhi, Gujarat, and Uttar Pradesh, Kerala lacked comprehensive legislation covering the entire realm of Apartment Ownership. In the KAOA, Section 2 addresses the application of the Act, stipulating the requirement for the registration of a declaration.
- b. This declaration must be executed either by the sole owner or by all the Owners, in accordance with the provisions outlined in Section 11 of the KAOA. Section 2 is extracted for an easy reference. Section 2. Application of the Act.-This Act applies only to property, the sole owner or all of the Owners of which submit the same to the provisions of this Act by duly executing and registering a declaration as hereinafter provided: Provided that no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used, for residential purposes.

- c. An intriguing scenario arises because of the peculiar provision requiring either the sole owner or all the owners to make the declaration, as evident from a careful reading of Section 5 of the KAOA. It's essential to recall that the KAOA was enacted with the primary objective of ensuring that Apartment Owners attain exclusive Ownership and the ability to make their Apartments heritable and transferable property.
- d. In this context, when examining Section 5 of the KAOA in connection with the aforementioned preamble, it becomes apparent that an Apartment owner is entitled to exclusive ownership and possession only if the Apartment is submitted to the Act's provisions as outlined in Section 2. Furthermore, a Deed of Apartment must be executed by the respective Apartment owner in a manner prescribed for this purpose.
- c. What makes this scenario intriguing is that a conjoint reading of the preamble and Section 5 leads to the conclusion that if either the sole owner of the property (typically the Promoter) or all the other Apartment Owners fail to execute the declaration and submit the property to the provisions of KAOA, individual Apartment Owners cannot attain exclusive Ownership or make their Apartments heritable and transferable property. This has implications not only for Ownership but also for other benefits available to Apartment Owners through the application of the Act.

h. THE LACK OF REGULATORY PROVISIONS IN KAOA

a. Even though a 'Competent Authority' is defined under section 3 (j) of KAOA, there is no provision in the Act dealing with

powers and functions of the Competent Authority. It may be recalled that all other states where similar Apartment Ownership laws are enforced have corresponding statutes regulating the sole owner or all the Owners to comply with such Apartment Ownership laws. In certain other Apartment Ownership acts of similar nature the Promoter or the sole owner is cast with the duty to make execute and register declaration while proposing to construct Apartment Buildings to be owned by individual Apartment Owners. The Lack of such a regulatory mechanism is the reason for the unconstitutionality of section 2 of the KAOA.

i. ENACTMENT OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016 (RERA)--IT OBJECTIVES AND PURPOSE.

a. The Parliament has enacted the RERA, with the objects that could be traced from the Preamble and the Statement of objects and reasons. The same are extracted below for an easy reference.

b. PREAMBLE OF RERA

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, Apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or order of the Real

Estate Regulatory Authority and the Adjudicating Officer and for matters connected therewith or incidental thereto."

c. STATEMENT OF OBJECT AND REASONS OF RERA

The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the county. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to be buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and Promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums.

In view of the above, it has become necessary to have a Central legislation, namely, the Real Estate (Regulation and Development)Bill, 2013 in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, Apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish Real Estate Appellate Tribunal to hear

appeals from the decisions, directions or orders of the Authority.

j. RERA AND THE APPLICATION OF THE DOCTRINE OF REPUGNANCY

- a. Unlike KAOA,RERA has a universal application. The RERA is enacted to ensure efficiency and transparency in the sale of plots, Apartments or buildings. Evidently, the RERA occupies the same field over which it has been enacted. Hence the doctrine of repugnancy as provided under the Article 254(1) of the Constitution of India would apply and make the provision relating to application of KAOA void to the extent it prescribes a conditional application of the Act.
- b. The Hon'ble Supreme Court of India in Forum for People's Collective Efforts (FPCE) vs. State of West Bengal |WPC 116 of 2019| considered the question of repugnancy of a state law enacted by the West Bengal legislature with reference to RERA and held that the West Bengal Housing Industry Regulation Act, 2017 (WB-HIRA) is repugnant of RERA and hence unconstitutional. In the said judgment the Hon'ble Supreme Court has clarified that both RERA and WB-HIRA are enacted by virtue of the constitutional mandate contained under Entry 6 & 7 of List 3 (Concurrent List) under Schedule 7 of the Constitution of India.
- c. Necessarily it follows that KAOA enacted with the object of providing exclusive Ownership over individual Apartment and making such Apartment heritable and transferable property,

and mandating the execution and registration of a declaration for the application of the act, would derive the legislative competence from Entry 6 & 7 of List 3 of Schedule 7 of the Constitution of India. Hence the provisions of the KAOA must pass the test of repugnancy prescribed by the Hon'ble Supreme Court as provided in the above judgment.

k. TEST OF REPUGNANCY

- a. The test of repugnancy, as enunciated in the Judgments of the supreme Court in Indu Bhushan Bose V Ramsundari Devi 1969
 2 SCC 289 are summarized as follows:
 - i. There may be a direct inconsistency or conflict between the actual terms of the competent statutes;
 - ii. Even if there is no direct conflict, where Parliament has intended to occupy the entire field by enacting an exhaustive or complete code, the state law in the same field would repugnant and inoperative; and
 - iii. A conflict may arise whether the state legislature has sought to exercise its powers over the same subject matter as legislation by the parliament.

1. REPUGNANCY OF SECTION 2 OF KAOA

a. A detailed analysis of the provisions of the KAOA with reference to RERA got to show that section 2 of the KAOA to the extent that it requires the sole owner or all the owners of the property to execute and register declaration as prescribed in the act, for the application of the act under section 2 is unconstitutional.

- b. It is important here to notice that the state enactment, KAOA, has not received the presidential assent as provided in the Article 254(2) of Constitution of India in order to preserve the constitutionality of the statute.
- c. This Hon'ble Court in a case were section 2 of the KAOA was under challenge, and the court directed as follows;
 - i. I leave liberty to the petitioners in these cases, as also any other person who may be interested, to appear before the Committee on 22.02.2024 and in the subsequent meetings and present their versions, including suggestions before it, in a written form, to be presented through its Convener.
 - ii. The Committee will on receipt of the afore suggestions and after fixing a time frame for completion of same, which shall be a minimum of two weeks after 22.02.2024 deliberate upon the issues, after hearing every necessary party and will take a final decision as to the recommendations to be made before the Government, viz a viz, the points of reference given to them. A final report in this regard, containing their recommendations, shall be placed by the Committee before the Government within a period of three months from 22.02.2024.
 - iii. The Government, on receiving the recommendations from the Committee, will consider the same and take a final decision, including as to the amendment to be carried out with respect to the relevant legislations, or to any modifications/requirements to be brought in, leading to

appropriate action being completed on it, as expeditiously as is possible, but not later than three months thereafter. In the event any amendment is found warranted, action for same shall be completed; for which purpose, an additional two WPC 34824/14 & connected 15 months is hereby granted.

- iv. Until such time as the afore is completed and necessary orders issued by the Government in terms of directions (c) above, the interim order granted in these cases will continue to be in force; with a further clarification that any registration of declarations made under the Apartment Ownership Act, 1983, without the consent and concurrence of all owners, as far as WP(C)No.9317/202 is concerned, will not visit the petitioners therein or any other unwilling person, with any coercive consequences. This will, however, depend upon the final decision to be taken by the Government in terms of the afore directions.
- v. Needless to say, the liberty of the petitioners to approach this Court for any valid reason, either during the pendency of the afore ordered exercise or thereafter, are left open; for which purpose, all rival contentions are also left undecided.

A true copy of the judgment dated 6th February 2024 in WP(C) No. 9317/2021 passed by this Hon'ble Court is produced herewith and is marked as **Exhibit P7**.

m. PRESERVATION OF KAOA AS 'LOCAL LAW' UNDER RERA

a. It is important here to note that RERA also preserves the application of local laws such reference can be seen in section 11 (4) (e) and 17. Unfortunately local law is not defined under RERA. However in Annexure A of Kerala K-RERA Rules 2018 there is a specific reference to KAOA,1983 at clause No.20 of the model Agreement for Sale. It may be noted that the parties are not competent to modify the terms of the model Agreement for Sale in Annexure A of K-RERA Rules 2018. Clause 20 of Annexure A is a clear indication that the term "local law" referred to by RERA is referable to KAOA. Clause 20 is extracted herein below for easy reference:

"The Promoter has assured the Allottees that the project in its entirety is in accordance with the provisions of the Kerala Apartment Ownership Act 1983(5 of 1984)"

- b. Section 11(4)(e) and section 17 are the obligations of the Promoter. Section 11(4)(e) mandates that the Promoter shall enable the formation of an Association of Allottees within a period of three months of the majority of allottees having booked their plot, Apartment or building. It is also an obligation of the Promoter to execute a registered conveyance deed of the Apartment, plot or building as the case may be in favor of the allottee along with the undivided proportionate title in the common areas to the Association of Allottees as provided in the section 17 of the Act.
- c. Section 17 deals with transfer of title, in favor of the allottee and the Association of Allottees and for handing over the

physical possession of the plot Apartment or building to the allottees and common areas to the Association of Allottees. Section 17 (1) has a proviso, where local laws are accommodated.

- d. The local law for the purpose of section 11(4) (e) and section 17 of RERA, is KAOA insofar as Kerala is concerned. The proviso to Section 17 (1), enables KAOA to operate, insofar as transfer of individual Apartments in favor of the allottees, including the proportionate undivided title in the common areas. While Section 17 of RERA deals with conveyance of individual Apartments in favor of allottees and proportionate undivided right of common areas to the association. However the above purpose is defeated by the repugnancy section 2 of KΛOΛ, with reference to RERA.
- e. Section 88 and 89 of the RERA, may also have some relevance in this context, hence the same are also extracted for an easy reference.

Section 88 "The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

Section 89 is also extracted here for easy reference: "The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

n. Conflict between Section 2 of KAOA with reference to the RERA

- a. In Spite of the preservation of the local laws in Section 11(4)
 (e) and (f), Section 17 and Section 88 and Section 89 of RERA,
 Section 2 of KAOA, continues to have a conflict with RERA.
 The conflict is better explained in the following paragraphs
- b. A reading of section 2 of KAOA would show that either the sole owner of the Apartment building or all the Owners shall execute and register the declaration as prescribed by the Act. Therefore the objectives of the Act could be achieved only if the sole owner or all the Owners perform a positive act of executing and registering a declaration. A corollary of the statement is that the entitlement of an allottee of an Apartment for exclusive Ownership as well as heritable and transferable rights solely depends upon the act of sole owner or all the Owners.
- c. However, the RERA has a universal application. It deals with plots, buildings and apartments. It provides for a scheme to deal with things that are covered by KAOA. However, RERA preserved KAOA, treating the latter as a local law. It is however true that the nature of rights provided under RERA and KAOA are different. Under RERA, the allottee is entitled only to the Apartment and not the common areas, however under KAOA, the Apartment owner is entitled for not only the Apartment, but also the for proportionate undivided right in the common areas of the land and building. A perusal of the comparative table may be good for a proper understanding of the conflict between the KAOA and RERA.

Comparative Table

SI No.	RERA	KAOA
1.	An Act to regulate the Plots, Apartments and Buildings	An Act intended to to create Ownership over Apartment and to make such Apartment heritable and transferable property
2.	The Allottee is entitled for exclusive Ownership over the Apartment in the building, however, proportionate undivided title is not transferred to him	The Allottee is entitled to exclusive Ownership over the Apartment along with proportionate title in the common properties
3.	The Association is entitled to proportionate undivided title in the common areas of the real estate property	The Associations are not entitled for proportionate undivided title in the common areas of the Apartment Building. But the Association may manage the common properties in accordance with the Declaration and byelaws
5.	Source of Power to Legislate can be traced from Entry 7 and 8 of the Concurrent List.	Source of Power to Legislate can be traced from Entry 7 and 8 of the Concurrent List.
6.	Central Legislation occupying the field, occupied by the KAOA. However, KAOA is preserved in the RERA, hence both the laws can operate simultaneously.	State Legislation occupying the field.

7.	Applies to Plots, Apartments and Buildings. Application of the Act is not dependent on any act of any stakeholder.	The Application of the Act is subject to the execution and registration of the Declaration by the Sole Owner or All the Owners.
8.	The Act has a Universal Application	The Act has a conditional application, given the nature of Section 2 of KAOA. Hence Section 2 of KAOA is void as the same is repugnant to the prisons of RERA

o. Promoter's Obligation to assure compliance of KAOA

- a. RERA came into force on 01/05/2017, the date on which all the provisions of the Act were applicable. Any real estate property, where completion certificate has been issued by the competent authority after 01/05/2017 is liable to be governed by the provisions of RERA.
- b. Section 13 of RERA states for entering into a written agreement of sale between the Promoter and the allottee. Section 13(2) provides that the agreement to sale referred to in sub section 1 shall be in form as may be prescribed. Rule 10 provides that the agreement for sale mentioned in section 13 (2) shall be in the form in Annexure Λ.
- c. Clause 20 of Annexure A makes it a contractual obligation upon the Promoter to assure the allottee that the project in its entirety is in accordance with the provisions of KAOA. However in the state of Kerala despite such mandatory requirements, the provisions of the KAOA have not

- implemented the respective Promoters by executing a registering declaration as prescribed under the KAOA.
- d. Therefore, the RERA Authority is obligated to ensure that the Promoters of Real Estate Projects comply with the provisions of the KAOA. However, the Respondent No. 4 has not taken any steps to

p. Application of KAOA without executing and registering Declaration by the Promoter

- a. The KAOA is deemed to be applicable, even without the execution and registration of the Declaration by the sole owner or all the Owners. This aspect can be discussed with reference to the Petitioner's Apartment as an example.
- b. The petitioner's sale deed executed by his Promoter, with respect to Apartment No. 6D of Paul Alukkas Eco Paradise, Stadium Link Road, Kaloor, shows that the completion certificate of the Apartment Building was issued after 01/05/2017, and therefore the provisions of RERA its rules applicable to the property.
- c. The Application of RERA is retroactive. In Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and Ors. (11.11.2021 SC): MANU/SC/1056/2021 it was held as follows:
 - 54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At

the same time, it will apply after getting the on-going projects and future projects registered Under Section 3 to prospectively follow the mandate of the Act 2016.

- d. In the view of the retroactive of the RERA, the terms of the statutory form of Agreement for Sale (Annexure A in the K RERA Rules) would be deemed to have been used by the Promoter to enter into the Agreement for Sale with the Allottees. Consequently the Promoter has contractual obligations as contained in Clause 20 to ensure compliance of KAOA.
- e. In this context the dictum laid down by Supertech Limited Versus Emerald Court Owner Resident Welfare Association & Ors. (Civil Appeal No. 5041 of 2021) is applicable. The Hon'ble Supreme Court was considering the Uttar Pradesh Ownership of Flats Act 1975 to the Apartment building where the Promoter had a similar obligation to execute and register declarations in order to make applicable the provisions of the Uttar Pradesh Ownership of Flats Act 1975. The relevant paras of the above said judgment is extracted below for an easy reference:

"122. The UP 1975 Act has been described in its long title as "an Act to provide for matters connected with the Ownership and use of individual flats in buildings consisting of four or more flats". Section 2 of the Act states that the Act shall apply only to Owners who submit to the provisions of the Act by executing a declaration.

Section 2 reads as follows:

"2. Application of the Act. — This Act applies only to property, the sole owner or all the Owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to section 10:

Provided that no property shall be submitted to the provisions of this Act, unless it is actually used or is proposed to be used for residential purposes: Provided further that the sole owner or all the Owners of the land on which building is situated may submit such land to the provisions of this Act with a condition that he or they shall grant a lease of such land to the Owners of the flats, the terms and conditions of the lease being disclosed in the declaration either by annexing a copy of the instrument of lease to be executed to the declaration or otherwise."

123. Section 3(d)26 contains the definition of common area and facilities. Section 427 stipulates that a flat shall be transferable and heritable property. Each owner of a flat is entitled to exclusive Ownership and possession of their flat in accordance with the declaration. Moreover, a flat together with its undivided interest in the common areas and facilities shall be heritable and transferable immoveable property. Further, a flat together with its undivided interest in the common areas and facilities shall not be partitioned or sub-divided for any purpose.

124. Section 5 provides for common areas and facilities in the following terms: "5. Common areas and facilities. — (1) Each owner of a flat shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. (2) The percentage of the undivided interest of each owner of a flat in the common areas and facilities as expressed in the Declaration shall not be altered without the consent of all the Owners of the flats expressed in an amended Declaration duly executed and registered as required by this Act. (3) The percentage of the undivided interest in the common areas and facilities shall not be separated from the flat to which it appertains, and shall be deemed to be conveyed or encumbered with the flat even though such interest is not expressly mentioned in the conveyance or other instrument. (4) The common areas and facilities shall remain undivided, and no suit shall lie at the instance of any owner of the flat or other person for partition or division of any part thereof, unless the property have been withdrawn from the provisions of this Act. (5) Each owner of a flat may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the Owners of other flats. (6) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the provisions of this Act and the bye-laws. (7) The Association of Owners of flats shall have irrevocable right to be exercised by the Manager or the Board

of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary to have access to each flat from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other flats." (emphasis supplied) Under sub-Section (2) of Section 5, the percentage of the undivided interest of each owner of a flat in the common areas and facilities, as expressed in the Declaration, shall not be altered without the consent of all the Owners of the flats expressed through an amended Declaration which shall be executed and registered under the Act. Section 1028 provides for the contents of such a Declaration. Further, Section 1129 envisages that all the Owners of flats may withdraw a property from the provisions of the Act by an instrument executed to that effect, following which it shall be deemed to be owned in common by the Owners of flats wherein the share of each such owner shall be the percentage of undivided interest previously owned in the common areas and facilities.

125. The submission urged on behalf of the appellant is that the UP 1975 Act has no application to the present case, in view of the provisions of Section 2. Section 2, as we have seen, specifies that the Act applies only to a property, the sole owner or all the Owners of which, submit it to the provisions of the Act by duly

executing and registering a Declaration setting out the particulars as contained in Section 10.

126. Undoubtedly, in this case there was no declaration in terms of Section 2. However, significantly, the lease deed which was executed by NOIDA in favor of the appellant on 16 March 2005, contains a stipulation in clause II(h) in the following terms:

"II) AND THE LESSEE DOTH HEREBY DECLARE AND COVENANTS WITH THE LESSOR IN THE MANNER FOLLOWING: [...] h) The Lessee/sub-lessee shall make such arrangement as are necessary for maintenance of the building and common services and if the building is not maintained properly the Chief Executive Officer, Noida or any officer authorized by him will have the power to get the maintenance done through the Authority and recover the amount so spent from the Lessee/Sub-Lessee. The Lessee/Sub-Lessee will be individually and severally liable for payment of the maintenance amount. The rule/regulation of U.P. Flat be Ownership | Act. 1975 shall applicable on lessee/sub-lessee." (emphasis supplied)

127. Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, advanced a submission that the last sentence of clause II(h) must be read together with the entirety of the clause, which relates to the maintenance of the building and common services. Clause II(h) states that in the event the

building or common services are not maintained properly, NOIDA would be entitled to ensure the maintenance and recover the amount from the lessee/sublessee.

128. However, the application of clause II(h) cannot be brushed away on this basis, particularly since the sentence imposing the application of the UP 1975 Act on the lessee/sublessee must bear some meaning and content. In this context, during the course of his submissions, Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of the RWA, has placed on the record a copy of the registered sub-lease executed on a tripartite basis by NOIDA, with the appellant as the lessee and the flat buyer as the sub-lessee. Some important provisions of this deed of sublease are: (i) Clause 16 contemplates that the occupant of the ground floor would be entitled to use a "sit-out area but the right of user shall be subject to the provisions of the UP Ownership Flat Act 1975"; (ii) Clause 17 recognizes the right to user of the occupant of the dwelling unit on the top floor, subject to the provisions of the same enactment; and (iii) Clause 27 envisages that all clauses of the lease executed by NOIDA in favour of the appellant on 16 March 2005 shall be applicable to the sub-lease deed as well.

129. In the backdrop of this provision, more particularly, clause II(h) of the lease deed which was executed by NOIDA in favour of the appellant on 16 March 2005, the appellant was duty bound to comply with the provisions of the UP 1975 Act. By submitting before this Court that it is not bound by the terms

of its agreement or the Act for want of a declaration under Section 2, the appellant is evidently attempting to take advantage of its own wrong.

- f. In view of the Hon'ble Supreme Court In Superttech (Supra) the provisions of KAOA, where the provisions relating to application is identical to Section 2 of the UP Act 1975, is bound to be declared to have application, notwithstanding the fact that the Promoter of the Apartment building or all the Apartment Owners failed to execute and register declaration as prescribed under KAOA. Hence the only conclusion that can be reached is that KAOA is universally applicable to all Apartment Buildings in the state of Kerala intended to be owned by individual Apartment Owners to issue directions.
- g. The provisions of Section 2 of the KAOA, is void to the extent it requires the sole owner or all the Owners to execute and register declarations, as prescribed under KAOA, since the provision is repugnant to the RERA. Hence, it is necessary that the interference of this Constitutional Court is warranted for the effective implementation of the KAOA.

In the circumstances, this public interest writ petition has been filed invoking Article 226 of the Constitution of India, on the following among other

GROUNDS

- **A.** It is submitted that Section 2 of the KAOA, is void to the extent it requires the sole owner or all the Owners to execute and register a declaration, in order to apply the Act.
- **B.** It is submitted that Section 2 of KAOA, to the extent it requires the sole owner or all the Owners, to execute and register a declaration, for the application of the Act, violates the fundamental right of the Apartment Owners in the State of Kerala, as provided under Article 14 and 21 of the Constitution of India. It also violates the right provided under Section 200A of the Constitution of India.
- C. It is pointed out that the sole owner, referred to in Section 2 of the KAOA is the Promoter as defined under RERA. Hence, Section 2, requiring the Promoter to execute and register a declaration, for the Application of KAOA, conflicts with the provisions of RERA, in the following manner.

I. Provisions in RERA

- Under Section 11(4)(e) it is the obligation of the Promoter to enable the formation of an Association of Allottees
- ii. Under Section 11 (4) (f) if the obligation of the Promoter to execute conveyance in favor of in favor of the Allottee and proportionate undivided title over the common areas to the Association of Allottees.
- II. Provisions in KAOA are enacted to provide for the Ownership of individual Apartments in a building and to make such Apartments heritable and transferable property. The object is

- the same as that sought to be achieved by virtue of Section 11(4) (e) and (f) and Section 17 of RERA.
- III. However, unlike RERA, KAOA would be applicable only if the Promoter as the Sole Owner or all the Apartment Owners execute and register the Declaration, in the manner prescribed. Hence, Section 2 of KAOA, to the extent requiring the execution and registration of Declaration, by sole owner or all the Owners is repugnant to the provisions of RERA and hence void.
- **D.** It is further humbly submitted that Section 2 of KAOA, imposes an impossible condition, to be performed, for the application of the Act. It is interesting to note that the KAOA offers a valuable right to Ownership over the Apartment to the Apartment owner. Moreover, the Act is intended to provide for the Ownership of an individual Apartment in a building and to make such Apartment heritable and transferable property. Hence, Section 2 of KAOA is void, for the reason that it violates the 'Doctrine of impossibility'.
- E. It is submitted that the 'Doctrine of Impossibility', is enshrined under Section 56 of the Indian Contract Act, 1872. Section 56 of the Indian Contract Act, provides that an agreement to perform an act, impossible by itself is void. It may be recalled from the pleading in the statement of facts above, it is clear that the state legislature has failed to enact a regulatory statute or to incorporate regulatory provisions in KAOA, compelling the Promoters, as sole Owners, of Apartment Buildings to execute and register declaration before transferring title to the Apartment Owners. Consequently, the provisions of Section 56 of the Indian Contract Act, squarely applies

to the situation, making the provision void. Section 56 of the Contract Act 1872 along with its illustration are extracted before for a easy reference:

Section 56 of the Contract Act6. An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.— Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the nonperformance of the promise.

Illustrations

- (a) A agrees with B to discover treasure by magic. The agreement is void.
- (b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- (c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.

- (d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- (e) A contracts to act at a theater for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions thus becomes void.
- F. It is important here to notice that the Hon'ble Supreme Court State of Uttar Pradesh versus In Re Inhuman Condition at Quarantine Centres and for Providing Better Treatment to Corona Positive (LL 2021 SC 258) has held that the 'Doctrine of Impossibility' is applicable to court orders, as well. The Court has made the following observations:

"Further while again appreciating the efforts of the judges of the High Court in looking to the matter in depth while passing orders, we are of the opinion that the High Court should normally consider the possibility of the implementation of the directions given by it, and such directions which are incapable of being implemented should be avoided. The doctrine of impossibility in our view, would be equally applicable to Court Orders.

- **G.** It is further humbly submitted that Section 2 of KAOA is repugnant to the provisions of RERA. KAOA and RERA occupy the same field in the concurrent list, namely entry 6 and 7 of List III of Schedule VII of the Constitution of India. Entry 6 and 7 of the concurrent list are extracted below for an easy reference:
 - **Entry 6**: Transfer of property other than agricultural land; registration of deeds and documents.

Entry 7: Contracts, including partnership, agency, contracts of marriage and other special forms of contracts, but not including contracts related to agricultural land.

Therefore, Article 254(1) of the Constitution of India, is applicable, incase of any conflict between RERA and KAOA. The Presidential Assent, as provided under Article 254 (2) has not been obtained, with respect to KAOA. Hence, any conflict leading to Repugnancy of KAOA, with reference to RERA, is void.

- H. It is therefore submitted that Section 2 of KAOA, to the extent it requires the sole owner or all the Owners to execute the Declaration for its application, is repugnant to RERA, as the latter regulate the sale of plots **Apartments** and buildings. Hence the restriction contained in Section 2 of KAOA, for the application of its provision is repugnant to RERA, and hence the restriction contained in the State Act is repugnant and hence void.
- It is further humbly submitted that the unconstitutionality of Section 2 of KAOA, can be remedied by application of the Doctrine of 'Reading Down', as formulated by the Hon'ble Supreme Court of India. In the Authorized Officer, Central Bank of India vs. Shanmugavelu (2024 LL(SC) 85, the Supreme Court elaborated on the concept of Reading Down as follows:

"Reading Down" a provision is one of the many methods the court may turn to when it finds that a particular provision, if for its plain meaning, cannot be saved from invalidation. So, by restricting or reading it down, the court makes it workable to salvage and save the provision from invalidation. The rule of "Reading Down" is only for the limited purpose of making a provision workable and its objective achievable."

Section 2 of KAOA, as it stands now, is unconstitutional, however by reading down the provision, the same can be made constitutional. This exercise may not otherwise affect the other provisions of KAOA. Hence, it is appropriate that this Hon'ble Court may Read Down the provision as follows:

"This Act applies only to property, the sole owner or 'all' (the word 'all' may be read as 'any of') the Owners of which submit the same to the provisions of this Act by duly executing and registering a declaration as hereinafter provided:

Provided that no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used, for residential purpose"

- J. It is submitted that the 'Reading Down' of the above provision in the manner suggested above ground, will be helpful in achieving its objectives of KAOA.
- K. It is submitted that apart from the various benefits that the Act offers, it also provides for the administration of the property in accordance with the byelaw, by the Managing Committee. One of the statutory obligations of the Secretary/Managing Committee under Section 13(6) of KAOA, is to send the Declaration and Deed of Apartment, together with a Memorandum to the Sub Registrar, for the Area. While 'Reading Down', Section 2 of KAOA, in the manner suggested

- above, will work consistent with Section 13(6) of KAOA and the other provisions of the Act.
- L. It is further submitted if such a Reading Down of if Section 2 of KAOA is not allowed, the formation of the Managing Committee, for the administration of the property, and sending of Declaration and Deed of Apartments executed by the Apartment Owners, to the Sub Registrar of the Area for registration, would become imposible. Otherwise, without the application of the Act, the formation of the managing committee and the administration of the property in accordance with the byelaws and forwarding the Declaration and Deed of Apartment, may be impaired.
- M.It is further humbly submitted that the unconstitutionality explained in the foregoing grounds, can be treated as difficulty in giving effect to the provisions of the Act. Therefore, it is only appropriate that the first respondent issue an order under Section 27 of the KAOA, in order to remove such a difficulty.

Section 27 of the KAOA, reads as follows:

- "Power to remove difficulties-(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything not inconsistent with the provisions of the Act which appear to them necessary or proper for the purpose of removing the difficulty.
- (2) Every order issued under sub-section (1) shall be laid, as soon as may be after it is issued before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following,

the Legislative Assembly makes any modifications in the order or decides that the order should not be issued, the order 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 done or omitted to be done under that order."

- **N.** It is further humbly submitted that the an order under Section 27 of the KAOA may provide contain the following:
 - 1. Define the powers and functions of the Competent Authority.
 - Powers may be given to the Competent Authority to ensure that the Promoter as the sole owner executes and register declaration before execution sale deed.
 - Power may also be vested with the Competent Authority to compel the Owners to execute and register declaration, in the manner prescribed.
 - 4. The order may include provisions in the similar manner as Section 24 A to C of the Haryana Apartment Ownership Act 1983. (penalties for failure on the part of the sole owner or any of the to execute and register declaration)

RELIEFS

Therefore it is most humbly prayed that this Hon'ble Court may be pleased to:

I. To declare that Section 2 of the Kerala Apartment Ownership Act 1983, is repugnant to the Real Estate (Regulation and Development) Act 2016, and is unconstitutional to the extent it requires the sole owner or all the Owners to execute and register declaration, in the manner prescribed, for the application of the Act.

II. To declare that inorder to overcome the unconstitutionality, of Section 2 of the Kerala Apartment Ownership Act 1983, the words "all the Owners' may be read as 'any owner' and consequently Section 2 of the Act shall be read as follows:

"This Act applies only to property, the sole owner or 'any of' the Owners of which submit the same to the provisions of this Act by duly executing and registering a declaration as hereinafter provided:

Provided that no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used, for residential purpose"

- III. To declare that the provisions of the Kerala Apartment Ownership Act 1983 is applicable to all Real Estate Projects in the nature of Apartment Buildings or Condominium type of Properties, covered under the provision of RERA, even if the Promoter as the sole owner or all the Owners of the said building, has not executed and registered declaration, as prescribed, in the light of the dictum laid down by the Hon'ble Supreme Court in 'Supertech Limited Versus Emerald Court Owner Resident Welfare Association & Ors. (Civil Appeal No. 5041 of 2021)
- IV. To issue a Writ of Mandamus or any other appropriate writ order or direction, compelling and commanding the Respondent No.4 to ensure that Clause 20 of Annexure A (standard form

Agreement for Sale) under the Kerala Real Estate (Regulation and Development) Rules 2018 is strictly complied by all the Promoters of the Apartment Buildings, registered under Section 3 of RERA.

- V. To issue a Writ of Mandamus or any other appropriate writ order or direction, compelling and commanding the Respondent No1, to direct the Competent Authorities appointed under KAOA, to take necessary further actions under KAOA, treating that the Act is applicable to all Real Estate Projects comprising of Apartment Buildings, to which RERA is applicable, without insisting for the execution and registration of Declaration by the sole owner or all the owners.
- VI. To issue a Writ of Mandamus or any other appropriate writ order or direction, compelling and commanding the Respondent No1, to pass appropriate order invoking Section 27 of the KAOA, for removing the difficulties and to give effect to the provision of the Act.
- VII. To allow such other reliefs that this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

INTERIM RELIEFS

For the reasons, stated in the accompanying affidavit it is most humbly prayed that this Hon'ble Court may be pleased to direct the Respondent No.4 to ensure that Clause 20 of Annexure A (standard form Agreement for Sale) under the Kerala Real Estate (Regulation and Development) Rules 2018 is strictly complied by all the

Promoters of the Apartment Buildings, registered under Section 3 of RERA, pending disposal of the Writ Petition.

Dated this the 4th day of April 2024 E-Verified Johnson Gomez

Counsel for the Petitioner



NON JUDIC

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e-Stamp Serial No.

Goyt, Reference No.(GRN)

Department Reference No

Payment Date & Time

Value of c-Stamp

: ES00035778836061167E

: KL005293049202223E

: 620T606388701

: 25/05/2022, 04:38 PM

: Rs 3,24,200/- (Rupees Three Lakh Twenty Four Thousand Two Hundred

Only)

Name of Stamp Purchaser

: Adv. ANANDA PADMANABHAN

G - 06 Block 2B Shubh Labh Apartment Roop Sagar Road, Rajasthan

State, New Keshav Nagar Udaipur

-313001

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Mr. Pauly C. Anto



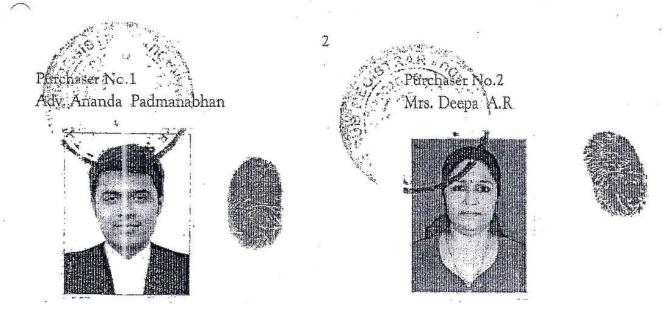


THIS DEED OF SALE is made and executed at Maradu on this the

Mr. Paul Alukka

Vendor

The authenticity of this e-stamp can be verified at https://kerelaregistration.gov.in/pearlpublic ഈ മുദ്ദേഹ്തം https://keralaregistration.gov.in/pearipublic എന്ന വിലാസത്തിൽ പരിശോധിക്കാവുന്നതാണ്.



Twenty Eighth day of May, Two Thousand and Twenty Two (28/05/2022) By

Mr. PAUL ALUKKA, (PAN-AFFPP1587H), Holder of Aadhaar No.5429 2462 8619, Son of Mr. A. J. Varghese, Aged 68 (Sixty Eight) Years, Business, Residing at Alukka House, Chilavannur Road, Kadavanthra Post, PIN-682020, Chilavannur Desom, Elamkulam Village, Kanayannur Taluk, Ernakulam District, hereinafter referred to as "VENDOR", (which expression shall wherever the context so permits shall include his successor, administrators and assigns)

TO AND IN FAVOUR OF

(1) Adv. ANANDA PADMANABHAN, (PAN - ALDPN0995P), Holder of Aadhaar No. 5794 4312 7586, Son of Mr. Viswanathan Nair, Aged 27 (Twenty Seven) Years, Advocate, and (2) Mrs.DEEPA A.R. (PAN - ABXPN5139M), Holder of Aadhaar No. 2153 7701 0954, Wife of Mr. N. V. Nair, Aged 50 (Fifty) Years, House Wife, both having permanent address at G-06 Block 2B, Shubh Labh Apartment, Roop Sagar Road, New Keshav Nagar, Udaipur, PIN - 313001, Rajasthan State, hereinafter referred to as "PURCHASERS" (which expression shall, wherever the context so admits or requires, mean and include their successors-in-interest, legal representatives, executors administrators and assigns).

WHEREAS the Vendor became the absolute owner in possession of the land admeasuring 21.41 Ares comprised in Survey No. 224/1 in Poonithura Village and

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		1		13

Presented in the office of the Sub Registrar of Maradi, with the photographs and fingerprints of the buyer/s, seller/s, and the presentant affixed under section 32A and a fee of Rs. 1624,9.D. Paid at 2.10...on the

162490

The June 2022 by Pauly. C. MNTO

Judgesul5

Residing of Chiragath House On the ft June 2022 JAYAI

IAYAN .K, STEPHEN SUB REGISTRAR

EXECUTION ADMITTED BY:

PAULY, O. ANTO

Sis. Liv. C.O. Anthropies, Deviness, Chireyom House, Prhynderskew Hoppe, Parevotani, East Fort Poot, Pill - diet OM, Turkess, for and an behalf of Mr. Pool Makke by Virbs of Special Power of Attorney No. 29/2015 Attorted by Sub Repistrar, Emakutam. Jone y solo

The above mendioned Pauly. C. Ando is Personally known to me.

On the for June 2022

JAYAN .K. STEPHEN SUB REGISTRAR

Registered as no. 1260 of 2022 in

563 page (to ... on 22 sheets ... 15t sheet

Oo the An June 2022

JAVAK K. STEPHEN SUB RECISTRAR

to 250 volume

documents referred hereunder registered before Sub Registrar Office, Maradu, made up of 7.76 Ares covered under the Settlement Deed No.961/2014 registered in Book No.1, Volume1244 at Pages413 to 415, 11.22 Ares covered under Sale Deed No. 4514/2006 registered in Book No.1, Volume802 at Pages 357 to 366 and 2.43 Ares covered under Sale Deed No. 2370/ 2007 registered in Book No.1, Volume 845 at Pages 343 to 350 together with all improvements, all easements and other similar rights appurtenant thereto and Vendor effected mutation of said property and paying land Tax for 13.65Ares under Thandapper No.18434 and for 7.76 Ares under Thandapper No.27767 of Poonithura Village, more particularly described in "Schedule A" hereunder and hereinafter referred to as "Schedule A Property".

AND WHEREAS the Vendor has formulated a housing scheme to develop Schedule 'A' Property by constructing a multi-storied residential apartment complex named as "ECO PARADISE", and to which the Vendor obtained Building Permit No. COC/EYP1/1355/13 dated 21/06/2014 from Kochi Municipal Corporation followed by No Objection Certificate (site) from commandant 'General Fire and Rescue Services, Trivandrum, NOC for Height Clearance from Commander, Headquarters, Southern Naval Command, Kochi, NOC from Kerala State Pollution Control Board, Trivandrum etc, for implementation of aforesaid Housing Scheme. The above referred building permit renewed on 17/06/2017 and extended the validity of the same upto 16/06/2020 (to be read with Govt.circular No. RA1/1/2021/LSGD dated 06/01/2021)

AND WHEREAS the Builder, M/s. PAUL ALUKKAS DEVELOPERS (P) LIMITED, having office at Building No.40/8846 of Kochi Municipal Corporation, Penta Square, Opposite Kavitha Theatre, M. G. Road, Ernakulam, have constructed aforesaid apartment complex with common facilities and amenities for the residential flat as per the Building Permit and approved Plan obtained by the Vendor from the Kochi Municipal Corporation, in the Schedule 'A' land consisting of 49 residential apartments with common facilities and amenities for the residential flat, under which scheme persons desirous to owning the apartment shall purchase undivided share in the Schedule 'A' Property and get constructed an apartment opted by them all by paying

4

cost of construction of the apartment together with common facilities and amenities necessary for residential flat to the Builder.

AND WHEREAS during completion of the project, the Vendor sought registration for on-going project from Kerala Real Estate Regulatory authority under The Real Estate (Regulation And Development) Act, 2016 and the K-RERA accorded registration as No. K-RERA/PRJ/089/2021 dated 10/02/2021 for aforesaid Apartment project.

AND WHEREAS the construction of aforesaid building complex is completed and obtained Occupancy certificate from Kochi Municipal Corporation in the name of Vendor on 30/07/2021 and assessed the tax in the name of Vendor and put the building numbers to the apartments severally and after obtaining the occupancy certificate for the aforesaid building complex, certain apartments remain unsold and unallotted and now the apartment and undivided share described in Schedule 'B' hereunder is enjoying by Vendor in his possession and ownership.

AND WHEREAS the Vendor herein agreed to sell and the Purchasers agreed to purchase 1.89% undivided share, rights, title and interest in the Schedule 'A' Property together with the Apartment No: 6D on the Sixth Floor, bearing Door No. 44/3882-A24 (Old 35/1617-D 24) of Kochi Municipal Corporation, having super built up area of approximately 158.39 Square Meter (1705 Square Feet) (113.03 Square Meter Carpet Area) inclusive of proportionate share in common areas such as passages, lobbies, lifts, staircase and other areas of common use in the building known as "ECO PARADISE", constructed in the land described in the Schedule 'A' above, together with exclusive Garden area having 12.63 Square Meter (136 Square Feet) and exclusive usage right of one covered parking No. 31 (Thirty One) on the Basement (1) Floor, more particularly described in Schedule 'B' herein; for total Consideration of Rs.81,00,000/- (Rupees Eighty One Lakhs Only), of which Rs.10,00,000/- (Rupees Ten Lakhs Only) being the value of undivided share of land and Rs.71,00,000/-(Rupees Seventy One Lakhs Only) being the value of the Built-up area, garden area inclusive of proportionate right of common area, common facilities amenities, interiors etc. and one car parking. The undivided share and Built-up area, common area,

common facilities amenities, interiors described in Schedule 'B' hereinafter jointly referred to as the 'Building Unit'.

AND WHEREAS the Vendor has assured the Purchasers that the undivided share of land mentioned in Schedule 'B' hereunder, is completely free from mortgage, charge, lien, lease, attachment, suit, arrears of taxes and other dues, claims of workers and other persons, proceedings under the Kerala Land Reforms Act, Land Acquisition Act, Revenue Recovery Act and other encumbrances and impediments whatsoever, and that the Vendor is undisputed owners in legal possession and enjoyment of the Schedule property.

NOW THIS DEED OF SALE WITNESSETH AS FOLLOWS:-

THAT in Consideration of Rs. 81,00,000/- (Rupees Eighty One Lakhs Only) 1. already paid by Purchasers in instalments, of which Rs.80,19,000/- (Rupees Eighty Lakhs and Nineteen Thousand Only) paid through M/s. Paul Alukkas Developers (P) Limited and Rs.81,000/- (Rupees Eighty One Thousand Only) remitted by Purchasers before Income Tax Department, being 1% TDS under Section 194-1A of the Income Tax Act, 1961 by vide Challan No.00028 through State Bank of India, Bangalore (Internet collection centre) and the receipt of the entire sale consideration, the Vendors hereby admits and acknowledges, as FULLY SATISFIED and the Vendor hereby transfer, convey, assign and deliver possession unto the Purchasers by way of absolute sale of all estate, rights, title, interest, claims and privileges in the Schedule 'B' Property together with all covenants and indemnities to which the Vendor is entitled to in respect thereof AND TO HAVE AND TO HOLD the Schedule 'B' Property unto and to the use of the Purchasers absolutely and forever with exclusive title, possession and enjoyment at d to hold the undivided share in the common areas and common facilities in the land described in the Schedule 'A' hereunder written along with co-owners without any let, hindrance or interruption from the Vendor and hereafter the Vendor has no right, claim or interest in the said Built up area, the undivided share in the common areas and common facilities and the undivided share in the said land.

2. THE VENDOR HEREBY ASSURE THE PURCHASERS AND COVENANT:-

- that there are no encumbrances or mortgages subsisting over the property detailed in the Schedule herein, that the Vendor has got good and marketable title and that the Vendor has paid all taxes and outgoing in respect of the undivided share hereby conveyed and undertake to discharge any such amount levied or leviable upto this date, and that the Purchasers become the absolute owners free from all encumbrances over the subject matter of this assignment by virtue of these presents and, that the Purchasers shall have quiet and peaceful possession over the same and shall be entitled to have joined mutation of land title and joint possession of the property in schedule 'A' hereto.
- ii) That the Vendor never owned or possessed lands in excess of the ceiling limit fixed by the Kerala Land Reforms Act as amended upto date or under any other statute and the property hereby conveyed is not included as Land Acquisition Act, Revenue Recovery Act, Conservation of Paddy Land and Wet Land Act, Kerala Forest Act, Forest Conservation Act, Private Forest Vesting and Assignment Act, Ecologically Fragile Land and Government excess land and that no land ceiling case is pending against the said property of the Vendor. The Schedule Property is not included in any land assigned to Schedule Caste or Schedule Tribes. That no person with any of the disabilities mentioned under the National Trust Act has any legal right over the property being transacted and by this transaction the rights of such individuals are not being deprived nor infringed upon.
- That in addition to obtaining rights as owners over the property detailed in the Schedule 'B' herein, the Purchasers have become clothed with benefit to enjoy licences, privileges and easements attached to the possession of the said Schedule 'B' Property, in and over the entire property detailed in the Schedule 'A' herein including the common benefits and other amenities provided in the above referred apartment complex in consonance with the approved plan, including the right to have the use of the staircase/lift and the right to have access leading to the staircase and all and every other common benefits and amenities therein.

- iv) That the easement rights obtained by virtue of this deed should not be misused.
- v) That no hindrance should be made by the Purchasers to the occupants of other flats in the building complexes situated in the Schedule 'A' Property.
- vi) That the Purchasers shall also be bound to suffer and share all costs and expenditure that might be incurred from time to time for providing common amenities on a proportionate basis based on the area occupied by the Purchasers.
- vii) That the Vendor is handing over to the Purchasers only copies of the original Sale Deeds relating to the Schedule 'A' Property. The Vendor further undertake with the Purchasers to make available for perusal at all times whenever reasonable called up to in that regard after previous notice all the subsidiary title deeds and other records, if any.
- viii) The Purchasers along with other owners will have to form an Owner's Association and make rules and regulations subject to the covenants herein for common enjoyment of the Schedule 'A' Property. Purchasers shall become a member and continue as such fully abiding by the rules and regulations framed by the said Association from time to time.
- ix) The Purchasers may apply for and obtain mutation of name in the proper land revenue registry in respect of Schedule 'B' property hereby conveyed and assigned to the Purchasers and obtain transfer of patta with other Purchasers and shall change name in their name in the Local body registers as regards Schedule 'B' Property and pay taxes thereon and enjoy the same absolutely.

The Consideration for the purpose of Stamp Duty is Rs.81,00,000/- (Rupees Eighty One Lakhs Only) and the Stamp duty is paid at the rate of 4% being Rs.3,24,000/- (Rupees Three Lakhs and Twenty Four Thousand Only) as per GO (MS) 84/2010 TD dated 27-03-2010 under The Kerala Stamp Act, 1959 as the Builder has provided

facilities for harvesting rain water, energy saving electrical appliances, solar panel for lightening and water heating in the aforesaid Apartment Complex known as "ECO PARADISE" and this document executed within Six Months from the date of Door Number put by Kochi Municipal Corporation to the Building constructed as per Building Permit No. COC/EYP1/1355/13 dated 21/06/2014 and also Rs.200/– for unvalued Agreement is paid. Thus the total Stamp duty round off Rs.3,24,200/– (Rupees Three Lakhs Twenty Four Thousand and Two Hundred Only) is paid herewith as per GO (MS) 84/2010 TD dated 27-03-2010.

The Fair Value of the Schedule 'A' Property being Rs.15,84,000/- (Rupees Fifteen Lakhs and Eighty Four Thousand Only) Per Are, fixed by the Government of Kerala under Section 28A of Kerala Stamp act,1959. As per Section 28B of the Kerala Stamp Act, 1959, the value of Flat/Apartment hereby constructed valued by Chartered Engineer, Mr.K.M.Latheef is Rs.51,40,575/- (Rupees Fifty One Lakhs Forty Thousand Five Hundred and Seventy Five Only).

The Certificate showing that the facilities under GO (MS) 84/2010 TD dated 27-03-2010 has already been provided in "ECO PARADISE", building complex and the certificate valuing the apartment referred in Schedule "C" as per Section 28B of the Kerala Stamp Act, 1959, both dated 25/05/2022 issued by Chartered Engineer, Mr.K.M.Latheef and copy of certificate showing the date on which the building number put by Kochi Municipal Corporation issued by the Kochi Municipal Corporation dated 30/12/2021, are appended herewith.

The Vendor authorised Mr. Pauly C. Anto by vide Special Power of Attorney No.29/15 authenticated by Sub Registrar Ernakulam to present the Deeds for registration executed by Vendor.

SCHEDULE A PROPERTY

1.	Sl. No	11
2.	District .	Ernakulam
3.	Sub District	Maradu
4.	Taluk	Kanayannur
5.	Village	Poonithura
6.	Desom/Kara/Muri	Karanakkodam
7.	Panchayath/Mun./Cor.	Kochi Municipal Corporation
8.	Re Survey Block No.	Nil
9.	Re Survey No.	Nil
10.	Re Survey Sub. Div. No.	Nil
11,	Old Survey No.	224 (Two Hundred and Twenty Four)
12.	Old Survey Sub. Div. No	1 (One)
13.	Extent(in Hector/Are/Sq.mtrs)	21.41(Twenty One Point Four One) Ares
14.	Tenure & Variety	Jenmom, Purayidam
15.	That dapper No. of Vendor	18434, 27767
16.	Than dapper No. of Purchasers	Nil

17. DESCRIPTION

All those piece and parcel of land total having an extent 21.41 Ares comprised in Survey No. 224/1 in Poonithura Village, made up of 7.76 Ares covered under the Settlement Deed No.961/2014, 11.22 Ares covered under Sale Deed No. 4514/2006 and 2.43 Ares covered under Sale Deed No. 2370/2007 together with all improvements, all easements and other similar rights appurtenant thereto. All documents referred herein above registered at Sub Registrar Office, Maradu.

18. BOUNDARIES

East

: Property of Nagpal Builders

North

: Thodu

West

: Stadium Link Road (Corporation Road)

South

: Property of Basil

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SCHEDULE 'B'

(Conveyed Property)

1.89% equivalent to 40.46 Square Meter undivided share in respect of land described in Schedule 'A' above and Apartment No: 6D on the Sixth Floor, bearing Door No. 44/3882-A24 (Old 35/1617-D24) of Kochi Municipal Corporation, having super built up area of approximately 158.39 Square Meter (113.03 Square Meter Carpet Area) inclusive of proportionate share in common areas such as passages, lobbies, lifts, staircase and other areas of common use in the building known as "ECO PARADISE", constructed in the land described in the Schedule 'A' above, together with exclusive Garden area having 12.63 Square Meter and exclusive usage right of one covered Car parking No. 31 (Thirty One) on the Basement (1) Floor.

SCHEDULE-'C'

RESTRICTIONS ON THE RIGHT OF THE PURCHASERS.

THAT the Purchasers, so as to bind themself, their successors in interest, heirs, representatives and assigns with the consideration of promoting and protecting their rights and interests as the owners of the apartment constructed in Schedule 'A' property referred to herein and in consideration of the covenants in the agreement of the Vendor binding on the owners of the other undivided interest/built-up area in the property described in Schedule 'A' herein and the construction thereon doth hereby agree to be bound by the following covenants:

C1. Not to use or permit the use of the construction referred to in Schedule 'A' herein and/or the tight in the property described in the 'A' schedule hereto in a manner which would diminish the value or utility of any of the common amenities provided or if any that may be provided in the property described in Schedule 'A' or in any construction made thereon.

- C2. Not to use the space in the land described in schedule 'A' herein left open referred to for parking any heavy vehicles or to use the same in any manner which might cause hindrance for the free ingress to or egress from any part of the 'A' Schedule property. Such areas should be used only for the purpose for which it is intended.
- C3. Not to decorate the exterior of the building constructed for the Purchasers otherwise than in a manner planned, built and handed over by the Vendor.
- C4. Not to make any independent arrangement for the maintenance, servicing and upkeep of the apartments/buildings referred to in the Schedule 'B' herein and for ensuring the common amenities therein for the benefit of all concerned other than that agreed to by the majority of owners.
- C5. Not to keep, stock or display of any wires or any other materials in the corridors or in any place intended for common use or on the roof.
- C6. Not to raise any construction in addition to that is specifically planned by the Vendor. Not to change the boundary and peripheral area, either by addition or by deletion, without the prior consent from the Vendor.
- C7. Not to default in the payment of any taxes or levies or charges to be shared by the Purchasers along with the other owners, occupiers or users of the property described in the Schedule 'A' herein or expenses to be shared by the owners of the apartments or any part thereof.
- C8. Not to do anything or act in any way prejudicial to the free use of all easements of their co-owners and the Purchasers shall be entitled to enjoy the property along with the owners or occupants of the other apartments according to the normal practices and contentions and restrictions that are common in the system of ownership of apartments fully abided by the terms and conditions specified by the Owner's Association formed under relevant enactments and rules.

- C9. Not to disturb or disrupt the privileges or amenities granted to other allottees and to enjoy the right strictly honouring and subject to the special privileges such as covered car parking facility or open car parking facility, if any, granted to such of the allottees for their exclusive enjoyment.
- C10. Not to carry on or permit to carry on any commercial or office activities within the building or any part thereof. The apartment complex/building shall exclusively be used for bonafide residential purpose.
- C11. Not to change the name of the apartment complex and the name of the same shall always remain "ECO PARADISE".

<u>SCHEDULE-'D'</u> RIGHTS INCLUDED IN THE TRANSFER TO THE PURCHASERS.

- D1. Full right and liberty for the Purchasers and all persons authorised or permitted by the Purchasers (in common with all other persons entitled permitted or authorised to the like right) at all times, by day or by night and for all purposes to go, pass and re-pass through the common areas in the building complex and in the appurtenant land pertaining to 'A' Schedule Property.
- D2. Full right and liberty to the persons referred to supra in common with all other person with or without motor cars or other permitted vehicles at all times day and night and for all purpose to go and re-pass over the roadways and pathways in the land described in the schedule 'A' herein.
- D3. The right to free and uninterrupted passage of running water, soil, electricity and telephone connections through the sewers, drain and water courses, pipes cables, wires etc; which now are, or may at any time hereafter be in or under or passing through the building or land or any part thereof. This right may also include all modern amenities that may become part of modern life from time to time in future but however subject to the right of privacy.

- D4. Right of passage for the Purchasers and their agents or workmen to the other parts of the buildings at all reasonable times on notices, to where the water tanks are situated for the purpose of cleaning or repairing or maintaining the same.
- D5. The right to pass and re-pass through car parking spaces in a manner that will not cause any hindrance to the owners of the car parking facility provided or cause any damages to vehicles.
- D6. The right to subjacent and lateral support and shelter and protection from the other parts of the aforesaid buildings and from the side and roof thereof.
- D7. The right to lay cables or wire through common areas or passages in the land and building complex without infringing the equal right of others thereof.
- D8. Right of passage for such persons, their agents or workmen to the other parts of building at all reasonable times, on notice to enter, for the purpose of cleaning, maintaining or renewing any such sewers, drains, water courses, cables, pipes and wires causing as little disturbances as possible and making good any damages caused.
- D9. The right to do all or any of the acts aforesaid without notice in the case of an emergency.
- D10. The special privilege or amenity such as covered car parking or uncovered car parking etc; if any allotted shall be enjoyed by all such allottees exclusively without interference by any one as an inseparable and integral part of the apartment at all times even in case of subsequent reconstructions.

SCHEDULE-'E'

The Purchasers in portion of the undivided interest hereby conveyed, along with the other Purchasers in the proportion of their undivided interest/ built up area, shall be deemed to have accepted the following conditions and to have contracted to bear the following expenses.

- E1. All lease rents, rates, taxes and outgoings whether already paid by the Vendor on behalf of the Purchasers or payable in respect of the land described in the Schedule 'A' hereto and the building to be constructed thereon.
- E2. The expenses of routine maintenance including painting, cleaning, gardening and the provisions of all common services to the building as set out below either by the Association of owners or an outside agency nominated by the said association.
- a. Maintenance of pump sets, lifts, generator, Fire equipments and facilities provided as per the norms of PCB and all other facilities provided in the project as per the instructions of the Statutory Body.
- b. Replacement of common light fittings and fixtures.
- c. Payment of electricity and water charges for common services
- d. Maintenance of landscaped area and related fixtures
- e. The cost of security services for the building
- f. The cost of upkeep of fire fighting equipment and all related services.
- g. Maintenance of common area and stair cases as the case may be.
- h. Share of contribution for running and maintenance of the association of Owner/occupier of the apartments referred to in this deed.
- i. Share of contribution towards sinking fund to be created by the above said Association.
- E3. Should the Purchasers default payments for any common expenses or amenities based on the area occupied them by decision of a majority of such apartment owners, the majority of the owners or the association shall have the right to remove such common amenities from their enjoyment while carrying out the services as contemplated above.
- E4. It shall be compulsory on the part of the Purchasers to act in union with others sharing the undivided interest in the said properties through an association/trust or otherwise for the above said act and the decisions/acts done by the said joint body shall be binding upon the Purchasers.

IN WITNESS WHEREOF, the Vendor has signed and delivered this Deed by which it is executed on this on the Day, Month and Year first above written in the presence of the following witnesses.

Signed and Delivered By:

Mr. PAUL ALUKKA

VENDOR

Witnesses:

 Mr. Cregorious Kuriakose, S/o Mr. Kuriakose, Bldg No.40/8846, Opp. Kavitha Theatre, M. G. Road, Ernakulam Village, PIN - 682035, Private Employee.

 Mrs. Ancy Nilson, W/o Mr. Nilson Antony, 3rd Floor, Thuruthummel Buildings, Market Road (Towards North), Kochi-682018, Office Staff.

Prepared by : ANIMON A. JOHN, Advocate (Roll No. K/776/1999), M/s. ANI & LAW ASSOCIATE, 3rd Floor, Thuruthummel Buildings, Market Road (Towards North), Kochi- 682 018

This document is computer printed

Corrections: Nil

FORM 1 B [See Rule 3(1A)] ANNEXURE 1. LANDED PROPERTY

Classification by use (commercial, Residential etc) 1.

: Residential

Short Description of improvements in the property 2.

(Details like nature of crop, age of plants or trees etc)

: Nil

Value of the area transferred from each Survey No. 3. Or Sub-division no. in the opinion of the executants/s

Item No.	Survey No.	Sub-division No.	Area transferred	<u>Value</u>
1.	224	1 .	1.89% undivided	
# # E			share of 21.41 Ares	: Rs.10,00,000/-
4. Valu	Value/Fair Value of the land transferred		7	: Rs.10,00,000/-

II BUILDINGS

1. House No.

: 44/3882-A 24 (Old 35/1617-D 24)

2Annual building Tax with Tax receipt number, : Rs, 3755/-, 017121150507620

Date and local body Name

: Kochi Municipal Corporation

3. Year of construction

: 2021

4. Built-up Area(Carpet Area)

: 158.39 Square Meter (113.03 Sq. Meter)

Note : Area open to sky such as court yards, Open spaces etc If any may be deducted from built-up area, floor type (Cement, terracotta, mosaic, ceramic tiles, marble, granite etc)

Floor	Thatched	Tinned	ACC	Tiled	RCC	Cost (Less depreciation)	
	Roof ·	Roof	Roof	Roof	Roof		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	

6th Floor

5. Area of separate out house, car-shed, bathroom etc

If any, and type of construction

6. Compound wall, if any

:Common Wall

7. Well, if any, or water connection, if any or both

:Common Connection

8. Electrical installation

: yes

(a) No. of points

, 50

(b) No. of Fans

: Nil

(c) No. of electric motor pump sets

: N.A

9. The executant's estimate of the value of the buildings and other items: Rs,71,00,000/-

10. The executant's estimate of the value of the land and Buildings.

: Rs.81,00,000/-

11. The amount of consideration set forth in the instrument

: Rs.81,00,000/-

Place: Maradu

Date: 28/05/2022

Signature of Executants/s

UNECE

Guidelines on the Management and Ownership of Condominium Housing







UNECE

GUIDELINES ON THE MANAGEMENT AND OWNERSHIP OF CONDOMINIUM HOUSING





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FOREWORD

Effective and efficient housing management is important to support the implementation of key UN agreements, including the 2030 Agenda for Sustainable Development, the New Urban Agenda and the Geneva UN Charter on Sustainable Housing. Efficient housing management results in economic benefits and decent housing conditions for inhabitants of condominiums. Housing management, through housing refurbishment programmes, protects the environment and contributes to decrease in greenhouse gas emissions, which supports the efforts of governments and stakeholders to address climate change.

The study "Guidelines on the Management and Ownership of Condominium Housing", developed by the United Nations Economic Commission for Europe (ECE) and the Real Estates Market Advisory Group (REM), intends to assist national and municipal authorities, as well as new unit owners by providing timely guidance on issues requiring legal-regulatory intervention, capacity-building, design of financing schemes, and best practices.

The study builds upon its predecessor document "Guidelines on Condominium Ownership of Housing for Countries in Transition" (ECE/HBP/123), produced by ECE in 2003, and expands its scope to address contemporary challenges. Further, it encompasses the entire ECE region rather than a select group of countries.

I would like to thank all coordinators and experts who contributed to the preparation of this study, and members of the Committee on Urban Development, Housing and Land Management and the Working Party on Land Administration for their valuable contributions. I invite all those with an interest in the management of condominium housing to make full use of the information and recommendations contained in this study. It can serve as a framework for future action and help shape programmes at national and local levels.

Finally, I would like to stress the relevance of the study as a unique instrument that allows ECE countries to have a better understanding of the legislation and management of condominiums and gain knowledge on financing of condominium projects and alternative occupancy of condominium units.

Olga Algaverova

Mgazerna

Under-Secretary-General of the United Nations

Executive Secretary of the United Nations Economic

Commission for Europe

ACKNOWLEDGEMENTS

The "Guidelines on the Management and Ownership of Condominium Housing" was developed by the United Nations Economic Commission for Europe (UNECE) Real Estate Markets Advisory Group (REM). Valuable contributions to the work have been received by the members of the Committee on Urban Development, Housing and Land Management (CUDHLM) and the Working Party on Land Administration (WPLA). The successful conclusion of the study would not have been possible without the generous support received from all contributors.

The final publication should be considered as a joint effort of the:

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GLOSSARY

The following terms are used in the study "Guidelines on the Management and Ownership of Condominium Housing" (hereinafter, the Guide) as defined below. However, meanings for the same terms may vary for each country and under the laws of different States. Member States should follow definitions provided under their existing legislation.

Common property: is comprised by all parts of the condominium that are not part of any individual condominium unit, including:

- land plot, any greenery, play courts and recreation areas
- building structure such as roof, staircases, exterior walls, windows, and building foundations
- infrastructure and building systems such as piping, electrical cables, engineering systems, equipment, circuits and devices which serve the entire property, or parts of it, and covering more than one condominium unit.

Common property is owned jointly, and each individual unit owner (see definition) therefore also owns a share of the common property. This share, which is specific for each unit, is called the "ownership fraction". Common property may also be referred to as "common areas", "common parts", "commonly owned areas", "common elements", or "jointly owned parts".

Condominium: a special kind of multi-apartment building in which each individual residential unit is separately demarcated, assigned individual legal title and can be legally owned separately from the whole. All associated land, common areas, and other real property is jointly owned in common by the individual unit owners (see definition). Condominium structures can include:

- Multi-flat/multi-apartment buildings exclusively for residential purposes
- Multi-functional or mixed buildings containing both dwellings and units for other functions (e.g., commercial)
- Building types such as row houses, terraced housing or other joined or connected buildings used either for residential, mixed or non-residential purposes.

Condominium agreement: the legal articles of incorporation that are filed with the government and which establish the structure, rules, and regulations that will guide the operation and management of the condominium building, owners' association, board, and other actors and activities.

Condominium association: same as owners' association (see definition below).

Condominium board: consists of elected unit owners (see definition) that serve to carry out and administer work on behalf of the owners' association. May also be referred to as "the Board".

Condominium conversion: the act of converting a multi-unit building into a condominium through physical improvements (as required) and legal acts, such as the

registration of a "declaration of division of ownership" and/or other registration documents relating to the building.

Condominium documents: same as condominium agreement.

Condominium fees: fees that each unit owner (see definition) are obliged to pay to the owner's association. These may be a fixed amount per unit or may vary with unit size. Condominium fees are used to pay for all costs associated with the maintenance, repair, and management of the condominium.

Condominium ownership: refers to the legal right of ownership to the real property comprised by a Condominium Unit.

Condominium unit: any of the separately demarcated spaces that have been assigned individual legal title and can be legally owned separately from the whole. Condominium units can be owned by an individual, a family, company or municipality, as permitted by law. A condominium unit can be either a residential dwelling unit or a commercial space. The Guide refers predominantly to units that are used for residential purposes. Also referred to as "units" or "privately owned units".

House rules: code of conduct that governs acceptable behaviour and relationships between unit owners (see definition).

Improvements: all activities and means necessary to increase the original standard of the property, change the property's functions or add new elements to the property.

Jointly owned parts: same as common property.

Limited common elements: same as limited common property.

Limited common property: refers to a special type of common property that, due to its nature, exists in the common area but is used exclusively by a particular condominium unit. Examples of limited common property elements are balconies of individual condominium units or reserved parking spaces.

Maintenance: all activities necessary to maintain the original standard and quality of the building and its installations. This includes all planned and unforeseen activities related to the repair of damage to buildings and installations, and replacements because of wear and tear. Repair work and replacements arising from routine service inspections and service agreements are also classified as maintenance activities. Generally, all activities related to improving the standard and quality of the building and its installations are defined as improvements and should not be classified as maintenance.

Maintenance costs: all costs related to maintenance and repairs. This includes the cost of labour, spare parts, replacements and other maintenance means. Maintenance costs, as defined here, refer solely to costs related to common space and installations. If the association, for practical reasons, pays costs that should normally be paid by the individual owners, these will be invoiced to the owners according to the condominium agreement.

Maintenance objects: are the parts of buildings, outdoor spaces, installations and equipment that are subject to maintenance and repair.

Management of a condominium: refers to all tasks and duties concerning administration, operation and maintenance of the condominium, irrespective of the method of management chosen.

Manager: a condominium unit owner (see definition) or other legal person (e.g., external advisor) or company contractually charged with the professional day-to-day management of the owners' association, including the maintenance and operation of the common property and all matters of common interest. The Manager's duties should be in accordance with the provisions of any national act on condominiums, the contract of administration, and the resolutions and decisions of the owners' meetings. This may also be referred to as an "administrator".

Operating costs: are all costs related to the daily operations of the property. This includes the cost of personnel, operations means (see definition below), service contracts, taxes, fees, insurance, energy use, waste disposal and other service charges. Operating costs, as defined here, are solely those related to jointly owned property. If the association, for practical reasons, pays costs that should normally be paid by the individual owners, these costs will be invoiced to the owners according to the condominium agreement.

Operations: the foreseen, routine activities and means needed for the daily functions of the building. Normally this includes the control and service of buildings and their technical installations, cleaning of indoor and outdoor spaces, gardening, etc. Service inspections, regular replacement of worn-out parts and managing service contracts are defined as operations. However, repair work resulting from service inspections is a maintenance activity.

Operations means: are the parts of buildings and technical installations which are used regularly, and the equipment and tools which the operational personnel need for their daily duties. Examples are light bulbs, cleaning supplies and equipment, filters, lubricants, lawnmowers and working clothes.

Operation objects: are the parts of buildings and outdoor spaces, installations and equipment that are subject to operational activities. Such objects can be, for instance, doors, windows, floors, staircases, roofs, ventilators, electrical equipment, lawns, pavements, etc. In some cases, an "object" can also take the form of an activity – for instance, energy saving.

Owners' association (OA): a private, not-for-profit body comprised of all the unit owners (see definition of unit owner) of the condominium established with the legal authority to act on behalf of all the owners of the condominium. The Guide advocates compulsory membership to the owners' association for all owners of condominium units, automatically upon the purchase of a condominium unit, and to remain members for the entire time they own the units. Membership in the owners' association is considered a legally inseparable part of the ownership of a condominium unit. The owners' association

is the same as a condominium association or unit owners' association. In countries where the term "apartment" refers to multi-unit residential buildings in which all units are individually owned, this may also be referred to as an "apartment association". However, it is important to distinguish this from multi-unit residential buildings in which ownership of all units is held by a single entity and occupancy is through lease contracts. Under different legal systems, this may also be referred to as "homeowners' association" in some countries.

Owners' council: same as condominium board.

Ownership fraction: the percentage of the common property attributable to the ownership of an individual condominium unit calculated as follows:

Ownership fraction = gross area of a unit / sum of gross area of all units

The area of the common property is not included in the sum of the gross area of all the units. The ownership fraction is used to determine the condominium fees that each unit owner (see definition) is obliged to pay based on the costs of maintaining and repairing the common property, and the operating costs of the owners' association.

Planned maintenance: all regular, routine activities relating to prevention of damage and breakdowns, and maintenance of the standard of the building and its installations. Planned maintenance is, for instance, the needed replacement of parts because of wear and tear, redecoration, etc.

Privately owned unit: same as condominium unit.

Repairs: all unforeseen activities connected with improvement and replacement of building parts and technical installations, due to damage or technical breakdowns.

Special assessment: a fee that is collected separately from the usual condominium fees to cover the costs of additional or large projects necessary for the continued operation or maintenance of the condominium, the cost of which is too large to be borne solely by collection of Condominium Fees. Special assessments can be imposed on a select portion of unit owners (see definition) to cover costs specific to limited common properties associated with their units. In some cases, special assessments require voting approval from unit owners (see definition).

Unit owner: the legal owner or owners on record of a condominium unit. A unit owner may own more than one condominium unit, within the bounds of applicable law.

Unit owners' association: same as owners' association.

1. BACKGROUND ON PRIVATE OWNERSHIP IN MULTI-UNIT CONDOMINIUMS

The transformation of the political and economic systems in countries in Central and Eastern Europe and Central Asia after the collapse of the Soviet Union and the fall of the Berlin Wall required the establishment of a new system regulating everything from basic economic activities to national policies and regulatory frameworks. These transformations affected all sectors of the economy and the housing sector, among others. In the new market economy, rules favoured private properties, democratic election of governance schemes, market-based regulation of economic activities, cost-recovery pricing of services and focus on customer satisfaction. Among the challenges of the time was the creation of legal frameworks to support the adoption of a new, private form of management, maintenance, and ownership of multi-apartment buildings/condominiums.

The conversion of former multi-unit rental buildings to condominium buildings allowed governments to divest of the responsibility (and financial burden) of maintaining and operating the housing stock. However, while doing so may have helped alleviate funding scarcity in the public sector, in many instances this privatization left new condominium unit owners facing unexpected costs associated with deteriorating buildings because of extensive deferred maintenance, inefficient energy and heating systems, and the challenges of implementing self-governance and collecting condominium fees.

To assist national and municipal authorities, as well as new unit owners, with this transition, in 2003 the UNECE produced the "Guidelines on Condominium Ownership of Housing for Countries in Transition" (ECE/HBP/123). This document provided timely guidance on issues requiring legal-regulatory intervention, capacity building, design of financing schemes, and best practices.

Since 2003, changes in technology, environmental issues, and social concerns have created new challenges for condominium management and ownership to all countries in the UNECE region. Examples of such contemporary changes include: 1) new technologies such as smart buildings, sharing economy platforms, and the Internet of Things (IoT); 2) changing global weather conditions that require new energy efficiencies and sustainable development practices; and 3) increasingly rapid rates of urbanization that require the protection of vulnerable groups. New international agreements, such as the 2030 Agenda for Sustainable Development, the Geneva UN Charter on Sustainable Housing, and the New Urban Agenda, have been introduced to target new social and environmental goals and impact national regulatory frameworks. Accordingly, this document "Guidelines on the Management and Ownership of Condominium Housing" builds upon its predecessor document and expands the scope of guidance to address contemporary challenges. Further, it encompasses the entire UNECE region rather than a select group of countries.

2. CONDOMINIUM LEGISLATION

Condominiums, in general, are dependent on national framework conditions and the efficient implementation of these conditions. The need for national initiatives should cover the whole range of issues from national framework conditions through municipal housing strategies and programmes to implementing practical training for condominium owners. However, this does not mean that all these activities must be established and operated by central government institutions alone. National organizations, municipalities and the private sector are to fulfil their distinctive tasks within the condominium sector.

2.1 National legislation

Although housing sector responsibilities often lie with municipalities, the importance of residential condominiums should not be overlooked at the national level. The State should recognize this importance, reflect it in national housing objectives and in governing legislation, and help municipalities and local authorities to promote practical actions to secure successful operation of condominiums in their jurisdictions.

2.1.1 National institutional framework to support condominiums

One of the most important elements of national responsibility for creating sound framework conditions for the organization and effective operation of privately-owned housing organized as condominiums is the establishment of adequate institutional structures and clear distribution of responsibilities within this structure. Condominium owners' associations can only be effective when appropriate direct and associated legislation is developed to spell out individual rules and procedures, and political will is exercised to enforce the policy and institutional schemes.

Development of a legal framework for the housing sector should be a parliamentary responsibility. For housing in general, and for the condominiums in particular, responsibility for the development of housing sector legislation should be with a relevant parliamentary committee. This would increase the political priority of the housing sector and facilitate a smooth process of socio-economic reforms.

Ministerial responsibility for housing should also be concentrated in a State body, either in a separate ministry for housing or a special division for housing in another ministry. The crucial factor is for the unit responsible for housing to have sufficient competence and capacity to effectively address major housing issues at the national level.

The government should accept the responsibility of supporting the creation and operation of national, regional, and local umbrella organizations for owners' associations. In particular, the government should support the activities of such organizations aimed at educating and

training owners of housing units in condominiums as well as the professional managers of jointly owned properties.

To guarantee ownership and security of tenure, a series of preconditions are essential. There must be:

- Clear, legal definitions of the rights and obligations of ownership (law on condominium ownership of housing)
- A legal definition of and support for property rights (law on land registration)
- Sound administrative structures and procedures for the transfer of property rights
- Effective and transparent legal procedures to handle property disputes as well as issues related to non-payers of condominium fees, including questions of informality and eviction
- A clear distribution of rights and obligations between borrower and lender in the housing sector.

Fulfilment of the above conditions should be at the core of national political responsibility as these legal aspects can usually only be addressed at the national level. The issues of land administration and the registration of real property rights are covered by the UNECE guidance documents "Guidelines on Real Property Units and Identifiers" and "Land Administration in the UNECE Region: Development trends and main principles.¹

2.1.2 National laws on condominium ownership of housing

In Western Europe and North America, national laws regulating condominium ownership vary considerably in structure and content. In general, short laws normally require additional regulations and guidelines, whilst specific laws do not require such detailed supplementary documentation. The legislative framework in countries with economies in transition, relies heavily on associated laws, such as the civil code, the construction code, laws on subventions and loans for capital repair or thermo-modernization of buildings, privatization laws, etc. The Guide has no preference as to the degree of detail in the law and/or in supportive regulations. Each country should determine what is appropriate for its specific circumstances.

Similarly, countries may take differently views with respect to the degree of detail that should be included in national laws and what regulating powers should be left for the owners' association. The Guide points to one particular option for the division of responsibilities between national and local regulations but does not necessarily contradict other views. Each

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¹ The two documents are available at http://www.unece.org/fileadmin/DAM/hlm/documents/Publications/guidelines.real.property.e.pdf and http://www.unece.org/fileadmin/DAM/hlm/documents/Publications/landadmin.devt.trends.e.pdf, respectively.

State should establish balance between regulations vested in a condominium owners' association and in the law.

In establishing a national housing policy, the State should also consider regulations on condominiums in housing related parts of legislation. For example, affordable housing initiatives may be partially addressed through laws relating to the approval of new building construction (according to the Geneva UN Charter on Sustainable Housing and the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development,). These laws can support inclusive housing for vulnerable groups of the population by requiring a percentage of newly built condominium units to be sold at a discounted rate to the lower income group. In this manner, national goals for social inclusion and protection of vulnerable groups can be incorporated into the development, ownership, and management of condominiums. Similarly, construction requirements or incentives may be used as part of a thoroughly developed plan to support environmental sustainability, energy efficiency in housing, and other related goals in both the retrofitting of existing stock and in the development of new condominium buildings. A final example pertains to appropriate regulations for short-term rentals and other shared economy formats (e.g., AirBnB) in hospitality and/or tenant laws. These and other issues can be addressed broadly in the legal framework at the national level while municipalities implement at the local level through zoning regulations, development approvals, and social housing programmes. It is important that relevant regulations exist to guide the management of condominiums.

Apart from the need to consider condominiums in broader legislation, there are specific legal instruments that determine the success of condominium ownership. The Guide deals with three major areas of legal regulations that are crucial for condominium ownership:

- 1) National laws and regulations on condominium ownership;
- 2) National laws on land (real property) registration and cadastre;
- 3) National laws and regulations on taxation.

National laws, internal statutes and agreements govern owners' associations in condominiums. The State is responsible for drawing up the general legal framework for owners' associations. In general, the following statutes and agreements are needed for a condominium and an owners' association to function effectively:

- Condominium agreement, including any applicable house rules
- Declaration of division of ownership (necessary when converting from a multi-unit rental structure)
- Management contract.

In developing a law on condominium ownership and management, it is recommended to incorporate the elements in this general structure:

PART I: Scope of regulations

Legislation regulating the management of condominiums

Central definitions

Principles governing the multi-unit building

PART II: Powers of the State, regional and local governments

Principal rules governing private and joint ownership

Rights and obligations of ownership Change in use of privately-owned units Change in use of jointly owned property

PART III: Association of owners

Role, purpose and competencies

Communication, meeting, and decision making, voting requirements Board and management (self-management, private management)

Budget, bookkeeping, assets, and accounts

Reserve fund

Joint expenses - obligations to pay

Maintenance and supervision of common property

Entrance to closed units, including lawfully owned but unoccupied units

Third-party liability for owners

Examples of details that a thorough condominium legislation should incorporate are the following:

CLEARLY DEFINED PROPERTY RIGHTS

It is imperative that legislation provides a method for clear delineation of boundaries of individual condominiums and common properties, and definition of rights of unit owners and the owners' association. The legislation should also be clear on who has ownership and control over a common property - the municipality or the owners' association – and on the rights to use, rent, dispose, or borrow areas included in the common property. A description of how units will be included in the owners' association is also important. This may include an entire single building or, as appropriate in some countries, individual floors, units served by a common entrance or utilities, or other allocation.

MEMBERSHIP IN THE OWNERS' ASSOCIATION

The owners' association should be a legal entity and a national law on condominium ownership should require compulsory membership of unit owners. This legal requirement is well in line with established democratic practices in the UNECE region. An owners' association that is not represented by all owners cannot possibly provide proper management of the common properties (roofs, staircases, external walls, pipes and wiring, etc.).

In countries where compulsory membership in owners' associations is not possible under existing laws, alternative methods for ensuring the administration of the jointly owned property must be introduced. This may include a provision for self-management jointly by the owners or contracting administration services from an outside party and the law or its supplementary regulations should set this out. In instances of outside party administration, the law should specify the type of services that could be provided, define the standards expected for these services, specify whether a license is required to undertake such services, and provide solutions in the event of failure to perform. The fee structure for the administration services should also be defined. Annex I shows an example of a legal framework where an administrator is employed.

GOVERNANCE AND VOTING

The right of unit owners to vote on matters that influence the governance of an owners' association is a specific area that requires legislative guidance. It must be decided if individuals or legal entities can own more than one unit as this could influence the voting rights of unit owners. The legislation should give careful consideration on this, in such a way that tenure and ownership rights are protected against a possible voting monopoly resulting from concentration of ownership among limited individuals or legal entities. In general, co-owners of a single unit share a single vote.

Similar decisions must be made regarding the voting rights of unit owners with respect to the sizes of their units. For example, the owner of a larger unit may have had a larger acquisition cost, be substantially making larger contributions in monthly condominium fees and may also face the greater impact from board decisions but these may or may not translate into additional voting rights. The State must decide as to whether each unit will be allocated one vote regardless of size or whether voting rights are based on percentage of overall ownership of the unit and weighted according to the unit size. Each State should address these issues in its condominium laws as appropriate for its culture and other guiding legislation.

The State should also specify what types of decisions can be approved by voting and ensure that the results of a legitimately conducted official voting are legally binding for all unit owners, regardless whether a unit owner participated in the voting process. A thorough legislation should stipulate instances when a simple or a specified majority vote is required. Decisions with greater potential impact should require a larger percentage of affirmative votes than basic management decisions. Regulations should clearly define which types of decisions fall in which category. Legislative efforts should also be made to define a suitable quorum for votes to avoid scenarios in which either (a) a small number of unit owners compromises a majority due to poor attendance or (b) the specified majority vote is too high that it impedes the process of making basic management decisions.

UNIT OWNER OBLIGATIONS

Governing legislation must require all unit owners to be responsible for the maintenance of their individual units and to participate in the cost of maintenance and repairs of the condominium's common property, which is normally achieved through the payment of condominium fees. Specific rules for calculating ownership fractions and the resulting fees can be included in the national law on condominium ownership or in regulations applying the law.

Maintenance of individual units, compliance with condominium agreement regulations, and the payment of condominium fees should be strictly required as they are critical for maintaining the overall quality of the condominium buildings as well as for generating the necessary funding to manage, maintain, and renovate them. Therefore, national laws should specify and support the enforcement of consequences to unit owners for failing to make the necessary repairs to their condominium units and for non-payment of the required condominium fees. The law could consider the following penalties to unit owners:

- a. Imposing a fine for maintenance violations of the individual condominium unit;
- b. Granting right to owners' association to undertake required repairs and invoice the unit owner for the work;
- c. Applying interests on delinquent payments or delayed payments;
- d. Granting right to owners' association to impose a lien on a condominium unit until payment for its sale or transfer has been made;
- e. Use of a private collection company to collect dues;
- f. Disconnection of the condominium unit from shared services and utilities (if applicable);
- g. Eviction of the unit owner and/or auction of the condominium unit;
- h. Other court determined resolutions.

The law could also consider suspension of owner's voting rights as a penalty for non-payment of condominium fees. The State must determine a realistic grace period (or moratorium) before a penalty is imposed on the defaulting party.

MANAGEMENT PROVISIONS

Legislation should clearly establish the roles of the condominium board and management body. This is critical for clear understanding of the requirements and tasks required for the management of a condominium. National condominium laws should identify management functions and define the duties and obligations of the manager, the board, and the owners' association, as appropriate. Further, the law should specify if owners' associations or condominium boards are considered legally competent entities authorized to enter into contracts for services, utilities, or other things.

The law should also specify all the possible circumstances that could lead to failure to organize management bodies. When such is the case, the unit owners should have the right to organize a general meeting and choose a management structure and/or request from the concerned government authority to do this for them.

ACCOUNTING

Most countries have laws regulating accounting practices. Such laws normally apply to all entities engaged in business and non-business operations and provide individual entities the option to choose the form of accounting most suitable to them. This does not mean, however, that the entities may maintain their accounts as they wish. The law normally specifies the accounting obligations and emphasizes that the accounting practice must ensure a fair and clear presentation of the financial status of the entity.

The law on condominiums should provide regulations on accounting instruments. According to most national legal frameworks, owners' associations must maintain professional accounting and where national laws do not specify this, associations should nevertheless lay down strict accounting rules.

TAXATION

With respect to taxation, a condominium owners' association should not be regarded as a commercial entity, but as a residential non-profit organization. Tax laws should provide clear and appropriate procedures that should be properly coordinated with condominium laws. Rules on taxation, bookkeeping, etc. should be adapted to such procedures. In general, the efficient management and maintenance of property of condominiums should be regarded as a common good and should therefore be rewarded through tax incentives. A well-developed tax policy could contribute to preservation of condominium buildings. Government entities should legally establish property tax incentives, for example, for energy efficient improvements of old building structures.

Income received by the owners' association from condominium fees and other fees should not be taxed. Property taxes for individual condominium units should be paid directly by unit owners to the appropriate government authority while any property tax associated with the common property must be paid by the owners' association through the manager. The common property should be identified separately from the condominium units for taxation purposes and should be assessed or valued according to regulatory requirements based on measurement and surveying criteria. When developing a tax policy, governments can draw from existing international standards, such as those provided by the International Association of Assessing Officers (IAAO)².

² They are available at https://www.iaao.org/wcm/Resources_Content/Pubs/Technical_Standards.aspx

Condominium properties that include a commercial/retail component should be assessed and classified appropriately depending on the legal framework of the city where the condominium is under jurisdiction. Any commercial revenue collected by the owners' association could be subject to taxation, depending on governing regulations.

CREATION AND DISSOLUTION

The legal identity of condominiums is established through the filing of a legally sound condominium agreement with the proper government authority. Approval for construction of a new condominium may be tied to the filing of this document within a defined period. The State must decide if a condominium when an existing condominium could be dissolved and under what conditions or reasons.

The State may also need to refine laws that allow multi-unit rental buildings or municipal housing buildings to be converted into condominiums. Regulations should define how the owners' association should be formed. This may occur automatically if the condominium conversion is required to happen concurrently for all units in a building or may be tied to a percentage of units converted if the conversion occurs on a unit-by-unit basis. A specified period for the creation and registration of the owners' association should be provided in detail in the law. In some cases, the legislation alone is not sufficient to ensure the formation of an owners' association and its related board, and management body. In the absence of an owners' association, unit owners could be encouraged to establish assemblies themselves through financial incentives and a condominium may consider including a provision on this.

2.2 Municipal legislation

It is at the municipal level that national housing policies transform into practical actions to achieve the desired results. Efficiency of political and administrative bodies at the municipal level is, therefore, important in implementing practical solutions to housing problems. As previously stated, any critical issues not within the scope of action at the national level should be addressed at the municipal level. These include conversions of multi-unit buildings into condominiums, zoning regulations, condominium development approvals, environmental goals, and social housing programmes.

Political responsibility in housing matters should be delegated to a dedicated housing committee or sub-committee or other recognized public body under the municipal council. This committee should be responsible for the following areas:

- 1) Overall municipal housing policy and strategies, including budget;
- 2) Cooperation with the private housing sector and local housing stakeholders, including the owners' associations;
- 3) Social housing;

- 4) Sustaining and improving the quality and value of housing stock, including environmental and energy efficiency goals;
- 5) Providing assistance for effective operation of condominiums and owners' associations;
- 6) Organizing tenders for selecting a management company for a building without management system.

Cooperation between municipalities and owners' associations on condominium matters should be based on clearly defined responsibilities of each party to avoid confusion. Private unit owners and condominium owners' associations should have full, unlimited responsibility for their property while municipalities have the administrative and regulatory responsibility to facilitate inclusion of condominiums within the context of its larger housing agenda. Further and as appropriate, the municipality should consider providing subsidies to owners' associations for renovations, repairs, and energy efficiency upgrade of condominiums.

Financial and institutional support from local government bodies, municipalities, and/or advisory centres is often necessary to help in the establishment of management bodies for condominium buildings converted from existing rental properties. For instance, local councils of municipalities can assist a condominium owners' association on matters such as the creation, reorganization, operation and management of condominiums. In instances where a condominium board or manager fails to meet specific obligations, the local councils may assist the owners' association in organizing a general assembly to resolve the situation or organize election of new board members.

Municipal maintenance companies

In some countries with economies in transition, the municipal maintenance companies that still exist have a monopoly on the delivery of administrative and management services to the housing stock, including condominiums. In general, this is not efficient and should be changed. However, municipal maintenance companies could still participate in tenders for services to condominiums.

3. MANAGEMENT AND OPERATIONS

3.1 Condominium agreement

Most condominiums in Western Europe and the United States of America are legally created before construction is completed by filing a condominium agreement with the municipality concerned. In countries with economies in transition, majority of condominiums were created from existing buildings and the sitting tenants became the unit owners. In this case, municipalities should have a role in providing special advice and assistance in forming and registering the condominium and owners' association.

Purpose

The condominium agreement is the central document regulating the internal relationship between the unit owners, the owners' association, the board and its committees, and the professional manager (if retained). The condominium agreement allows for more precise rules and regulations for the association than those normally included in national laws on condominiums. These documents should be comprehensive, clear and specific on how issues are to be handled and decided. Condominium agreements are the cornerstone of a successful owners' association. In new condominium developments, the condominium agreement is often the legal vehicle by which the condominium is created.

The condominium agreement applies equally to all owners without exception. Upon sale or transfer of an individual unit, the unit owner must present the agreement as a non-negotiable condition of sale or transfer, and it must be accepted with signed acknowledgement by the buyer as part of the sales contract. Annex II presents a model for a condominium agreement. The condominium board should give sufficient time to the new unit owner to repair any damages or defects inherited from the purchase of the unit.

Contents

The condominium agreement must clearly indicate the following:

Description of the relevant physical aspects of the condominium, such as:

- The building or buildings involved, defined by municipality, street name and house number
- General description of the building, e.g., size, construction type, general purpose
- Description of each privately-owned unit, its position within the building, its purpose (e.g., flat, commercial), size (e.g., its square metres and number of rooms) and any particular characteristics, assigned storage units, parking spaces, etc.
- The calculation of ownership fractions for each unit as well as the method and assumption on which the calculations are made

- Clear definition of all common property including equipment and land plots under, inside and outside the building(s)
- The specific rights and obligations of unit owners
- The drawings, plans and technical certificates of the buildings and adjacent property.

Description of the relevant administrative structures and procedures, such as:

- Structure and function of the owners' association
- Meeting formats and procedures
- Voting rights and procedures
- Financial accounts
- Condominium fee obligations and special assessments
- The Board, including its authority and duties
- Roles and responsibilities of managers.

Condominium agreements should also outline the rules of conduct for unit owners and penalties for violations. The house rules could be a separate document but incorporated into the condominium agreement. House rules is an important but often sensitive regulatory component of a condominium agreement because it contains the rules of behaviour and standards that must be observed to maintain good relationship among unit owners. They could include building quiet hours, whether pets are permitted, restrictions on what can be stored on balconies, and limitations on unit owners' freedom to fit extra lighting, flag posts, window boxes, or antennas on the exterior walls of the buildings, etc. Annex III presents a specimen document on house rules. It is recommended that house rules have "general rules" separate from regulations and instructions for special items, and these could be added as appendices. In this manner, when amendments are needed for any of the appendices, the whole set of rules need not be changed. If the cleaning and daily maintenance of jointly owned areas is handled by the unit owners/residents themselves, instructions on how this should be carried out should be available.

The contents of the condominium agreement and its adoption by the unit owners (in cases where the property developer has already prepared one) must be guided by and set in accordance with any applicable state law. It is a best practice to outline the obligation of unit owners, the board, and any management entity in the condominium agreement even if these are already specified in a law. This will ensure that all parties concerned are informed of their obligations, especially in instances where the parties may not be familiar with the existing relevant legislation.

3.2 Structure and functions of the owners' association

The owners' association

As per recommendations of the relevant legal framework, all unit owners should automatically become part of the owners' association upon the purchase of a condominium unit and membership is compulsory. The principal responsibility of the owners' association is to ensure the satisfactory maintenance and repair of the jointly owned property and the most effective use of the association's funds. To achieve this, the association needs an organizational structure with clearly defined rights and obligations. An owners' association cannot fulfil its responsibilities by the conduct of general meetings alone and it should not depend on the state or the municipality to carry out its functions.

In order to preserve the interests of the owners in the jointly owned property, an owners' association must be able to enter into contractual agreements, to raise capital in the market, and could act as plaintiff and defendant in courts. For these reasons the Guide recommends that the owners' association should be registered as a legal entity in appropriate national registers. The Guide assumes that the unit owners in a condominium are the ultimate guarantors for third-party claims against the owners' association. The guarantee serves as a satisfactory collateral for loans to owners' associations that will allow them to maintain, repair and upgrade jointly owned properties as necessary.

If an owners' association becomes a legal entity, depending on the national legal framework, all owners share responsibility for the obligations of the association including debts. If, for example, a lender cannot claim back the money from an owners' association that defaulted on its loan, the lender can claim from each individual owner who may stand to lose the property.

The owners acting together in a general meeting is the supreme authority of the owners' association. To be efficient, the owners delegate large part of their authority for the day-to-day running of the association to a board elected by and among the owners. The board is responsible for implementing the tasks of the association and specific decisions of general meetings in the most efficient and cost-effective way. Members of the board are responsible to the owners and should act solely in the interests of the owners. To carry out its duties effectively, the board is empowered to engage professional management to assist the association. At the general meetings, the owners can also delegate specific responsibilities to committees composed of owners. More detailed information on meetings will be provided in section 3.3 of the Guide.

THE CONDOMINIUM BOARD

Since holding of meetings of owners is often not possible, the owners' association should find practical ways to assist owners by proposing policies and overseeing their implementation, as well as decisions taken at meetings of owners. A general effective solution to this is to create a condominium board.

For newly developed condominium buildings, the developer will act as a board and manage the condominium until a sufficient number of units have been sold and until the owners' association can begin to function and hold elections. Many developers will continue to participate in the work of the board until after the sale of final units to ensure successful transition of operations.

The board is elected by the owners usually at an annual general meeting and consists of three to five members (for small condominiums it is also possible to operate with a one-person board, for example, the president of the association). Board members are elected for a limited term of one or two years, typically. These members are appointed by the owners to oversee the activities of the association between the meetings of the owners.

In small condominiums, the board may be directly responsible for executive functions such as hiring employees, performing management functions and entering into repair and maintenance contracts. For medium and large condominiums, however, it is normal for the board, to hire outside professional expertise for the management of the association. In this case, the external manager (or management company) is responsible for the supervision and control of the management.

Although the board is given the powers to act on behalf of the owners, it cannot decide on issues that should be discussed by owners altogether in a general meeting. This limitation in the responsibility of the board should be clearly set out in the condominium agreement.

For the effective functioning of the board, it should always focus its work on the interests of the unit owners as a whole. This requires objectivity and integrity from the board members. Their individual interests as unit owners must always be secondary, and personal interests, whether financial or otherwise, should not play a role in considering or making decisions. Conflicts of interests should be avoided to maintain the trust of the owners. Board members may be dismissed by a vote of no confidence from the unit owners, if permitted by the condominium agreement.

Board members should not receive financial compensation, directly or indirectly, from any party with commercial ties for the association's activities. Receiving compensation should be regarded as gross misconduct and ground for immediate dismissal.

However, board members may receive remuneration for the tasks they perform for the association. The payment should be decided by the unit owners in advance and communicated to all owners prior to the general meeting board election.

A critical part of the board's responsibility is to provide the owners with comprehensive, clear and regular communication and information on the activities of the association. This is vital to ensure a continued trust and confidence of the owners on the board. The condominium agreement may provide specific recommendations on the type and frequency of communication of information to owners. For example, the board could distribute to all unit owners a summary of each general meeting within a certain number of days after the meeting has concluded. The meeting summary helps to inform owners who did not attend the meeting and creates a formal record of business discussed. All communications should be in a form recognized as legally valid under national laws. This may include email, physical mailing of letters, or both.

The board may have its own meetings to discuss management issues and/or listen to committee reports and recommendations. These meetings may be held open to the unit owners, although they do not have the right to vote on the issues discussed in such meetings. The number of these meetings may be specified in the condominium agreement but should occur at least four times a year (or once per quarter). Board meetings should be tied to the organization's fiscal year if different from the calendar year.

COMMITTEES

Committees are authorized by the condominium agreement and approved by a vote of the unit owners at the general meeting to prepare and/or implement specific tasks. Examples include committees for landscaping, audit, election, and activities. The election committee is responsible for proposing candidates at the annual meeting for official positions in the association.

THE MANAGER

It is advisable for medium and large size associations to hire a professional manager to take care of the day-to-day management of the association. The manager is supervised by the board and reports regularly to the board. The manager can be a professional person or company, or several people appointed from among the unit owners. Although most national condominium laws define management functions and sometimes the responsibilities of the manager, it is recommended that owners' association conclude a separate and detailed contract with the manager.

Management contracts should define in detail the rights and obligations of both parties. Stipulations of the management contracts for individual or commercial companies should not differ. If multi-person management is engaged (selected from amongst the owners), it is

recommended to establish a separate agreement with each person, clearly defining their responsibilities. However, a single contract can also be made in this case. A model of a management contract is presented in Annex IV.

CONTRACTORS

The manager provides professional services for repair, maintenance, landscaping, and administration, for example, and concludes contracts as necessary for professional services of lawyers and engineers/architects, and technical services for infrastructure, cleaning, etc. In hiring a contractor, a condominium agreement may require a minimum number of bids/applications, usually three, to be submitted to the board for approval.

UTILITY SUPPLIERS

Suppliers of hot water, gas, electricity, telecom, and other utilities often enter into separate commercial supply contracts with individual unit owners to serve their units. These types of contracts are normally not the concern of condominium associations, which are required to have supply contracts for jointly owned property only. In special cases, the association may accept temporary contracts between owners and utility suppliers.

In many countries with economies in transition, unit owners may enter into agreements directly with utility companies or, in some cases, the condominium association may enter into agreements with utility providers or provide certain of services on their own. The list of such services and corresponding payment procedures are established in the contract concluded between the condominium association and individual unit owners. Whether the owners' association is legally entitled to earn revenue from fees or commissions from such an arrangement, as may be the case when condominium buildings are offered preferential pricing, is a matter for the national law.

EMPLOYEES

Where necessary and in accordance with the law, the owners' association may hire full- or part-time employees such as janitors and cleaners. Employees are hired and supervised by the manager.

3.3 Meetings

An owners' association consists of several unit owners with equal rights. Discussions and decisions on relevant issues normally take place at formal meetings and it is where important decisions of the owners and the board are made. Therefore, clear and binding procedures for convening and calling these meetings and reporting on their outcomes are important for the success of an owners' association. This section provides guidelines for convening, conducting and reporting on the meeting. A specimen agenda is given in Annex V. A specimen

announcement of a general meeting is provided in Annex VI and Annex VII provides a specimen minutes of a general meeting.

Annual general meeting of owners

The highest authority of the owners' association is the general meeting of condominium unit owners. The most important of these meetings is the annual general meeting. It must be convened regularly, usually once every fiscal year depending on the date the condominium was established.

CALLING THE MEETING

The annual general meeting must be convened once a year within the first quarter of the fiscal year. The owners must be given 14 day written notice of the meeting and the notification should state the date, time and venue of the meeting, including the agenda containing all matters to be discussed and agreed. The number of days of notification may refer to business days or calendar days and is governed by national law or determined in the condominium agreement if not specified in the national law. As previously stated, the legally acceptable way to submit a written notice may be through email or mailed hard copy letter, depending on what is permitted by law or specified in the condominium agreement.

The notice should include reports on the previous year's activities and financial performance, annual activity plan, and proposals of the election committee. The manager is responsible for convening the annual general meeting. If the manager fails to do so, the meeting is convened by the board. If the board also fails to do this, the annual general meeting may be convened by any of the unit owners.

At the annual general meeting, the owners' association has the right to adopt resolutions when 50 per cent or more of the unit owners or authorized proxies were present at the meeting. If this quorum is not reached, a second annual general meeting must be convened as soon as possible. However, this meeting will have the right to take decisions regardless of the number of owners and/or proxies who attended. This provision should be stated in the letter convening the meeting and included in the condominium documents.

AGENDA FOR THE MEETING

The agenda for the annual general meeting consists of a number of items requiring formal discussions and/or decisions in order to meet the requirements of laws, statutes and agreements. It should also include matters that are important to the operations of the condominium and owners' association. All issues that must be resolved at the annual general meeting must be included in the agenda. It is important that the agenda clearly state proposals for decisions that need to be taken by the meeting. These proposals are often

related to the conduct of elections and discussion and adoption of recommendations costs for various maintenance and improvement initiatives.

VOTING RULES

The owners' association exercises its authority by voting on decisions presented by the board at the general meeting. Voting on decisions and other issues can be carried out in properly convened meetings or, as permitted by the condominium agreement, through absentee voting or by proxy. Absentee ballots require the distribution of precise and extensive information and exclude the necessary exchange of views among the unit owners. For this reason, and for management purposes, they are not recommended. Voting in meetings may be by show of hands or in writing. If certain percentage of the unit owners present (usually 10 percent) is required, the voting may be conducted in writing.

Voting can be based on one vote per unit owner or a weighted vote based on ownership fraction/shares, as provided for by any applicable national or municipal legislation and indicated in the condominium agreement. Both procedures are used; however, this Guide is based on the of one vote per unit owner as this is the easiest to conduct and control. Before voting takes place, it is important that all proxies are checked and approved, and that all votes are counted to establish the meeting's authority to carry motions.

In most issues related to elections, approvals or decisions, the presence and votes of a simple majority of the unit owners is required to carry a motion. This means that more than 50 per cent of the votes must be cast in favour of the candidate or the motion in question. Otherwise, a second meeting is convened with the same agenda where decisions are taken by a simple majority regardless of quorum.

Although majority of decisions at unit owners' meetings are adopted by a majority vote, the most important issues require a specified majority. In some countries, this majority is defined as two thirds all unit owners in attendance or all unit owners in the condominium. The specific voting rules should be clearly described in the condominium agreement.

Examples of issues that in many countries require approval by all unit owners are:

- Amendments to the condominium agreement or the corresponding registered declaration of ownership rights and ownership fractions
- Sale or permanent disposal of significant parts of the jointly owned property
- Permanent division of one unit into several units (unless otherwise specified in the in the condominium agreement)
- Fundamental changes in the use of the units (e.g., from residential to commercial use).

Examples of issues that in many countries require approval by three quarters of owners are:

- Amendments to the condominium agreement
- Repairs, maintenance and improvements that are substantially more extensive than conventional and necessary
- Decisions on loan agreements
- Decisions regarding construction agreements affecting the condominium building and/or common property.

If permitted under applicable law and the condominium agreement, the owners may have the right to adopt resolutions without calling a general meeting. In this case, the Board shall send a draft of the resolution to all owners, specifying the time period by which the owners must present their position on the draft resolution. If a unit owner does not give notice of his/her decision on the resolution within the specified time period, the action will be considered as either abstaining, supporting, or opposing the resolution depending on what is defined in applicable laws and condominium agreement.

MINUTES

Minutes of annual general meetings must be taken. They should be signed by the chairman of the meeting, the secretary, and the two unit owners selected for this purpose. The minutes should be distributed to the manager and all unit owners of the condominium as soon as possible. The minutes is distributed using the method specified in condominium documents or agreed in the meeting, the alternative methods being:

- Minutes sent by post to the owners
- Minutes posted on the condominium's notice board
- Minutes sent by email, provided all unit owners have access to email
- Posted on the condominium website, provided all unit owners have access to the internet.

To disseminate important information, it is recommended to send minutes of the annual general meeting and meeting of owners by post or email to individual owners. Minutes can also be posted on any private and secure community website.

The minutes must include the agenda, all proposed decisions, and state which motions were approved. The discussions need not be reflected in their entirety, but participants have the right to request to include their points of view.

Meetings of unit owners

Meetings of unit owners are convened in between annual general meetings whenever necessary. These meetings are called when there are issues that need to be resolved urgently before the next annual general meeting and which cannot be decided within the authority of

the board and/or manager. Such meetings can be convened by the manager or the board, or at the request of at least one tenth of the unit owners.

The convening of meetings of unit owners follow the same procedures as the annual general meeting, including in the adoption of decisions and resolutions and distribution of the minutes. The agenda must include an opening procedure and the rest of the agenda items should be reserved for discussion of substantive issues.

Board meetings

The board should meet regularly and ideally, every month. A typical agenda for a board meeting would include a discussion on completed, ongoing and planned repairs and maintenance, a review of monthly reports on financial and other management issues, and discussion of issues raised by the owners or the manager.

As a rule, the board may decide to conduct open meetings, which may be attended by all unit owners. An alternative is to have closed meetings to facilitate open and free discussion within the board. If open meetings are chosen, it is necessary to close parts of the meeting where confidential matters related to individual unit owners are discussed. Individual unit owners may be allowed or invited to appear in board meetings to present their issues or opinions to the board.

A board meeting is formally called by the chairman or two of its members. The manager can request for a meeting in cases where the advice of the board is required, or for reference purposes.

The board has no formal authority except when such authority is granted by the owners' association or provided in the condominium documents. Decision making through voting of board members is needed on special issues. In this case, a simple majority of the votes of the board members is required. In case of tie vote, the chairman shall have a casting vote.

Minutes of a board meeting should include the agenda and major points of the discussions. Minority views and decisions by voting should be presented. The minutes should be made available to the unit owners.

3.4 Management of jointly owned property

As noted earlier, the principal responsibility of an owners' association is to ensure the satisfactory maintenance and repair of the jointly owned property and the most efficient use of the association's funds. This task can be divided into three major areas of responsibility:

- Administrative management
- Financial management
- Operation, maintenance and repair of the jointly owned property.

To effectively address these responsibilities, the association needs qualified management, which can be obtained in different ways. A manager can run the jointly owned property alone, or be assisted by experts from different professions, either all from one company or hired individually. The most appropriate method of managing the jointly owned property must be chosen carefully for each individual owners' association because only in this way can effective management be secured. The rights and obligations of all parties should be clearly stated (see annex VIII).

Responsibilities of the manager

The management consists of a manager and his/her staff. Irrespective of the method of management chosen, the manager acts according to appropriate laws, statutes, agreements and decisions, such as the:

- Civil code and code on civil procedures
- Act(s) on condominium ownership
- Condominium agreement
- Management contract
- Decisions taken by the owners' association.

In practical terms, the tasks of the management will in most cases include the following, which may be further supplemented by requirements of applicable laws or professional industry standards:

ADMINISTRATIVE TASKS:

- Carrying out all necessary tasks to ensure proper meeting procedures
- Implementing all decisions taken at meetings of owners and the board
- Proposing annual activity plan
- Preparing monthly/quarterly management status reports
- Hiring, supervising and terminating employees
- Accepting external contract obligations, including insurance, legal and municipal relations, reports and documents
- Communicating information to new owners/tenants, etc.
- Notifying unit owners of violations and/or delinquent condominium fee payments
- Representing the condominium.

FINANCIAL TASKS:

- Opening and control of bank accounts
- Preparing the budget and accounting
- Control and payment of invoices, bills and taxes
- Control, collection, and follow-up of unit owners' condominium fee payments

• Paying out salaries to employees, etc.

PROPERTY OPERATION:

- Supply of utilities
- Maintenance, repairs and improvements
- Implementation of condominium rules as specified in the condominium agreement
- Volunteer work by employees, etc.
- Ensuring compliance with safety and evacuation guidelines in accordance with national law.

Hiring a professional manager

Selecting and concluding contract to hire a manager is an important and time-consuming process. The responsibility lies with the board or a special committee that is elected at a meeting of the owners or board. Hiring a manager is an important decision, and the process of selection and conclusion of agreement is simpler if the committee has expertise in business, property, and technical/engineering matters. In countries where the formation of an owners' association is not required by law, it is usually preferable for the unit owners to decide on professional management through simple majority vote rather than engage in self-management, particularly for large properties consisting of many condominium units and extensive common property.

Unless a management description is provided by the condominium agreement, the committee must draw up the terms and conditions of the job and define what is expected of the manager. All these should be specified in the proposed management contract (see annex IV). Once the terms and conditions of the job have been finalized, the committee usually advertises the job opening in the local job market to identify as many qualified candidates as possible.

After identifying potential candidates, the committee should review each application in terms of job requirements. All applicants should provide references, which could also include bank references, if needed. The committee, as part of the preliminary analysis of the applications, should check relevant references.

The review of applications usually results in a shortlist of applicants considered suitable for the job. These candidates are then invited for official interviews. Each interview should be carried out as similarly as possible and try to elicit the following information:

- Applicant's work experience
- Applicant's views and opinions on the terms and conditions of employment
- Capacity of the applicant to do the job (qualifications, time, availability)
- Applicant's compatibility with the vision and goals of the owners' association.

After completing the interviews, the committee should discuss on each candidate and present a recommendation to the board. Second interviews with individual candidates could be arranged if necessary. The recommendation of the committee can be unanimous or made by a minority or majority. It is preferable to nominate more than one candidate for consideration; however, in this case, candidates should be recommended in order of preference. The board makes the final hiring decision and offers the selected candidate a management contract. If the job offer is accepted, the candidate signs the contract. A board should work with qualified unit owners, lawyers, other boards, or the municipality to obtain information necessary to evaluate a management contract before signing.

3.5 Financial management

Successful financial management is the foundation for effective functioning of the owners' association. Well-prepared budgets and sound financial planning are prerequisites for ensuring that income is sufficient to meet expenses. More than any other aspect of the owners' association, financial matters require high personal integrity from the parties involved. Such integrity must be accompanied by high quality systems of oversight and control. Information about and from these control systems should be made available to all unit owners (usually provided during owners' meetings).

Financial planning and budgeting - association's annual budget

The annual budget is the financial programme for the condominium. The budget anticipates planned income and expenditure for the coming year and is the basis for control and balance of the association's finances. A specimen annual budget is shown in Annex IX.

The annual budget is prepared by the manager or board and is included in the annual activity plan. The general meeting approves the budget as part of the procedures for approving the annual activity plan.

Budget contributions come from different sources. Condominium fees are often the sole revenue source and used for maintenance and operation of building and common areas. However, revenue may be collected from other sources such as fines, maintenance fee collections, special assessments, or rental income for use of public spaces, among others. Budget contributions can be collected and estimated in different ways. The manager must collect condominium fees in a timely manner and ensure the safe transfer of the funds to the condominium owners' association financial accounts. It is, however, important that the calculations and evaluations are presented in such a way that the input can be used for periodic budgets and other control purposes. For operation and maintenance, systematic planning and calculation are very important.

Normally expenditures are planned and calculated first, which means that each item creating a cost for the condominium must be evaluated and its cost considered. Previous years' accounted costs will represent valuable input for the budget, but it is vital that the new budget should be based on new cost estimates, tenders and calculations, and is not presented as an adjusted copy of the previous year's budget. The budget should also report liabilities as well as accruals matured from the previous year's operations.

The annual budget also includes a section on services to separate units. This applies when external services to the separate units are delivered based on collective contracts between the supplier and the condominium owners' association and are charged to each owner based on ownership fraction. This separation of cost accounts is considered important for control purposes and usually applies to utility services (gas, electricity, hot water, etc.)

The annual budget must be balanced, i.e., total revenue must equal total expenditure. This means that payments for services provided to the association should be balanced by fees paid by the owners to the association. Planned costs for new construction or major repairs should be balanced by funds or loans budgeted under "other revenues". Sample income and expenditure line items for group accounts and separate accounts for the annual budget are listed in Annex X. The list of accounts can, of course, be extended.

Excess revenues can be paid back to the unit owners proportionately to their ownership fraction or be kept in the association's bank account for maintenance purposes or in preparation for large or costly capital improvements if the owners so decide. Owners will also bear expenses and liabilities not covered by the association's income and revenues proportionately to their ownership fraction.

The following sections should be included in the annual budget:

REVENUES

This section presents all the incomes of the association throughout the year, as in Annex X. Account 1110 shows all the monthly payments towards common costs. Part of these will cover repair and maintenance. This account must be separated from account 1410, which should only contain payment to cover the costs of services to each unit paid through the condominium owners' association. Revenues such as loans, grants, subsidies, etc. should be budgeted under 1610.

MANAGEMENT COSTS/FINANCIAL COSTS

The costs budgeted under this heading are those connected with the administration and finance of the association. In some cases, it is difficult to distinguish between administration and operations. A caretaker will normally be budgeted under operations, whilst a technical manager will be part of the management team. However, it is important that the costs should

be included in the total budget, whether they are misplaced or not. Sound judgment must be used in such cases.

OPERATING COSTS

It is important to note that the operating costs budgeted under 3410 and 3420 are costs related to jointly owned space only. These accounts should not be mixed up with the accounts for services to separate units (6110 to 6120).

MAINTENANCE COSTS

These budgeted costs are calculated in, and transferred from, the detailed maintenance budget as described in greater detail below.

COSTS OF IMPROVEMENTS AND MAJOR REPAIRS

The costs budgeted under this heading will vary extensively from year to year depending on the amount of work planned for the year in question. The budget entries should be based on detailed calculations of each separate activity planned.

COSTS OF SERVICES TO SEPARATE UNITS

The costs budgeted under this heading are costs for services delivered to each unit but invoiced by the supplier to the association. Such collective invoicing should be avoided if possible. When this is not the case, the costs should be budgeted (and later accounted) separately to assist control. The budgeted costs should be based on tenders and/or officially approved fees from the suppliers.

Periodic budgets

A balanced budget does not ensure that the association has enough money in the bank at any time to pay the incoming bills when they are due. It is therefore important that budgeted expenditures should be allocated to the specific periods when they occur so that they can be balanced with the income of the corresponding period to prevent possible liquidity problems and the need for external financing.

In most associations, common costs, rent for common space and fees for services will be paid monthly. It is therefore natural to split the budget into monthly periods both for revenues and expenditures (see annex IX). In small condominiums and/or when the condominium owners' association's financial commitments are not too complex; the budget may be split into quarterly periods and still allow for suitable control.

The budget should be split into appropriate periods for each account in the annual budget. It is important that both costs and incomes should be entered in the period when they occur and indicate the amount to be received or paid in that particular period. This means that

some entries will be in equal periodic sizes, whilst others will be irregular according to seasonal activities and costs. It is thus necessary to anticipate when, for instance, operational and maintenance activities occur, and when irregular payments and incomes are due. Given the periodical breakdown of the budget, the manager will have a basis on which to plan the association's finance to achieve maximum financial income by depositing surplus liquidity on the best terms, or to minimize short-term liability and/or liquidity loans.

Bank accounts

All condominium owners' associations should have a bank account in which revenues are deposited and from which payments are made. In many cases it is also advisable to have more than one account so that funds for different purposes are kept separate and balanced individually. Depending on national laws, the condominium agreement, and decision of the board, funds may be kept in separate accounts and dedicated for different purposes, such as those related building management and general maintenance; to refurbishment/renovation. These accounts can be named for clarity in record keeping, for example as the Operating Fund and the Repair and Renovation Fund respectively. In countries where the law restricts the owners' association or other forms of operation to a single building, then each individual building and operational/management structure should maintain individual bank accounts.

The manager or board will be given power of attorney to open the bank account in the name of the owners' association. In small condominiums, the civil code may provide for accounts to be opened by joint representation from all unit owners. The banking agreement should name the people responsible for the financial affairs of the association and also contain their sample signatures. Only these people may conduct banking transactions. If a person authorized to conduct such transactions is suspended from his/her management duties, then he/she legally loses the right to conduct banking transactions on behalf of the association. Under no circumstances should funds for more than one association, or for an association and other legal bodies or people, be kept on the same account.

The manager should audit the state of the bank accounts, including transactions, deducted commissions and deposited interest based on the agreement signed with the bank. The account transactions will also be audited by the internal and external auditor as will be described in section 3.5.6. Interest accumulated on the bank account is exempt from income tax. Maintaining reliable bank account records of cash flows and overall balance is advisable and it is especially important in instances where this information may be used as collateral for future loans to repair, renovate, or improve the energy efficiency of the condominium building(s).

Information on the bank account will normally be included in the manager's monthly or quarterly status reports and discussed during the owners' and board meetings.

Accounting

STATUTORY ACCOUNTING IN ASSOCIATIONS

As outlined in the discussion on condominium legislation, the law on condominiums should specify which regulations should be adopted on accounting as well as it should specify that owners' associations should maintain professional accounting. Where national laws do not specify this requirement, associations should nevertheless lay down strict accounting rules.

ACCOUNTING STANDARDS

The basic goal of accounting in condominium management aims to identify, measure and communicate information about events with a financial impact taking place within the association, to reflect its financial condition, and to show the financial relations between the condominium and the owners of individual units. The accounts also serve as a transparent and complete database for future planning and budgeting.

To achieve these goals, the accounting system must be based on certain standards of practice and applicable templates that allow interested parties to read and interpret the information from the accounts, and the financial reports without difficulty. Simplified standards and templates can be adopted only if they do not affect the fairness and clarity of the accounting information.

Accounting is a profession that should be carried out by trained people. Condominium owners' associations must therefore hire a professional accountant to undertake the work; however, the account records should be kept in the head office of the association. Since the necessary professional knowledge goes beyond what can be presented in this Guidelines, a checklist of applicable procedures is given here below.

THE ACCOUNT BOOKS

The account books should be maintained on a routine basis. They consist of:

- (a) A journal which contains details of all transactions carried out on credit;
- (b) The general ledger where each transaction is entered in accordance with double-entry standards;
- (c) Auxiliary ledgers (such as personal, impersonal, etc.);
- (d) Balance sheet (register of assets and liabilities);
- (e) Trial balance of the general ledger and a listing of balances from the auxiliary ledgers.

The accounting template adopted by the association should show its financial condition and profits/losses clearly and allow for easy review of the books. The template should specifically facilitate the collection of:

(a) Data necessary for the proper preparation of a balance sheet;

- (b) Income statement and other information derived from the accounts;
- (c) Data required to assess taxes and complete financial transactions with suppliers and employees;
- (d) Information to gain effective internal control of the conducted transactions and assets held by the condominium owners' association.

The association should keep the documentation describing the accounting standards adopted for as long as required by applicable law, especially:

(a) An accounts chart which includes: the list of accounts in the general ledger (general accounts), data entry procedures, asset and liability valuation procedures, procedures regarding the ancillary accounts (detailed accounts) and their allocation in the accounts of the general ledger;

OURT

(b) A list of account books used.

The account books should be "opened" or begin the accounting record for the year at the date when the association is founded and at the beginning of each subsequent financial year. The books should be "closed" or completed on the final day of the financial year and at the date of liquidation. The books should be closed no later than 15 days from the approval of the financial statements for a given financial year.

Financial statements

According to most national laws, owners' associations are normally required to prepare a financial statement at the end of the financial year. The financial statements include:

- (a) The balance sheet with notes this document explains the association's financial situation by comparing assets minus liabilities to give a net worth. This report will show how much money is in the association's bank account;
- (b) The income statement with notes this statement shows the occurred transactions for a certain time period (i.e. one month, quarterly, or annually) and shows the amount the association spent for the given time period compared to the budgeted amount for the same period.

Accounting laws usually also define the details in which the statements should be presented, and for most associations the minimum requirements will be the same. Since all associations will have a professional accountant to keep their books, the comments below are general, and not intended to describe the financial statements in full.

The financial statements are prepared based on the account books and the numerical, internally balanced data derived from these books, and should be presented not later than three months after the books have been closed for a given financial year.

The manager or board is responsible for submitting the financial statements to the owners' meeting and other relevant bodies within the time limits defined in laws, statutes and agreements. The financial statements should be dated and signed by the professional accountant keeping the books and the manager or the board members.

In large associations, or where the unit owners so decide, a periodic income statement may be issued. Such a statement can be quarterly or half-yearly and will ensure a closer control of the association's finances.

Auditing

Auditing should always be adopted as a control procedure in the association's management routines, whether it is a legal requirement or not. Audits can be carried out by an external auditor or as an internal procedure.

It is recommended that the association should adopt both internal and external auditing. The board, or a special audit committee, if appointed by the owners' meeting, should act as internal auditor on a regular (quarterly) basis, making sure that revenues and expenditures are within the budget, that assets and liabilities are balanced and that bank accounts are kept in an orderly manner. Errors and discrepancies should be reported to the management and corrected. Failure to correct should be reported to the unit owners and measures to avoid future errors should be taken. The external auditor should audit based on the financial statement and make a report of findings that is submitted to the annual owners' association meeting, so that the meeting can approve the financial performance or decide to take measures as recommended in the report.

All auditors, whether external or internal, should receive close attention from the management and the bookkeeper, and receive all information necessary to obtain a clear picture of the association's financial status.

Payment of invoices

All invoices should be subject to cost control before being paid. This cost control will either be conducted according to the procedures described in this Guidelines in section 3.6.4, or by the person responsible for the part of the budget where the cost is included. Invoices should be cross-checked by the manager or the responsible board member. This control should include the formal approval of the invoice as a legal document for accounting purposes.

The signature of the manager or responsible board member(s) approves the invoices for payment. The payment is made by the person authorized through the association's relevant bank account.

The general meeting may, by resolution, limit the amount that can be paid by a single transfer and/or the amount exceeding the scope of the budget that can be approved by a single

person. In such cases special procedures for authorizing larger payments will be adopted to ensure the necessary control.

In principle, all payments should be made through the relevant bank accounts. However, it may be practical for the management to keep petty cash to pay for minor administrative expenses, which should be limited in number and amount. All invoices should be filed as supporting documents for the accounts.

Taxation

The owners' associations in condominiums should be exempt from income taxes on revenue. The underlying principle being that all revenues obtained by the association are for sustaining the property, such as for maintenance costs. Any income (surplus) can justifiably be exempted from taxation since, in the future, it will be allocated to association expenses. The board and manager should confirm the tax status of the owners' association under applicable laws.

While property taxes for individual condominium units are to be paid to the appropriate government authority directly by unit owners, any property tax associated with the common property should be paid by the manager.

The board and manager should be aware of any tax incentives provided by the government with respect to energy-efficient renovation projects or other improvements.

Insurance

The association should take out an insurance policy for itself to cover buildings, other common property, equipment, and also third-party liability and injury to any employees that the owner's association may hire directly. The extent of the insurance and its cost depend on a number of factors related to the type of building, activities in the building and common areas, building construction, type of equipment and measures taken to protect the property against damage, burglary, etc.

It is advisable to insure against damage to buildings and installations from fire, water, lightning and other natural causes. Building installations and other property should also be insured against damage resulting from the defect of materials and constructions, against rot and fungi, etc. The insurance must also cover third-party liability towards persons and things, caused by falling objects, or resulting from activities in and around the property. Finally, employees should be insured against injury at work.

Detailed specifications of the items covered by the insurance, the conditions of the insurance and the costs should figure in the insurance policy. The insurance costs should be approved by the owners' meeting as part of the association's annual budget. The final insurance policy should be signed by the manager or the board. The insurance referred to above does not

cover personal belongings in the individual condominium units or equipment in commercial units that may be a part of the structure. Such insurance must be taken out by individual owners or operators.

Annual activity plan

The annual activity plan is the working programme for the management of the association. The document defines planned activities for the year including landscaping efforts, signage installation, drainage improvements, and other works. It also includes the financial framework for the coming year, and describes the consequences and actions resulting from decisions by the owners' meetings. The document may also describe other administrative measures and actions considered necessary to improve the financial, technical and social standards of the jointly owned property.

The annual activity plan may be presented in different forms. It is, however, important that the plan contains the association's budget, and describes the activities that provide revenue to the budget. Since the annual activity plan is a suitable means of communication between the management and the unit owners, it is also recommended that the plan should be used to describe other planned actions and activities aimed at improving management, administration and living conditions in the condominium.

RESPONSIBILITY

The manager (or the board) is responsible for the preparation of the annual activity plan. If it is considered that the closure of the fiscal year is 31 December, the draft plan should be presented to the board for revision before 15 December. The board decides on the final version of the plan and presents it to the annual general meeting.

CONTENTS

As indicated above, the annual activity plan can be presented in different forms. The following suggested list of contents is an example of the formal information to be included in the plan according to the condominium agreement, and other information concerning management, administration and living conditions in the condominium:

- (a) Finance;
 - The annual budget
 - Amount of monthly payment of common costs, including utilities (the document should contain the basic calculation and the list of payable amounts per unit. The amounts allocated to the repair and maintenance fund should be presented separately)
 - Amount of monthly payment of service costs for individual units (if these costs are charged based on common agreements between the supplier and the association,

the basic calculations and the list of payable paid amounts per unit should be presented)

- The level of remuneration of the manager and/or members of the board
- Bank accounts (planned or anticipated changes in the conditions and administration of funds).

(b) Management;

- Changes in the management organization
- Staff (changes in staff)
- Powers of attorney
- Relations to unit owners.

(c) Operation;

- Operation routines (only changes in routines that will be experienced by the residents, such as cleaning, refuse handling, security, etc.)
- Supply of services (changes in service delivery contracts, renegotiations, etc.)
- Insurance (planned or anticipated changes in, or new, insurance policies).

(d) Maintenance and repairs;

- Planned maintenance activities (activities, time of execution and consequences for the use of buildings and areas)
- Major repairs and improvements (activities, time of execution and consequences for use of buildings and areas).
- (e) Major changes in the condominium;
 - Sale or rent of a common space
 - Combination of units
 - Changes in the use of common space.

(f) Environment and social life

- Observation of the house rules and added rules (with the focus on issues like order, cleanliness, parking, pets, etc.)
- Voluntary work
- Meetings and social events.

3.6 Operations, maintenance and repairs

In most countries, the board, guided by unit owner voting as appropriate, makes decisions about the use, operation, rehabilitation/reconstruction, improvement, and reorganization of the common property, while the manager undertakes to support such decisions as required. The manager is also responsible for general and routine maintenance, repair, and operation of the common property as well as the purchase of equipment and other supplies if appropriate. In some cases, the manager's activities may be guided by a formal maintenance and operation manual or may fall under the purview of the manager's professional experience.

Inspection

A thorough inspection of the building structure, building parts, surfaces, technical and other installations, equipment, outdoor spaces, etc. should be conducted once a year to assess the technical condition of all objects of operation and maintenance. This will facilitate the planning of activities necessary for the upkeep and improvement of the common property. The first inspection to be carried out will establish a basis for the future technical management of the association and should therefore be given sufficient time and attention.

Later inspections are equally important and will benefit from the experience and results of the initial inspection. The inspection should be carried out in late autumn leaving ample time for the planning to be concluded as input to the annual budget at the end of the year. The word "inspection" is also used for regular service inspections as part of operations and maintenance. It is important to distinguish between these inspections and the yearly inspection.

In addition to internal inspections, the manager should be available to assist with any municipal or other government inspection as may be necessary from time to time.

RESPONSIBILITY

The manager and board are responsible for the inspection. However, they can authorize a qualified person(s) to do the practical work. It is recommended that two persons with technical and/or janitorial background should conduct the inspection, and that craftsmen or experts are consulted when special technical matters so require.

REGISTRATION AND REPORT

The form "objects of operation and maintenance objects" is useful to help registration. A model is presented in Annex XI. The completed form together with all notes and other material referred to in the form, constitutes the yearly inspection report. Furthermore, the form serves different purposes:

- (a) It presents a comprehensive list of building parts, installations, and spaces to ensure a systematic registration process covering all objects. Since the form is general, not all the objects are relevant for each association. A shorter, more appropriate form can be made on the same model for individual condominiums.
- (b) The form permits the identification of the different categories of work: (i) operations; (ii) planned maintenance; and (iii) repairs. All objects must be considered and classified, since they will require different activities to be documented later in the process. It should be noted that some objects will fall into more than one category, depending on the type, condition and age. Activity cards, which are further described in 3.6.2, are

- produced for each object identified under each category according to the procedures discussed in the section "Operational Activities" below .
- (c) The column "type of activity" should be used to identify the main activity/activities in broad terms and is primarily meant to give a general presentation of the type of work or action to be undertaken. It should also serve as a reminder in the production of activity cards.
- (d) The last column "comments/references" is for all-purpose use: short comments can be noted, but it should mainly be used for reference. In a thorough inspection, all findings, thoughts, and ideas cannot be presented briefly. In most cases it is necessary to describe the state of the object and the suggested action in detail. Therefore, it is recommended that the inspectors make detailed notes that are marked and referred to in the registration form for future use. The reference column should also include reference to manufacturers' manuals, service guides and consulted experts, contractors or craftsmen.

Operations

Operations refer to all the services necessary to keep the building, installations and surroundings in a functional condition on a daily basis. In practice, good living conditions can be maintained in a condominium only when the operation activities are carefully planned and executed. The basis for such planning is the inspection report.

OPERATIONAL ACTIVITIES

In the registration form "operation and maintenance objects", all objects that need operations are identified through the inspection. Each of these objects should be given an operations activity card (see annex XII), with the object's name and identification number stated in the heading.

The purpose of the card is to describe the work to be undertaken for the particular operations object. Whether it is cleaning the stairs and corridors, daily and/or weekly inspection of the heating system or changing filters in the ventilation system, the activity(ies) should be presented in detail to act as instructions or routines for the work. The card should also indicate the frequency of work, whether it is daily, weekly, monthly, seasonal, etc. Also, activities such as service inspections, conducted by contracted specialists, should be presented in an activity card. For some activities the description will be based on practical know-how and for others on technical information, inspection instructions, laws and regulations. When feasible, references to additional sources, experts, manufacturers, contractors, etc. should be included.

The manager and board are responsible for the production of operations activity cards. However, it is advisable that the person(s) conducting the inspection, assisted by the

necessary experts, should carry out the practical work. The cards should be approved by the manager, the board or an authorized person. The operations activity cards should be recognized as an important part in the systematic management of operations and should therefore be produced paying proper attention to all objects. The cards should be filed and will serve as reference not only when work instructions are prepared, but also in the calculation of costs and in budgeting. Whenever a routine does not work as intended or when installations or building components are changed, the operations activity card should be amended.

CALCULATION OF OPERATING COSTS

Operating costs can be divided into two types:

- (a) All costs related to the operations activities as they are described in the operations activity cards. These costs will include personnel, operations means, technical service agreements and other inspection/service costs; and
- (b) Costs related to public services delivered (heating, water, gas, electricity, etc.), insurance, security, taxes, fees, etc.

The calculation and presentation of costs serve several purposes. In the budget process, the costs serve as input to the operations budget, which is part of the annual budget, and from which, among other things, the individual unit owners' shares of the common costs are calculated. Also costs for the separate activities serve as a background for decisions on work methods, use of external contractors or own employees, etc. The costs should be calculated and presented in a manner that serves the purposes mentioned above and gives sufficient background for cost control.

Previous experience and costs registered in previous years are important information as a basis for the calculations. All service agreements should have fixed, tendered prices to be used directly, and the costs of operations means should be partly based on tenders and partly on market prices for the various items. The cost of personnel should include all contracted and/or employed personnel, fully or partially occupied with operational duties.

The cost of cleaning can be treated in two ways. If the activity is contracted out, the costs should be recorded under "cleaning". If, however, it is done by employed personnel, the costs should be recorded under "employed personnel" and "operations means". The same applies to other activities, such as gardening, service inspections, etc. Costs described in point (b) above do not normally need to be calculated. In most cases these costs are extracted from tenders or contracts with external suppliers and service companies. Such costs can be entered directly into the operations budget.

DECIDING OPERATIONAL ACTIVITY PRIORITIES AND SCALE OF SERVICES

The operating costs as calculated and/or presented by external service providers and contractors are evaluated and used in the prioritizing of activities and services. Normally the type of activities and services necessary for the daily functions of the common spaces and installations of the buildings and their surroundings are relatively fixed. However, the frequency of the actions and the quality of work and operations means, and also the degree of comfort of heating, lighting, etc., can vary and thus influence the operating cost. It is the responsibility of the manager/board to evaluate the order of priorities and to present conclusions and/or alternatives to the annual meeting as part of the annual activity plan and the annual budget.

OPERATING BUDGET

The operating budget is made up of all costs related to operational activities, services received and means necessary to support the ordinary daily functioning of the common space of buildings and their surroundings. Such costs include:

- Personnel (caretakers/service personnel)
- Cleaning
- Operations means
- Services (heat, water, gas, electricity, etc.)
- Insurance
- Taxes/fees
- Security
- Service agreements (contracts) and other operating costs

The operating budget is a part of the annual budget. The costs in the budget are the costs connected with the common space. Costs that are covered by the association but related to individual units should be invoiced to individual units and not be presented in the operation budget.

The manager/board is responsible for presenting the operating budget, as part of the annual budget, before 1 December of the year preceding the considered fiscal year, or at the date set by the owners' meeting.

The operating budget should not be a copy of the previous year's budget, but should be based on new evaluations, calculations and tenders.

The costs are transferred to their respective groups and positions in the operating budget's template (see annex XIII).

In the template, the personnel costs are presented under item 11, the costs of operations means under item 13, and the costs for service agreements, cleaning contracts and other costs under item 12 and 21 to 74.

To complete the operating budget, the costs for services related to common space are presented under item 14. The condominium owners' association's insurance costs under item 15, taxes and fees under item 16 and costs related to special security arrangements (security guards, etc., but not alarms) under item 17.

The costs of services (item 14) relate only to common space (areas) or common services. Costs related to each unit but invoiced through the condominium owners' association's accounts are presented in the owners' association's annual budget, accounts 6110 to 6190. These costs will in turn be invoiced to each unit owner separately.

The operating budget as shown in Annex XIII is used as a basis for the financial control of all service deliveries, operational activities and related costs. The completed presentation form also serves as input to the owners' association's annual budget, where the costs are presented under their respective budget account numbers.

OPERATIONS INSTRUCTIONS AND REPORT

The description of the operations process above presented possible routines for planning the execution and control of operations. Procedures for the practical work are presented below.

The suggested approach is to issue a work order or operations instructions and report for each month, specifying the operational activities for that month. The activity is described according to the procedures given for the particular activity/object in the operations activity card, with regard to work sequences and frequency (daily, weekly, monthly, etc.).

All activities should bear the operations object number concerned. The number serves as a reference to the activity described on the operations activity card. The manager, board, or a person appointed by him/her is responsible for the preparation of the monthly operations instructions and report. The instructions must be approved by the manager or the board.

MAINTENANCE AND REPAIRS

For new and modern buildings maintenance and repairs are typically fairly manageable as long as they are carefully planned and receive the necessary on-going attention. In old buildings, however, the deterioration of installations is often beyond repair, or the equipment is too old to satisfy the required standards even if maintained properly. In such cases improvements should be considered as a better long-term, economic solution than maintenance and repairs. The basis for the systematic planning of maintenance and repairs is the above-mentioned yearly inspection report.

PLANNED MAINTENANCE ACTIVITIES

As mentioned, the registration form "operations and maintenance objects" identifies all objects for which maintenance activities are planned (see annex XI). Each of these objects should be given a planned maintenance activity card, with the name and identification number of the object stated in the heading. The purpose of the card is to describe the maintenance work to be undertaken for a particular maintenance and repair object.

Some planned maintenance activities are repeated at certain intervals, but the frequency may vary, for instance from the yearly, general overhaul of the heating pipes and equipment, to the planned painting of stairwells and corridors every sixth year. Some activities are not repetitious but are planned on the basis of the inspection report and executed in time to avoid a breakdown, for instance replacing a valve in the heating system or changing a window frame with clear evidence of rot. Regardless of the type of activity, the cards should contain the necessary detail to act as instructions or procedures for the work and can be modified to include a priority score to assist in determining which interventions should be completed as a matter of priority.

For some activities the description will be based on practical know-how and for others on technical information, inspection instructions, laws and regulations. When feasible, references to additional sources, experts, manufacturers, contractors, etc. should be given. The manager and/or board is responsible for the production of planned maintenance activity cards. However, it is advisable that the person(s) conducting the inspection, assisted by the necessary experts, should carry out the practical work. The cards should then be approved by the manager/ board or an authorized person.

The planned maintenance activity cards should be recognized as an important part of the systematic management of maintenance and repairs and should therefore be produced paying proper attention to all objects. The cards should be filed and will serve as reference not only when work instructions are prepared, but also in the calculation of costs and in budgeting. Should activities be undertaken by external contractors, the cards will also serve as background information for the tender documents.

REPAIRS

In some cases, repair work must be carried out immediately, whilst in others the work can be postponed in order to fit in with a work schedule or in order to have it properly planned. In the latter cases it is sometimes difficult to distinguish between what is maintenance and what is repair. Generally, all work of a certain cost that does not have to be repeated regularly is considered as repair.

There are many reasons why repair should be given higher priority by an association. In some cases, a repair secures safe conditions for occupants and the general public; in others it

prevents further damage or deterioration of the property. Technical installations must receive immediate attention when they break down, and it is important for the occupants and their investments that the value of the property is maintained. Sometimes it is vital to undertake the repair work first, and worry about the costs later, but in most cases the work should be carefully planned, specified and calculated/tendered before execution.

CALCULATION OF MAINTENANCE AND REPAIR COSTS

The calculation and presentation of costs serves several purposes. In the budget process the costs serve as input to the maintenance and repair budget, which is part of the annual budget, and from which, among other things, the individual owner's share of common costs is calculated. Also, the costs for the separate activities serve as a background for decisions on method, use of external contractors or own employees, etc.

With respect to operating costs, the method of calculation will vary according to experience. However, the costs should be calculated and presented in a manner that serves the purposes mentioned above and by means of giving sufficient background for cost control.

For each planned maintenance object presented in an activity card, the costs are presented in total and then broken down for entry into the maintenance and repair budget (see annex XIV). Previous experience and costs registered in previous years are important information as a basis for the calculation. The costs of spare parts and other means should be based on tenders or market prices. The cost of personnel should include all contracted and/or employed personnel fully or partially occupied with operational duties.

Maintenance and repair work in many cases demands special skills and equipment and is also labour-consuming. Therefore, external contractors should be considered and employed on the basis of competitive tenders based on accurate specifications. The costs of external contracts are entered under total costs in the calculation form. Unforeseen repair should be calculated with reference to previous experience as a fixed sum based on the costs per square meter observed for previous years and adjusted to the relevant price index.

It is possible to make the calculation more comprehensive by dividing the property into parts and using costs per square meter from previous years for each part or group of parts. However, it is important that the cost data used are based on realistic assumptions and the necessary know-how. The anticipated costs of unforeseen repairs are presented directly in the maintenance and repair budget, account 4310.

DECIDING MAINTENANCE AND REPAIR PRIORITIES

Maintenance costs as calculated and/or given in tenders by external contractors should be evaluated and used in the prioritization. The reasons for giving priorities are to balance the

financial expenditure of the association. It is therefore an important responsibility of the manager/board to evaluate the consequences of such priorities both technically and financially, and to present conclusions and/or alternatives to the annual meeting as part of the annual activity plan and annual budget.

MAINTENANCE AND REPAIR BUDGET

The maintenance and repair budget is made up of all costs related to maintenance, repairs and replacements that were planned and executed to maintain the quality and standard of the building and to prevent damage and breakdowns. Planned maintenance (and planned repairs) is calculated and presented in the budget as costs per object. Repairs (and replacements) cannot normally be planned and calculated for budgeting purposes. But the maintenance and repair budget must allow for repairs, and in order to do so the related costs must be specified based on experience and the expected amount of work to be undertaken. The budgets of previous years should not be copied.

The maintenance and repair budget is used as a basis for the financial control of all service deliveries, maintenance and repair activities and related costs. The completed template also serves as input to the annual budget, where the costs are presented under their respective budget account numbers. The manager/ board is responsible for the presentation of the maintenance and repair budget as part of the annual budget, before 1 December of the year preceding the considered budget year, or at the date set by the owners' meeting.

MAINTENANCE INSTRUCTIONS AND REPORT

As for the operations activities, it is also suggested that the practical work connected with planned maintenance (and minor planned repairs) should be based on work orders or maintenance instructions and report. The instructions are issued for each month, specifying the activities for that month. The activities are described according to the procedures given for the particular activity/object for execution and frequency. The instruction should also include minor repairs and replacements resulting from damage or breakdowns that have occurred during the last month and that need attention. Major repairs and replacements will normally be planned and executed on the basis of individual specifications and tenders. The manager/board or a person appointed by them is responsible for the preparation of the monthly maintenance instructions and report. The instructions must be approved by the manager/board.

Improvements

At a certain stage, the question of making improvements to the property will occur. Depending on the age and condition of the property, or the financial situation of the association, such improvements could include:

- (a) Increasing the original standard of the property;
- (b) Changing the function of parts of the property;
- (c) Adding new elements to the property.

Work connected with additional thermal insulation of the building, changing a shop into a community room for the association (change in use) or building a shed in the children's playground, are all examples of improvements. In a properly organized association such work is based on discussions and decisions made in the governing bodies. After the work is planned and anticipated costs are calculated, the costs are entered in the annual budget in accordance with the financial arrangements made for an activity.

In most cases, the manager and board rely on the use of external consultants and contractors to design, plan, and execute the work on the basis of tendered contracts. The main functions of the management will therefore be to advocate competitive tenders and to effect quality and financial control throughout the construction phase, and to regularly report the results to the association and to the owners.

Control of operation, maintenance and repair costs

Cost control is an important managerial duty that should be given high priority. This duty is addressed by the budget.

The control of costs at budget level is the responsibility of the manager and board. In practice however, control starts at a lower administrative level with the person responsible for the activity, such as the association's accountant. The actual costs resulting from invoices from suppliers and contractors, the costs of employed and hired personnel, the purchase of materials and equipment, etc., should be compared to the calculated costs for the activity.

By controlling each activity, the invoices and internal costs should be approved. In the case of deviations from agreed, expected or planned costs, the issue should immediately be reported to the person responsible for the budget. The control is completed by attestation (signing) from the controlling person, and the invoice and the internal costs are then handled according to the payment process adopted by the association.

4. ALTERNATIVE OCCUPANCY OF CONDOMINIUM UNITS

Typically, condominium units are occupied by the unit owner, for whom the unit serves as a primary residence. However, alternative forms of occupancy exist, including:

- Units that are frequently and/or continuously unoccupied by the unit owner, but which are not abandoned (e.g. vacation homes or second homes)
- Units that are used primarily as rentals, for either short or long periods (e.g. via annual rental contracts or through shared economy arrangements such as AirBnB)
- Units that are abandoned
- Units that are illegally or informally occupied by a party or entity other than the unit owner.

The challenges created by alternative forms of occupancy can include:

- Communication challenges wherein the board and/or manager cannot readily and reliably contact the unit owner
- Maintenance issues that can affect other condominium units and unit owners, such as an appliance failure in an unoccupied unit that causes water to leak into a downstairs adjacent condominium unit
- Disturbances, liability issues, and/or safety concerns associated with both the longand short-term rental of units not occupied by the unit owner; and/or
- Inability to effectively collect the condominium fees owed.

Many condominium laws and related hospitality and/or property laws do not adequately address forms of alternative occupancy, nor provide sufficient guidance on resolving associated challenges.

In instances where the legislative framework does not directly address issues related to alternative forms of occupancy, it may be possible to address them in the condominium agreement. This can be achieved by the thorough design of a new condominium agreement or, if permitted, by amending an existing condominium agreement. The later will almost certain require a majority vote of the unit owners at a formal meeting. However, in no instance can the terms of the condominium agreement contradict or violate prevailing statutes. Owners' associations seeking to amend their existing condominium agreements should consult with a competent attorney before proposing changes.

Solutions to ameliorate the challenges created by alternative occupancy in condominium units will vary by country and circumstance. In some cases, and as permitted by law, it may be possible to include clauses and conditions in the condominium agreement to address specific challenges. Examples of these are described in the following sections.

UNOCCUPIED UNITS AND ABSENTEE OWNERS

Some units may remain unoccupied for extended periods of time. This is especially common in condominiums where a large percentage of the units consist of second homes or vacation homes, although a similar situation can arise if a unit owner travels extensively for work. To improve the timeliness of communication in such instances, the board may be able to require unit owners to provide (and maintain) a valid email address. It is also important to ensure that the condominium agreement gives the board and/or manager the right to enter the unit and conduct emergency repairs on behalf of the unit owner. Any costs associated with such repairs will be the obligation of the unit owner. In cases where the absenteeism creates operational problems or material disruptions for other residents, it may be appropriate to restrict voting rights such that absentee owners do not participate in decision relating to major investments or expenditure of funds. Similarly, requiring that unit owners attend meetings in person in order to participate in important votes (as opposed to voting by proxy or absentee ballot) can be considered.

RENTED UNITS

Imposing rental term limitations and/or prohibiting the rental of condominium units can help reduce the challenges associated with non-owner occupancy. If renting units is prohibited, the condominium agreement should include specific fines or other consequences for unit owners found in violation. However, such a restriction may be unwelcomed by unit owners, particularly in condominiums where a large percentage of the units consist of second homes or vacation homes that are rented out to supplement the owner's income. In such cases, the board may consider a variety of mitigation policies and can present a motion at the annual meeting calling for the adoption of a short-term rental policy. This policy can include measures such as:

- Imposing a rental fee payable by the unit owner (in addition to any regular condominium fees owed) to cover expenses of additional wear and tear, damages, liability insurance, special assistance by staff (if applicable), and other costs that may be incurred as a result of rental tenants and their activities
- Requiring unit owners of rented units to notify the board of each rental, including dates and relevant guest information, to ensure an accurate record of non-owners that have access to the property
- Imposing reasonable regulations on non-owner tenants, such as: quiet hours, arrival times, a requirement to check-in with the manager or other staff upon arrival, pet and smoking restrictions, etc.
- Imposing fines on unit owners that fail to comply with policy requirements and/or who fail to ensure the compliance of rental tenants.

In all cases, the board and manager should be aware of changes to hospitality law that may impact rental activity in the condominium and advise unit owners accordingly.

ABANDONED UNITS

With respect to treatment of abandoned units, the responses of the manager and board as well as any clauses contained in the condominium agreement should be guided by relevant legislation. In most cases, it will be necessary to establish that abandonment has truly occurred. This is especially important to avoid potential conflicts if a unit owner or the heirs of a unit owner make a future claim. Conditions for establishing abandonment will most likely be tied to the unit being continuously vacant for an extended period; the unit owner being delinquent on taxes, utility bills, and condominium fees; and a complete lack of contact with the unit owner.

Upon establishing that a unit has been abandoned, continued maintenance for the abandoned unit may fall to the owners' association or the board and manager may be required to follow eviction proceedings established by law. In some countries, ownership and responsibility for the unit may be transferred to the municipality. In such instances, the municipality should be obliged to maintain the unit and contribute fees as per the condominium agreement.

INFORMAL OCCUPATION AND VULNERABLE GROUPS

Informal occupation of a condominium unit can occur for several reasons. For example, a short-term rental tenant may refuse to vacate the premises and, in countries where short-term rentals are not subject to tenants' rights laws, this can create an informal occupancy. In other instances, an unoccupied unit may become inhabited without the unit owner's knowledge. Depending on the circumstances, the responsibility and costs for initiating eviction proceedings may fall primarily to the unit owner or to the board and manager. The board and manager should engage the professional services of a competent attorney in determining how to proceed.

An additional challenge posed by illegal or informal occupancy centres on the treatment and protection of vulnerable groups. One such example would be a pensioner or other person who has no alternative housing but who can no longer afford to make the necessary payments associated with a condominium unit and may have lost ownership as a result of bank foreclosure. Approaching such situations in a respectful and productive manner while remaining cognizant of the needs and rights of other unit owners can pose an immense challenge for both the board and manager.

When facing such situations, the board and manager should seek resources from the municipality and organizations specializing in the protection of vulnerable groups. It may be possible to introduce public sector housing support systems guaranteeing the ability of low-

income owners to meet the financial obligations stemming from condominium ownership. These may take the form of direct transfers, tax breaks, or "de-privatization" wherein the government acquires the condominium from low-income owners and guarantees their right to stay on as tenants.

Solutions sought by the board and manager should be in accordance with the goals outlined in leading international documents, such as the SDGs of the 2030 Agenda for Sustainable Development, the Geneva UN Charter on Sustainable Housing, and the New Urban Agenda.



5. FINANCING FOR CONDOMINIUM PROJECTS

An acute problem faced by condominiums in many markets is financing renovations and improvements. Most laws designate the owners' association, through the actions of its board and manager, as the organization tasked with generating the financial resources to repair, renovate, or improve deteriorating buildings. However, funds generated by condominium fees are often insufficient to undertake large-scale projects. Project costs can be further exacerbated if the condominium suffers from poor quality initial construction or if repairs and maintenance have not been conducted assiduously over time. Income inequalities among unit owners and vulnerable groups, such as pensioners or single-parent households, mean that the board is not always able to pass motions to enforce special assessments in order to raise additional funds. Therefore, financing condominium projects often becomes a challenge for the owners' association.

PUBLIC AND DONOR FUNDING

Public funding schemes can benefit smaller and/or less well funded owners' associations that might be rejected by traditional lending sources, such as banks. Further, public assistance in renovating common property may include social considerations to help offset income inequalities among unit owners. However, such schemes inherently require the availability of public funds and are often not sufficiently robust to provide the necessary funding under all scenarios.

Donor supported funding, particularly if the framework for its distribution exists under the law, is another possible source of funding in which owners' associations become partners to donor initiatives and grant schemes. In such instances, the existence of an owners' association is critical because of the way donor support schemes are structured: for example, assemblies (owners' associations) can be counterparts to EU institutions under such initiatives, while individual unit owners cannot. Donor funding can be especially beneficial in improvement initiatives where the owners' association is identified as the beneficiary in energy efficiency grant schemes.

In general, public sector and donor-based grant schemes may only be available to certain groups or to cure severe systemic defects, while traditional loans may be the primary source of funding for interventions that feature financial benefits.

TRADITIONAL PROJECT FINANCING

Renovations and improvements that must be funded through traditional financing or bank loans depend on the existence of certain key conditions for a condominium to borrow money. As described in preceding chapters, the owners' association should have a bank account controlled by the board and manager. The bank account and financial history of the association will need to be considered as part of any loan evaluation. The owners' association

must also have a functioning structure and the necessary legal status to exercise decisions over the common property, including the use of such assets as the subject for improvement of and/or as collateral for loans.

Owners' associations have limited options when seeking to satisfy a bank's requirement for collateral and/or a guarantee in order to approve a loan. One possible structure may involve using common property or the maintenance fund as collateral. Alternatively, the cash flow of the owners' association itself may be accepted as collateral by banks under certain conditions.

Before committing to any loan agreement, the board and manager must be sure a sustainable method of repayment exists. The specifics of repayment a dependent on the project and any resulting cost savings from operations or accruing to individual unit owners. However, in many cases, new improvements or curing significant defects in the condominium structure do not generate any form of cost savings. In such instances, the unit owners may be asked to vote on a motion to either accept a special assessment or increase condominium fees in order to cover the loan repayment or else forgo the improvement. Note that increased fees attributable to improvements to limited common elements, such as balconies, should only (or predominately) affect those unit owners that benefit from the limited common elements in question.

FINANCING FOR WATER AND ENERGY EFFICIENCY

There are environmental, economic, and health benefits to water and energy efficient retrofits of older housing stock, including condominiums. In additional to debt products to finance basic renovations or improvements, some lenders offer special "green financing". These products usually feature preferred (lower) interest rates in exchange for specific environmental outcomes, usually tied to improving water or energy efficiency. While such loans are often aimed at multi-unit rental properties, they may be applicable to certain condominium projects.

Savings from energy-efficiency investments may be achieved through reduced energy bills due to the energy savings over time. However, retrofitting existing buildings has long payback periods and does not always produce results exactly as anticipated due to a variety of factors. Further, savings may largely benefit individual unit owners rather than common property or the owners' association as an entity. This can lead to challenges in structuring an appropriate repayment scheme if project funding or loans are obtained by the board on behalf of the owners' association as an entity, rather than by individual unit owners. Boards must work closely with their owners' associations and lenders to structure the loan and payments accordingly. For example, unit owners benefitting from a reduction in utility costs may be required to pay some proportion of the savings in the form of an increase in condominium fees to be used by the board for loan repayment. Note that such arrangements

are easier to structure in schemes were shared utilities are provided by the owners' association to the unit owners.

Green financing is a developing field and financial institutions should endeavour to incorporate energy efficiency projects in their practices, raise technical expertise for related appraisals, and work with owners' associations, boards, and managers to identify successful loan structures. Guidance can be sought in many contemporary documents. The Geneva UN Charter on Sustainable Housing³ has articles dedicated to the environmental and energy performance of housing while several of the SDGs of the 2030 Agenda for Sustainable Development are related to health, housing, and the environment. The evolution of green financing may be further facilitated by the existing global community of stakeholders working to disseminate information and increase awareness surrounding residential energy efficiency. These actors and/or agencies can assist in contracting for technical audits and baseline assessments, organizing residents and educating unit owners, and preparing the necessary documentation.

The support and assistance of expert stakeholders is particularly necessary when owners' associations and/or their professional managers do not have sufficient experience to prepare and implement renovation and improvement projects. Encouraging and facilitating stakeholder support should be an integral part of any program or initiative aimed at bringing together communities, condominium owners' associations, and public and private sector actors (including financial institutions) for the purpose of incentivizing large-scale energy-efficiency upgrades of the overall housing stock.

ENERGY POVERTY⁴

Even in most developed Western European countries, a considerable portion of the population lives in energy poverty, as defined by the need to spend more than 10 per cent of household income on energy in order to heat homes to a minimum standard of warmth. Energy poverty is frequently tied to lower income and vulnerable groups. The cycle of energy poverty tends to worsen given that the same groups are unable to afford investments in energy efficiency.

³ The document is available online at http://www.unece.org/housing/charter.html

⁴ Habitat for Humanity Armenia (2014): Legal-Regulatory Solutions for Strengthening Civic Involvement in Condominium Management in Armenia: Utilizing the Knowledge Wealth from Visegrad States and Ukraine. Study prepared for Habitat for Humanity Armenia by Astghine Pasoyan. Available at https://getwarmhomes.org/wp-content/uploads/2016/05/HOA-recomendations-HFH-A.pdf; Habitat for Humanity International (2017): How to improve residential energy efficiency in South Eastern Europe and CIS: Policy Discussion Brief for national governments and international organizations. Available at https://getwarmhomes.org/wp-content/uploads/2017/06/How-to-improve-REE policy-brief HFHI.pdf

Boards and managers should be cognizant of the needs of these groups when considering green financing projects. If the bank and applicable laws allowing the owners' association freedom in developing and approving a schedule for the manner and period of repayment for each unit owner, fees may be waived or discounted for low-income households. Green financing may also be combined with appropriate public subsidies wherein vulnerable residents can be assisted through the existing social allowance system, either through an expanded allowance or through additional funding by other social protection institutions. Regulations should encourage substantial financial support from the government at the local or national level in order to reduce the payback period on improvements so that energy-efficient investments are more attractive and affordable, especially for the low-income owners. The board and manager can assist in seeking subsidies and grants for low-income unit owners to allocate toward improving the energy efficiency performances of their dwellings through retrofit projects.



ANNEX I Legal regulations for the administration of jointly owned property in condominiums without owners' associations

(Specimen)

Introduction

Where the national law on condominiums does not make owners' associations compulsory in all private, multi-flat buildings, the law or regulations should state that such associations exist de facto through the functions of an administrator. Administrators appointed for the jointly owned parts of private, multi-flat property should have the same rights and obligations as administrators employed by owners' associations in buildings where such associations exist. The only exemption from this principle follows from these regulations.

It is recommended that the national law should have a clause stating clearly that for condominiums whose owners do not set up and register an owners' association of all owners within three months of registering the condominium, the municipality, represented by the mayor, has the exclusive right to appoint an administrator in accordance with the following regulations.

Regulations

- 1. The municipality is obliged to:
 - (a) Establish and periodically update a register of qualified administrators;
 - (b) Appoint and, on behalf of the private unit owners, enter into a contract with the first administrator for the jointly owned parts of the property;
 - (c) Appoint and, on behalf of the private unit owners, enter into a contract with any subsequent administrator, where a court has dismissed the previous administrator;
 - (d) Produce and publish, yearly:
 - (i) A standard list of functions to be carried out by administrators (for guidance only);
 - (ii) Advice on acceptable tariffs to be charged by administrators for administrative functions for commonly owned parts of property.

- 2. The local authority should have no legal or other obligations regarding administrators than those explicit in paragraph 1.
- 3. The contract of administration established by the municipality can only be terminated by either:
 - (a) A final decision by a competent national court; or
 - (b) The formal formation and registration of an owners' association within the housing complex.
- 4. The court can decide to dismiss the administrator only if it has been proved that the administrator has acted negligently with regard to his contract of administration.
- 5. Where the owners form and register an owners' association this should be regarded as a formal termination of the contract of administration within a specified notice period (three months). The association is then contractually free to retain or change the administrator and to enter into a new, renegotiated contract.
- 6. All unit owners are legally obliged to pay to the Administrator a fee for his services. This fee cannot be higher than the maximum tariffs for administrative functions published yearly by the local authority.
- 7. All unit owners are legally obliged to enter into individual binding contracts with all utility suppliers delivering services to the property. Such contracts should be structured in two parts:
 - (a) Services delivered directly to the unit owner/the privately-owned unit. For these services the unit owner is fully responsible; and
 - (b) Services delivered wholly or partially to the jointly owned parts of the property. For these services the unit owner is legally responsible pro-rata, according to established ownership ratios or fractions.
- 8. The administrator has no responsibility, legally or otherwise, for any aspect of the contractual relationship between unit owners and utility suppliers (para. 7 (a) above). He is, however, obliged to assist and advise the owners on all such contractual relationships.
- 9. The administrator is obliged to advise the unit owners on the form and contents of contracts proposed by the utility suppliers.
- 10. The administrator is obliged to advise the unit owners on all legal and practical aspects of forming an owners' association.

ANNEX II Condominium agreement

(Specimen)

1. Members of the owners' association

The	owners of individual units in
form	the owners' association of the property in the local authority of Real estate ber Name
The	owners are listed with full names, description of individual units and ownership fractions
	2. <u>Legal status of the owners' association</u>
1.	The owners' association is a legal entity competent to acquire rights and to take on obligations; it can sue and be sued in courts of law.
2.	The owners' association has unlimited liability for common property; internally each unit owner's liability is limited to his ownership fraction in the common property.
3.	The association cannot establish or participate as owners in commercial enterprises.

3. <u>Individual property and common property</u>

- 1. The individually owned property is the self-contained unit together with the auxiliary space. This includes everything inside the unit: internal walls, all doors (including entrance door to a flat), the inside surface of window frames, floor coverings, wall coverings, ceilings, all technical installations inside the unit which serve the exclusive use of the individual flat, kitchen and built-in cupboards.
- 2. The common property is (among other things, as far as these legally belong to the Condominium) the plot of land under the buildings, outdoor space such as roads, gardens and playgrounds, foundations, external walls, external doors and windows, load-bearing walls, structural floors, roofs, staircases, all internal doors not serving individual units, lifts, technical distribution systems for electricity, gas, water, sewage, heat and common TV aerials. The common property also includes common laundry rooms, technical rooms, rooms for caretakers and other rooms, such as attics, cellars, halls, etc., that are not individually owned. Management funds and repair funds are also common property along with equipment purchased by the condominium association in order to operate the property.

3. The rights and obligations of the co-ownership of the common property cannot be abolished by an individual owner of a unit. The individual owner's share of co-ownership of the common property is defined by the ownership fraction.

4. Rights and duties of the unit owners

The rights and duties of the flat owners are governed by the [Act of _____ on Condominium Ownership] unless otherwise stated below:

- 1. The unit owner has the exclusive right to use his individual property within the limit of the law and this condominium agreement. The unit owner has to bear all costs related to his individual property.
- 2. The unit owner has the right to co-use the common property, and to receive any benefits and revenues according to his ownership fraction. The unit owner has to bear all costs related to the common property, in particular the management costs, according to his ownership fraction.
- 3. It is the unit owner's right to jointly manage the common property, in particular to participate and decide in the general meeting on all issues related to the common property. The unit owner can delegate powers to the manager of the condominium or to another unit owner.
- 4. The unit owner is obliged to exercise his rights with due respect for all other unit owners' rights. The unit owner has to observe the house rules.
- 5. Commercial activities within a unit initially planned for housing need the consent of the owners' association. The consent can be withdrawn by a resolution passed with a simple majority. The owners' association can delegate the power of consent to the manager. The consent can only be withheld for good reasons such as the commercial activity disturbing the unit owners or leading to unwanted use of the common property or limiting its proper use and influencing the character of the estate, etc.
- 6. The unit owner is free to let his property. This does not, however, free the owner of his rights or responsibilities towards the owners' association. The owner must inform the manager before letting the unit and give the name and number of his tenants.
- 7. The unit owner has to give access to third persons if this is needed for maintenance, repair or replacement work. The unit owner cannot claim compensation for such access.
- 8. The unit owner is free to sell the unit. He is obliged to pass on all obligations to the purchaser. The purchaser accepts all the seller's obligations; in particular, the purchaser is bound by the running management contract. The unit owner and the purchaser are jointly liable for all costs and duties. In the case of sale, the common funds mentioned under section 3, paragraph 2, remain with the owners' association.

- 9. Any seller of a unit is obliged to provide the buyer with written information on:
 - All relevant agreements;
 - Current cost levels;
 - Important decisions made by the association;
 - Any other relevant information relating to, or having an impact on the rights of and obligations for the unit being bought.

5. <u>Forced sale of individual property</u>

- 1. The owners' association has the right to bring action against any unit owner who persistently and gravely disregards his obligations. The association can sue for the forced sale of the individual property, in particular if a unit owner:
 - Is in arrears for three months with the regular financial obligations; or
 - Persistently and gravely violates the house rules; or
 - Behaves in a way that is detrimental to the other unit owners' interests.
- 2. The decision to sue a unit owner must be passed by a simple majority of all unit owners at a formally called owners' meeting.
- 3. The unit owner whose unit has been sold does not have any claims for substitute housing on the association.

6. <u>Maintenance, repairs and modernization</u>

- 1. Maintenance of the common property is the responsibility of the manager and should be carried out on the basis of the maintenance budget agreed by the general meeting.
- 2. Major repairs, modernization and extensions of the common property require a decision of the owners' association by a three-quarters majority. The costs of such work are covered by the repair fund or by separate funding.
- 3. The repair fund is financed by a portion of the owners' monthly advance payments, allocated to a separate repair-fund account. This monthly portion is agreed by the owners' association at the general meeting.

7. <u>Costs of common property</u>

- 1. The individual owners are obliged to cover their share of the costs of the common property according to their ownership fraction.
- 2. The costs of common property consist of:

- Management costs;
- Operating costs;
- Maintenance costs; and
- The repair fund.
- 3. The anticipated yearly costs are presented in the budget and determined by the owners' association at the general meeting.
- 4. To cover the common costs each owner shall make a monthly advance payment invoiced to him by the manager, or pay on the basis of a rent book, not later than the 10th of the month. The payment is made to a special account for common costs. From this account the manager transfers the agreed portion to the "repair-fund" account.
- 5. The common-costs account is balanced yearly as part of the yearly financial report and the general meeting decides on action regarding profits or losses.
- 6. In case of price or cost increases not foreseen in the budget, the manager has the authority to increase the advance payment during the fiscal year by up to 15 per cent on a yearly basis. The increase per month cannot, however, exceed 10 per cent of the former month's payment. Increases exceeding 15 per cent on a yearly basis must be agreed by the owners' association with a simple majority.
- 7. Costs for electricity, water, heat and gas for each individual unit are invoiced directly from the supplier to the owner of the unit. (If such agreement cannot be reached with the suppliers, individual owners should pay their proportional share through the monthly payments.)

8. Management

- 1. The owners' association may establish and elect a board from amongst the owners. The board shall be responsible for the proper functioning of the association between general meetings.
- 2. The condominium's main responsible body is the owners' association. The association has the power to appoint a manager to carry out daily management tasks.

9. Responsibilities of the owners' association

The responsibilities of the owners' association are to:

- (a) Approve the annual activity plan including the budget and the amount of advance payment;
- (b) Approve the yearly financial report and the manager's activities;

- (c) Conclude the management contract, in particular decide on the remuneration of the manager;
- (d) Give special powers of attorney to the manager when necessary;
- (e) Take decisions on major changes in the condominium, i.e. sale of common property or division and/or change of use of the common property;
- (f) Take decisions on major repair and modernization activities and new construction of common property requiring external financing or extensive use of common funds;
- (g) Grant permission to combine or to divide units;
- (h) Take the decision to initiate legal proceedings on a forced sale of individual property;
- (i) Make changes in the condominium agreement;
- (j) Approve the house rules; and
- (k) Elect the board.

10. Meetings of the owners' association

- 1. The owners' association exercises its powers by decisions in meetings of its members.
- 2. There should be at least one annual meeting, the general meeting, convened not later than within the first quarter of the year.
- 3. Additional meetings, owners' meetings, can be convened at the request of the board, the manager or at least one tenth of all unit owners.
- 4. All such meetings should be convened in writing at least 14 days in advance, stating the place and time for the meeting and the items to be discussed and agreed upon.
- 5. Except for decisions on changes in the condominium agreement (sect. 15), major changes in the condominium (sect. 9, para. 5) or major repairs, modernization and new construction (sect. 9, para. 6), which need a three-quarters majority, decisions require a simple majority when 50 per cent or more of the unit owners are present or represented by proxy.
- 6. A proxy must be presented to the meeting in writing, signed and dated by the owner.
- 7. The votes are counted on the basis of one vote per unit. The meeting can decide on a written vote if more than 10 per cent of the unit owners present request it.
- 8. No owner owning more than 30 per cent of the units in the condominium may have more than 30 per cent of the total number of votes.

9. A unit owner has the right to appeal to court against any decision on the grounds of its unlawfulness or inconsistency with the condominium agreement. A decision must be challenged within six weeks of it being approved by the meeting or announced to the unit owner in writing. The lawsuit is brought against the owners' association. Unless the courts suspend the execution of the decision until the case is considered, the decision is put into effect.

11. Convening the general meeting

- 1. The general meeting is convened by the manager in the first quarter of the year.
- 2. Should there be no manager or should the manager, contrary to his duties, fail to convene the general meeting, then the owners' association, the board or one of the unit owners can convene the meeting.
- 3. The general meeting is convened in writing at least 14 days in advance, stating the place, time and agenda for the meeting.
- 4. No decisions may be taken on questions that are not included on the agenda.
- 5. The general meeting elects its chairman and two unit owners as tellers and they sign the minutes together with the chairman.
- 6. The general meeting also elects a unit owner or a member of the management to take the minutes of the meeting. All decisions taken in the meeting should be recorded in the minutes. The minutes shall be distributed to all unit owners.
- 7. Should the general meeting not be attended by the 50 per cent of unit owners necessary to take decisions, a new general meeting shall be convened. This second meeting will have the power to take decisions regardless of the number of unit owners present.

12. Appointment and dismissal of the management

- 1. The owners' association can, by majority vote, appoint a manager for a period of up to three years. The manager can be a private person or a legal entity. One or more unit owners can also be appointed as managers.
- 2. The manager shall enter into a management contract with the owners' association. The contract defines the scope of work and the remuneration of the manager.
- 3. The manager can be reappointed by a new decision of the owners' association.
- 4. The manager can be dismissed, and his contract terminated, because of the clear breakdown of the confidential relationship between him and the owners' association, of his bankruptcy, of breach of contract or his failure to implement decisions.

- 5. If no manager is appointed or the appointed manager seriously fails in his duties but is not dismissed, any unit owner has the right to have a new manager appointed by the courts.
- 6. If there is disagreement between the majority of unit owners and the manager, the manager has the right to submit his case to the courts.

13. Responsibilities of the manager

- 1. The manager represents the owners' association externally and internally according to the provisions of the management contract and the powers of attorney given with the following responsibilities:
 - (a) The implementation of decisions taken by the owners' association;
 - (b) The execution of all activities necessary to operate and maintain the common property, including the administration of employed personnel and/or contracting of external contractors;
 - (c) Taking the action required to minimize damage to common property in emergencies;
 - (d) Invoicing and/or controlling advance monthly payments to cover common costs and repair fund; enforcing payment by legal action if necessary;
 - (e) Keeping the management fund (common costs) and repair fund on separate accounts in the name of the owners' association;
 - (f) Controlling costs and paying all invoices on behalf of the owners' association;
 - (g) Keeping the books and balancing the bank accounts;
 - (h) Preparing the yearly financial status and reporting it to the general meeting;
 - (i) Preparing the quarterly financial status and reporting it to the board;
 - (j) Preparing the annual activity plan, including the annual budget, and presenting it to the general meeting;
 - (k) Convening the general meeting according to the provisions of this condominium agreement;
 - (l) Seeking decisions on the annual activity plan, the annual budget and the size of the advance monthly payment;
 - (m) Controlling the application of the house rules; and
 - (n) Seeking advice from the owners' council when necessary.

14. The board

1. The owners' association elects a board among the unit owners to act as an advisory body to the manager.

- 2. The board consists of a chairman and two to four members elected for a one-year term by the general meeting. The members can be re-elected.
- 3. The board has no formal authority other than that given by special decisions of the owners' association.
- 4. The manager consults the board when preparing the annual activity plan and budget and submits the annual financial report and the quarterly reports to the board for internal audit. If there are irregularities, the board reports to the manager or, in special cases, puts the matter to the owners' association in a general meeting.
- 5. The chairman of the board signs the management contract on behalf of the owners' association.
- 6. If the manager fails to convene the general meeting under the provisions of this agreement, the board has the right and duty to convene the meeting.
- 7. The board is convened by the chairman or by two of its members.

14/

15.	Final	provisions

1.	The [Act of	on Condominium Ownership], together with all other relevan
	acts, shall apply in all	matters not regulated by this condominium agreement.

2.	This condominium agreement may be changed only by a decision in the general
	meeting or an owners' meeting with a three-quarters majority.

Date	Signature	Date	Signature
Date	Signature	Date	Signature
Date	Signature	Date	Signature

ANNEX III House rules

	(Specimen)
For	
	[name of condominium]
The	house rules below were approved by the decision of the owners' association or [date].

(C -- - -: -- - -)

- 1. All unit owners and their families, tenants and visitors should observe the house rules. Violation of the rules will lead to warnings from the management and repeated violation may lead to legal action being taken by the owners' association.
- 2. Residents and visitors are required to observe silence during the night from 10 p.m. to 6 a.m. This means that radios, television sets, etc. should be turned down and the sound from musical instruments or singing should be kept low, so as not to disturb the neighbours. Washing machines or dishwashers should not be operated on weekdays from 9 p.m. to 8 a.m. and there should be no disturbing sounds from repair or maintenance work. The same applies from 4 p.m. on Saturdays till 8 a.m. on Monday mornings. It should be noted that sound from open windows and/or balconies might cause extra disturbance.
- 3. The balconies should not be used for storing items that are higher than the railing of the balcony, and drying clothes should also be kept below the railing. Refuse and, in the winter, ice and snow should be removed from the balconies. The beating of carpets, clothes and bedding should not take place on the balconies but be kept to places designated for this purpose. Such activities should not take place between 9 p.m. and 8 a.m. on weekdays and not at all on Sundays.
- 4. All residents should use the technical facilities in the building, such as lifts, washing machines/dryers, gas installation, electrical installations, etc. according to these rules and any specific instructions annexed to the house rules. Damage to water pipes, sewage systems, gas supplies or electrical supplies in the individual flat or in common areas should be reported immediately, and secondary damage restricted as far as possible.
- 5. No television or radio aerials should be installed on external walls or balconies. Aerials may be installed on the roof, but only with the permission granted of the management. If this installation causes damage to the roof, the user(s) will be held responsible (the use of common aerials should be encouraged).

- 6. Refuse should be properly wrapped (in paper, plastic bags, etc.) before being deposited in the refuse containers or chutes. Special care should be taken not to litter the areas around the containers or chutes.
- 7. Residents or visitors should not litter areas of common use. If limited activities in these areas cause littering, then the litter should be removed as soon as the activities permit it.
- 8. Storerooms and/or cellars should be used according to special instructions.
- 9. The driving and parking of motor cars and motorcycles should be restricted to roads, parking areas and garages designated for this purpose by the management. Residents or visitors riding bicycles on common areas should pay attention to the safety of pedestrians, and bicycles should be left in areas for this purpose.
- 10. Residents are permitted to keep cats and dogs in the flats. Permission must be obtained from the management, and the owner must respect special instructions, if such exist.
- 11. Flowerpots, window boxes etc. kept on window sills and balconies should be properly secured.
- 12. Residents and visitors should be careful not to start a fire. This especially applies to the disposal of cigarettes or ashes, the use of candles or open fires, and the use of gas, electricity and supporting installations. Fire instructions must be prepared to suit the demands of the fire authorities, the building layout, etc.

ANNEX IV Management contract

(Specimen)

1. The owners' association of	
(the condominium)	
by a majority vote on the management of the common pro	
(the manager)(company and/or p	erson)

and gave authority to the chairman of the board to sign this contract.

- 2. The contract is entered into for a period of one year and will, if it is not terminated, automatically be renewed for a new one-year period. The owners' association with a simple majority vote may decide to terminate the contract. Each unit owner represents one vote. Termination must be announced to the manager in writing at least three months before the contract expires.
- 3. The manager can terminate the contract by written notice to the owners' association at least three months before the contract expires.
- 4. Both parties are entitled to give written notice of termination in the case of serious default or neglect, such as breakdown of the confidential relationship, bankruptcy, non-execution of resolutions and breach of this contract. Termination under this clause may take immediate effect.
- 5. The manager represents the condominium externally and internally, and acts according to the provisions of this contract, the condominium agreement, the Act of _____ on Condominium Ownership and the special powers of attorney given to him.
 - 5.1 The manager executes all relevant decisions taken by the general meeting or an owners' meeting.

- 5.2 The manager plans and executes all activities necessary to operate and maintain the common property. This includes the employment and administration of personnel and the contracting of external contractors and suppliers.
- 5.3 The manager invoices and/or controls the monthly advance payments from the unit owners of the amount decided by the general meeting. These payments should be made not later than the 10th of each month, for the month to follow. If necessary, the manager can invoice additional payment of up to 15 per cent of the agreed payment on a yearly basis. The monthly increase should not be higher than 10 per cent of the previous month. Additional payment (exceeding 15 per cent) must be approved by the association. The managerinforms unit owners in arrears two weeks after payment was due, and again after four weeks. Not later than two months after the payment is due the manager is obliged to start default action. All additional costs are charged to the debtor.
- 5.4 The manager is authorized to open bank accounts on behalf of the association. The monthly advance payments should be separated into "common costs" and "repair fund" and kept on separate accounts. "Common costs" include the remuneration of the manager. Under no circumstances should funds belonging to the association be kept on accounts belonging to the manager or other bodies.
- 5.5 The manager controls and pays all invoices on behalf of the association by charging them to the proper accounts. He also balances the accounts on a monthly basis.
- 5.6 The manager is responsible for the bookkeeping and the presentation of the quarterly and the yearly financial report. The quarterly financial status is reported to the board of the association. The yearly financial status is reported to the general meeting after internal auditing by the board or the audit committee, if such exists.
- 5.7 The manager prepares the annual activity plan and presents it to the owners' council for revision before 15 December of the previous year. The plan, containing operational activities, planned maintenance, major repairs, modernization, etc., the yearly budget and the recommended level of monthly advance payment should be approved by the general meeting.
- 5.8 The manager convenes the general meeting in accordance with the condominium agreement, and presents the annual financial report, the annual activity plan and other necessary matters to the meeting for approval.
- 5.9 The manager convenes owners' meetings when necessary on his own behalf or at the request of the board or of at least 10 per cent of the unit owners.

- 5.10 In order to inspect maintenance, repair and modernization of the common property, the manager is entitled to access individual units. In such cases due notice should be given to the owner. The manager shall also keep records of the sale of individual units in accordance with the provisions of the condominium agreement (see section 4).
- 5.11 The manager concludes and updates all necessary insurance policies for the common property, such as damage by fire, water, storms or thunderstorms to buildings and installations and indemnity insurance.
- 5.12 The manager represents the association in all legal and other matters, in and out of court. The manager has the authority to enforce the unit owner's payment of common costs, repair fund and other expenditures approved by the association. In all other legal matters, the manager needs a power of attorney from the owners' association. The manager is not personally responsible for legal claims or actions against the association.
- 6. The board acts as a supervisory body to the manager and represents the association in all formal and contractual questions. The manager is encouraged to seek a close working relationship with the board and to seek informal advice from the board whenever feasible.

The board also acts as the internal controller of the association and should be supplied with the quarterly and annual financial report and the annual activity plan to be able to perform its duties.

- 7. For his regular work, the manager is remunerated in the amount of ___ per square metre of total floor area per month, in total ____ per year. This remuneration covers all daily management duties concerning operation, maintenance and financial matters, according to this management contract. Extraordinary work connected with major repairs, modernization and new construction is remunerated separately according to an agreed amount included in the budget for the activity in question.
- 8. The manager is liable for damage caused by him intentionally or by gross neglect. Therefore, the manager should take out insurance covering losses to the amount of ___ per instance. This contract is not valid if such insurance is not entered into and submitted to the chairman of the board.
- 9. The association and the manager hereby declare that they will do their utmost to settle disputes that might arise from the execution of this contract by direct negotiations between them. If they fail to reach an agreement, the parties can ask for the matter to

be put to the owners in an owners' meeting or the general meeting. If no internal agreement is reached, the matter should be put to the Court of Arbitration in _____

(Place/date)		
The manager	The owners' association	



ANNEX V Outline of the agenda for the annual general meeting of owners

	(Specimen)	
On	(day) (month) (year)	
1.	Opening of the meeting	
	 (a) Adoption of the agenda; (b) Acceptance of proxies; and (c) Attendance and stipulation of number of votes present. 	
2.	Election of Chairman	
3.	Election of two unit owners as tellers	
4.	Election of Secretary to take minutes (two unit owners to sign the minutes)	
5.	Presentation and discussion of report on last year's activities.	
6.	Presentation and discussion of report on last year's financial report including auditor's reports.	
7.	Decision on last year's reports on:	
	(a) Finances;(b) Management performance.	
8.	Presentation of proposed annual activity plan including budget.	
9.	Discussion and decisions on proposals with budgetary consequences:	
	(a);	
	(b);	
	(c); etc.	
10.	Decisions on annual activity plan:	
	(a) Budget spending;	
	(b) Level of monthly payment.	

- 11. Discussion and decisions on other proposals
 - (a) _____;

 - (b) _____; (c) _____; etc.
- Election of: 12.
 - Owners' Council; (a)
 - Audit Committee; and (b)
 - Election Committee.
- Closing of the meeting 13.



ANNEX VI Announcement of the general meeting

(Specimen)

Date	
Owner	
Address	
	f the Condominium Association of [name], and according to ninium Agreement of [date], I/we hereby convene the General 20
The meeting Agenda:	will be held at [place] on [date], starting at [time].
must have a place and da The power	who are not able to attend the meeting can be represented by proxy. Such proxy written power of attorney stating the name and address of the unit owner, the ste of the General Meeting and the name of the person representing the unit owner. of attorney must be signed by the unit owner and presented to the General the proxy for approval.
Signature	
Enclosed:	Report on last year's activities Last year's financial report Annual activity plan including budget Proposals and drafts decisions Proposals from the Election Committee

ANNEX VII Minutes of the general meeting

		(Specimen)
Cond	ducte	d on [date], at [place]
1.	OPE	NING OF THE MEETING
	(a)	The meeting was convened in writing within the deadline set in the Condominium Agreement and with the following agenda 1. Opening procedures 2.
		3
Deci	sion:	सत्यमेव जयते
The	Gener	al Meeting was lawfully called (or the opposite if this is the case)
	(b)	All powers of attorney were presented and checked.
		Number of proxies accepted: Number of proxies rejected for formal reasons:
	(c)	Attendance and stipulation of number of votes present.
		ex: the list of unit owners attending the General Meeting. (The list must beannexed be minutes.)
		Number of unit owners present: Number of accepted proxies: Total number of votes present: Total number of unit owners in the Condominium:
Deci	sion:	
-	moti The	General Meeting was represented by the number of votes necessary to carry ons (or the opposite if this is the case). number necessary for a simple majority was:;

2.	ELECTION OF CHAIRMAN
	[name] was elected to chair the General Meeting.
3.	ELECTION OF TWO UNIT OWNERS AS TELLERS
	[name] and [name] were elected.
4.	ELECTION OF SECRETARY TO TAKE THE MINUTES AND TWO UNIT OWNERS TO SIGN THE MINUTES
	[name] was elected as Secretary to take the minutes.
	[name and [name] were elected to sign the minute ether with the Chairman and the Secretary.
5.	PRESENTATION AND DISCUSSION OF THE REPORT ON LAST YEAR'S ACTIVITIES
(The	e minutes should include major points from the discussion.)
6.	PRESENTATION AND DISCUSSION OF LAST YEAR'S FINANCIAL REPORT, INCLUDING THE AUDITOR'S REPORT
	e minutes should include major points from the discussion and state that the Auditor's ort was read out in the meeting.)
7.	DECISIONS ON LAST YEAR'S FINANCIAL REPORT AND MANAGEMENT PERFORMANC
	a. Financial report
Dec	ision:
	Last year's financial report was approved with the following remarks (if any):
	(or the opposite if this is the case)
	b. Management performance

Deci	sion:
	The management's performance for last year was approved, and the Manager released from his responsibility with the following remarks (if any):
	(or the opposite if this is the case).
8.	PRESENTATION OF THE PROPOSED ANNUAL ACTIVITY PLAN INCLUDING BUDGET
activ on tl	point is intended to present the plan and promote a discussion on the proposed ities. The major points from the discussion should be included in the minutes. Decision(s) ne plan will be made under item 10 after the discussion and decisions on proposals that influence the annual activity plan.)
9.	DISCUSSION AND RESOLUTIONS ON PROPOSALS WITH BUDGETARY CONSEQUENCES
(The	minutes should include the proposals and decisions made point by point.)
10.	DECISIONS ON THE ANNUAL ACTIVITY PLAN
	a. Budgetoutgoings
Deci	sion:
	The budget for next year's activities was approved with the following remarks (if any):
	(or the opposite if this is the case).
	b. Level of monthly payment
Deci	sion:
	The monthly payment for 20 is[amount].
11.	ANY OTHER BUSINESS

(This item includes all matters that do not go into the annual activity plan. The proposals, major points of discussion and decisions are presented.)

12. ELECTIONS

Owners' Council

The proposal from the Election Committee was presented and the General Meeting was invited to propose additional candidates for the Owners' Council. The following candidates were added:

	[name]
etc.	21107
The elections resu	ılted in the following:
Chairman	[name]
Member	[name] ^{तत्यमेव} जयते
Election Committee The General Meet	ee ing proposed the following candidates: [name][name]
	[name]
The elections resu	Ited in the following:
Chairman	[name]
Member	 [name]
Member	

[name]

13. CLOSING OF MEETING The meeting was closed with the fo	lowing remarks and proposals:
	etc.
Closing time	
Place/date	JGH COURT OF
Chairman of the General Meeting	HIGH COURT OF TELL
Unit owner	सत्यमेव जयते
Unit owner	Secretary of the General Meeting

ANNEX VIII Rights and obligations of interested parties - some examples of possible disputes and solution

Ownership of housing in the form of condominiums may give rise to conflicts and disputes between the parties involved. Below are some examples of areas where disputes may arise and indications on how they can be solved. The legal and/or contractual basis for solving disputes should be integrated in the national legal framework and/or in the contracts and agreements regulating the internal life of condominiums.

1. If the owner does not pay his share of common expenses:

The owners' association can establish a lien on the owner's share of the property as security for the share of expenses and all interest and collection costs.

Such a lien must be followed by legal action within six months.

2. If the owner does not carry out maintenance of a private unit:

The association has the right of access to carry out the necessary maintenance work at the owner's expense. If the association bears the cost connected to this, it can establish a lien on the owner's property to cover this cost, see above.

3. Liability of owner:

Any owner is liable towards other owners of units and parties entitled to use units for any financial damage to their property resulting from failure to maintain a unit, equipment, etc., and mistakes in use and/or maintenance.

4. Liability of association:

The owners' association is liable towards owners and parties entitled to use units if financial damage or loss is caused by failure to maintain any jointly owned property, mistakes in their operation or maintenance or malfunctioning of jointly owned property.

5. External liabilities of owners:

Owners of units are liable towards anybody holding claims against the owners' association. Such liability is limited to that fraction of the total claim corresponding to each owner's ownership fraction. Any claimant must first attempt to have claims paid by the association. If payment is not made within 60 days after the claim, the claimant may seek payment from one or more of the owners. If an owner has paid his financial liability,

see above, he automatically acquires the right to appeal against the association and/or the other owners, including legal claims on units.

6. Violation by owner – Rights of association:

If the owner is guilty of gross or repeated violation of obligations, the association may prohibit residence and ensure the voluntary or forced sale of the unit. This can only be carried out after due and satisfactory written warning, stating clear cause. If the owner does not comply, the association can enforce its decision through the courts.

- 7. Rights and obligations of the management: (see management contract)
- 8. Rights and obligations of the board: (the same as for the association)
- 9. General:

It should be noted that any legal claim established by the association against any owner, or by an owner against any other owner, normally should take precedence over any external claims against that owner.

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ANNEX IX Condominium annual periodic budget

(Specimen)

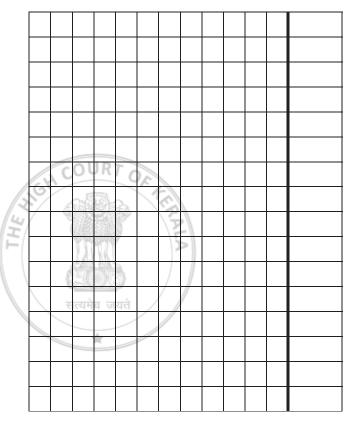
	J	F	М	Α	М	J	J	Α	S	0	Ν	D	TOTAL
REVENUES													
1110 Monthly payment of common costs													
1210 Revenues from the renting of common floor space	Į,	co	UR	T	ع ا								
1310 Revenues from the renting of other common space					1	S. S. S.							
1410 Monthly fees for services to unit owners				Ÿ		100	A						
1510 Interest on bank accounts				3									
1610 Other revenues		तत्व	*	140									
TOTAL REVENUES													

EXPENDITURES

J	F	М	А	M	J	J	Α	S	0	Ζ	D	TOTAL
---	---	---	---	---	---	---	---	---	---	---	---	-------

MANAGEMENT COST/FINANCIAL COST

- 2110 Management contracts
- 2120 Employed management
- 2130 Board management
- 3180 Other personnel
- 2210 Management consultants
- 2220 Legal fees
- 2310 Office rent
- 2320 Office furniture
- 2330 Office equipment
- 2340 Management systems
- 2350 Office accessories
- 2360 Telephone / fax
- 2380 Other office costs
- 2410 Interest on loans
- 2420 Other financial costs SUBTOTAL



	J	F	М	Α	М	J	J	А	S	0	N	D	TOTAL
OPERATING COST													
3110 Contracted personnel													
3120 Employed personnel													
3210 Cleaning													
3310 Operations means													
3410 Electric power													
3420 Gas													
3430 District central heating		01	JR	-									
3440 Water	70	0	71	(25								
3450 Sewage						(S							
3460 Refuse				8		/							
3490 Radio/TV			XX.	A.		-)'							
3510 Insurance	-1												
3610 Taxes/Fees	-	नत्यम	d A	यत			7						
3710 Security			À										
3810 Building operations													
3820 Plumbing/ventilation operations													
3830 Electrical installation operations													
3840 Telecommunication/ automation													
operations													
3850 Other installations operations													
3860 Outdoor items operations													
SUBTOTAL													

		J	F	М	Α	М	J	J	Α	S	0	Ν	D	TOTAL
MAIN	ITENANCE COST													
4110	Building maintenance													
4120	Plumbing/ventilation													
	maintenance													
4130	Electrical installations													
	maintenance													
4140	Telecommunication /													
	automation maintenance													
	Other installations maintenance													
	Outdoor items maintenance													
	Replacement		0	UR	T									
4310	Unforseen maintenance			OTTO S		1	1							
	SUB-TOTAL	4					3	1/40						
COST	OF NEW CONSTRUCTION AND MA	JO	R RI	EΡΑ	IRS		/	2						
5110	New construction		11	7										
	Major repairs													
3210	SUB-TOTAL		सत्यः	la v	स्थाने संयते									
	300 1017/12													
COST	S OF SERVICES TO SEPARATE UNITS			\star										
6110	Electric power													
6120	Gas													
6130	District central heating													
6140	Water													
6150	Sewage													
	Refuse													
6190	Radio / TV													
	SUBTOTAL													
			1	<u> </u>	I	1	l	l	<u> </u>	I	1			
	TOTAL EXPENDITURES													
				•	•		•	•	•	•	•	•		•
	BUDGET BALANCE													
		Ц	1	l	1	1	1	1	l	1	1	1	1	

ANNEX X Income and expenditure of the annual budget

(Specimen)

Income

- 1110 Monthly payment of common costs
- 1210 Revenues from the renting of common floor space
- 1310 Revenues from the renting of other common space
- 1410 Monthly fees for services to unit owners
- 1510 Interest on bank accounts
- 1610 Other revenues

Expenditures

MANAGEMENT COSTS/FINANCIAL COSTS

- 2110 Management contract
- 2120 Employed management
- 2130 Board members
- 2180 Other personnel
- 2210 Management consultants
- 2220 Legal fees
- 2310 Office rent
- 2320 Office furniture
- 2330 Office equipment
- 2340 Management systems
- 2350 Office accessories
- 2360 Telephone/fax
- 2380 Other office costs
- 2410 Interest on loans
- 2420 Other financial costs

OPERATING COSTS

- 3110 Contracted personnel
- 3120 Employed personnel
- 3210 Cleaning

COURT

- 3310 Operations means
- 3410 Electric power
- 3420 Gas
- 3430 District central heating
- 3440 Water
- 3450 Sewage
- 3460 Refuse
- 3420 Radio/TV
- 3510 Insurance
- 3610 Taxes/Fees
- 3710 Security
- 3810 Building operations
- 3820 Plumbing/ventilation operations
- 3830 Electrical installation operations
- 3840 Telecommunication/automation operations
- 3850 Other installations operations
- 3860 Outdoor items operations

MAINTENANCE COSTS

- 4110 Building maintenance
- 4120 Plumbing/ventilation maintenance
- 4130 Electrical installations maintenance
- 4140 Telecommunication/automation maintenance
- 4150 Other installations maintenance
- 4160 Outdoor items maintenance
- 4210 Repairs

COSTS OF IMPROVEMENTS AND MAJOR REPAIRS

- 5110 New construction
- 5210 Major repairs

COSTS OF SERVICES TO SEPARATE UNITS

- 6110 Electric power
- 6120 Gas

6130 District central heating

6140 Water

6150 Sewage

6160 Refuse

6120 Radio/TV



ANNEX XI Operations management – operations and maintenance objects

(Specimen)

NO.	OPERATIONS OBJECTS		QUI	ENC		EXTERNAL	TYPE OF	COMMENTS/
		D	W	М	Υ	ASSISTANCE	ACTIVITY	REFERENCES
54	ALARMS							
541	Distribution network							
542	Fire alarm	C.Y	CC) U	RT	OF		
543	Burglar alarm	5	4			TE		
544	Entrance control		4			OKHERALA		
545	Other equipment			777				
6	OTHER INSTALLATIONS		8	यमेव यमेव				
61	BACK-UP POWER		सत		जयत	///		
62	LIFTS			*				
63	ESCALATORS							
64	CLEANING INSTALLATIONS							
641	Refuse (also outdoor)							
642	Vacuum-cleaner system							
65	SPECIAL PIPING							
7	OUTDOOR							
71	STRUCTURES							
711	Garden walls							
72	TECHNICAL INSTALLATIONS							
721	Water supply							
722	Sewage							

723	Gas							
724	Power supply							
725	Telecommunications							
73	ROADS/AREAS							
731	Roads							
732	Pavements							
733	Squares							
734	Playgrounds/equipme	nt						
74	GARDEN			col	JRT	0		
741	Lawns	1/3	CH	048		OKTERALA		
742	Trees, bushes	HE				B		
743	Flower beds	F		M	MY			
744	Tables/benches							
8	FREE			सत्यमे	व जयते			
				,	*			
9	FREE							
Approved	by:	Date:	•	•	Wr	itten by:	Date:	

ANNEX XII Operations management – operational activities

(Specimen)

1. Specification of operational activities.

All operations objects registered in the form "OPERATIONS OBJECTS" should be subject to written instructions specifying the operational activities and their frequencies for each separate object. The specifications are to be used in the daily operation of the property.

The instructions shall be presented on a standard "OPERATIONAL ACTIVITY CARD"(see below).

2. Responsibility.

The manager/management board is responsible for the specification of activities but can authorize a qualified person or persons to carry out the preparations. Persons with operational responsibility should contribute to the specification of activities. The manager/management board should approve the operational instructions by signing the operational activity cards.

3. Preparation of operational activity cards.

The standard form "operational activity card" shall be used.

The operational activity card shall specify the object and its number according to the registration form "operations objects" and state the activity or activities to be carried out for the particular object.

The operational activity card shall specify the person or persons responsible for the operational activity and, if appropriate, the person responsible for control. The card also states the frequencies of the operational activities.

The instructions given must be based on practical know-how and all available information from technical specifications and instructions, laws and regulations, etc. The operational activity card shall also make reference to these sources.

OPERATIONAL ACTIVITY CARD

Operations object		No.
Responsible		
Control by		
Frequency		
Activity	HIGH COURT OF FERRALA	
References	सत्यमेव जयते	

Page 1 of 1	Approved by:	Date:	Written by:	Date:

ANNEX XIII Operating budget – presentation form

NO	BUDGET ACCOUNT NO	BUDGET ITEM	COSTS
1			
		PERSONNEL, OPERATIONS MEANS AND OTHER	
11		COURTON	
111		PERSONNEL	
112	3110	Contracted	
	3120	PERSONNEL Contracted Employed	
12			
	3210	CLEANING REQUESTED TO THE COLUMN TO THE COLUMN THE COLU	
13		11414 0141	
131		OPERATIONS MEANS	
132	3310	Workshop/store	
133	3310	Tools and equipment	
134	3310	Working clothes and safety equipment	
	3310	Consumable means	
14			
141		SERVICES	
142	3410	Electric power	
143	3420	Gas	
144	3430	District central heating	
145	3440	Water	
146	3450	Sewage	

147	3460	Refuse
	3490	Radio/TV
15		
	3510	INSURANCE
16		
	3610	TAXES/FEES
17		
	3710	SECURITY
		JIGH COURT OF TO
		4
Page 1 d	of 3 Approv	ed by : Date : Written by : Date :

सत्यमेव जयते

NO	BUDGET ACCOUNT NO	BUDGET ITEM			COSTS		
2		BUILDING	BUILDING				
21	3810	FOUNDATIONS	FOUNDATIONS				
22	3810	BUILDING STRUC	TURE				
23	3810	EXTERNAL WALL	S				
24	3810	INTERNAL WALL	S				
25	3810	FLOORS/CEILING	S				
26	3810	ROOFS					
27	3810	FIXTURES	FIXTURES COURT				
28	3810	STAIRS/BALCON:	STAIRS/BALCONIES				
3		PLUMBING/VENT	PLUMBING/VENTILATION INSTALLATIONS				
31	3820	PLUMBING	PLUMBING				
32	3820	HEATING	HEATING				
33	3820	FIRE PROTECTIO	FIRE PROTECTION				
34	3820	GAS	GAS सत्यमेव जयते				
35	3820	REFRIGERATION	REFRIGERATION				
36	3820	VENTILATION					
37	3820	COOLING	COOLING				
4		ELECTRICAL INST	ELECTRICAL INSTALLATIONS				
41	3830	SUPPLY					
42	3830	HIGH VOLTAGE					
43	3830	DISTRIBUTION	DISTRIBUTION				
44	3830	LIGHTING	LIGHTING				
45	3830	HEATING	HEATING				
46	3830	OTHER EQUIPME	OTHER EQUIPMENT (radio/TV, etc.)				
Page 2	Page 2 of 3 Approved by :		Date :	Written by :	Date :		

NO	BUDGET ACCOUNT NO	BUDGET ITEM	COSTS					
TRANSF	TRANSFERRED							
5		ELECOMMUNICATIONS/AUTOMATION						
51	3840	GENERAL						
52	3840	DATACOMMUNICATION	PATACOMMUNICATION					
53	3840	TELEPHONE						
54	3840	ALARMS						
6		TELEPHONE ALARMS OTHER INSTALLATIONS BACK-UP POWER LIFTS ESCALATORS						
61	3850	BACK-UP POWER						
62	3850	LIFTS /u/	LIFTS 4					
63	3850	ESCALATORS						
64	3850	CLEANING INSTALLATIONS						
65	3850	SPECIAL PIPING						
7		OUTDOOR ITEMS सत्यमेव जयते						
71	3860	STRUCTURES						
72	3860	TECHNICAL INSTALLATIONS						
73	3860	ROADS/AREAS						
74	3860	GARDEN						
TOTAL								
Page 3 o	Page 3 of 3 Approved by : Date : Written by : Date :							

ANNEX XIV Maintenance and repair budget – registration form

(Specimen)

	BUDGET					
NO ACCOUNT NO		BUDGET ITEM	COSTS			
1		FREE				
2		BUILDING				
21	4110	FOUNDATIONS				
22	4110	BUILDING STRUCTURE				
23	4110	BUILDING STRUCTURE EXTERNAL WALLS INTERNAL WALLS FLOORS/CEILINGS ROOFS				
24	4110	INTERNAL WALLS				
25	4110	FLOORS/CEILINGS				
26	4110	ROOFS				
27	4110	FIXTURES				
28	4110	STAIRS/BALCONIES				
3		PLUMBING/VENTILATION				
31	4120	PLUMBING				
32	4120	HEATING				
33	4120	FIRE PROTECTION				
34	4120	GAS				
35	4120	REFRIGERATION				
36	4120	VENTILATION				
37 4120		COOLING				
4		ELECTRICAL INSTALLATIONS				
41	4130	SUPPLY				
42	4130	HIGH VOLTAGE				
43	4130	DISTRIBUTION				
44	4130	LIGHTING				
45	4130	HEATING				
46	4130	OTHER EQUIPMENT (radio/TV, etc.)			
	TRANSFERRED					
Page 1 of 2	Approved by :	Date : Written by :	Date :			

Page | 102

MAINTENANCE AND REPAIR BUDGET PRESEN			TATION FORM					
NO	BUDGET ACCOUN	T NO	BUDGET ITEM		COSTS			
	TRANSF	TRANSFERRED						
5	TELECOMMUNICATIONS							
51	4140	GEI	GENERAL					
52	4140	DA	DATACOMMUNICATION					
53	4140	TEL	TELEPHONE					
54	4140	ALA	ALARMS					
6		4140 TELEPHONE 4140 ALARMS OTHER INSTALLATIONS 4150 BACK-UP POWER 4150 LIFTS 4150 ESCALATORS						
61	4150 BACK-UP POWER							
62	4150	4150 LIFTS (E)						
63	4150	0 ESCALATORS						
64	4150	CLE	CLEANING INSTALLATIONS					
65	4150	SPE	SPECIAL PIPING					
7		ου	TDO	OR ITEMS	*			
71	4160	STF	RUCT	URES				
72	4160	TEC	TECHNICAL INSTALLATIONS					
73	4160	RO	ROADS/AREAS					
74	4160	GΑ	RDEN	J				
	PLANNED MAINTENANCE AND REPAIRS							
	4210 UNFORESEEN REPAIRS							
	TOTAL							
Page 2 of 2	Approve	d by :		Date :	Writte	n by :		Date :



Guidelines on the Management and Ownership of Condominium Housing

The study "Guidelines on the Management and Ownership of Condominium Housing" intends to assist national and municipal authorities, and new unit owners by providing timely guidance on issues requiring legal-regulatory intervention, design of financing schemes and best practices. It builds upon its predecessor document "Guidelines on Condominium Ownership for Countries in Transition", produced by UNECE in 2003, and expands its scope to address contemporary challenges in the entire UNECE region.

The study is a cooperative effort of the UNECE secretariat, the UNECE Real Estate Market Advisory Group, and international experts.

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GOVERNMENT OF MAHARASHTRA LAW AND JUDICIARY DEPARTMENT

MAHARASHTRA ACT No. XLV OF 1963.

The Maharashtra Ownership Flats
(Regulation of the promotion of construction, sale, management and transfer)
Act, 1963.

(As modified upto 23rd April 2018.)



PRINTED IN INDIA BY THE MANAGER, GOVERNMENT WAI PRESS, AND PUBLISHED BY THE DIRECTOR, GOVERNMENT PRINTING, STATIONERY AND PUBLICATIONS, MAHARASHTRA STATE, MUMBAI 400 004.

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1963: Mah. XLV

THE MAHARASHTRA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT,1963.

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- 6. Responsibility for payment of outgoings till property is transferred.
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- 7A. Removal of doubt.
- 8. Refund of amount paid with interest for failure to give possession within specified time or further time allowed.
- 9. No mortgage, etc., to be created without consent of parties after execution of agreement for sale.
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MAHARASHTRA ACT No. XLV OF 1963¹.

THE MAHARASHTRA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT, 1963.]

[Received the assent of the President on the 12th day of December 1963; assent first published in the Maharashtra Government Gazette", Part IV, on the 16th day of December 1963.]

Amended by Mah. 29 of 1964.

```
1 of 1966.
 2 of 1968.
11 of 1970.
15 of 1971.
 5 of 1973.
53 of 1974 (1-1-1975)*
66 of 1977.
 1 of 1979.
 6 of 1982 (12-2-1982)*.
13 of 1983.
 5 of 1984† (1-2-1984)
 9 of 1981
 6 of 1985 (20-2-1985)*
```

- * This indicates the date of commencement of Act.
- † Sections 4 and 5 of Mah. 5 of 1984 read as follows:
- "4. (1) Where any agreement for sale was entered into, or was purported to be Validating entered into under section 4 of the principal Act and such agreement was not registered under the provisions. Registration Act before the commencement of this Act, then notwithstanding anything contained in any law for the time being in force or in any judgement, decree or order of any Court, such agreement shall not be invalid or ineffective, merely on the ground that it was not registered as required by the said section 4, and shall be deemed always to have been valid and enforceable, if such document is duly presented for registration on or before the 31st December 1984 and registered under the said section 4 as amended by this Act.

(2) In computing any period of limitation prescribed by any law for the time being in force, for the purpose of taking any legal proceeding for enforcing any rights or liabilities arising from any agreement for sale deemed to be valid and enforceable under sub-section (1) or for execution or enforcing any other documents depending on or connected with such agreement for sale, the period from the date on which such agreement is entered into and the date on which it is registered under section 4 of the principal Act as amended by this Act shall be excluded.

5. Nothing in this Act shall render any person liable to be convicted of any offence under the Savings. principal Act, in respect of anything done or omitted to be done, before the commencement of this Act, if such act or omission was not an offence under the principal Act but for the amendments made in the principal Act, by this Act".

Maharashtra Ordinance No.III of 1985 was repealed by Mah. 6 of 1985, s. 3(1).

¹ For Statement of Objects and Reasons, see Maharashtra Government Gazette, 1963, Part V, page 117.

Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963

```
Amended by Mah.

""" 36 of 1986 (30-1-1986)*

""" 15 of 1990£(17-3-1990)*

""" 10 of 1995†† (1-4-1995)*

""" 49 of 2000@ (1-4-2000)*

""" 37 of 2005@@££(1-4-2005)*

""" 4 of 2008 (25-2-2008)*

""" 23 of 2008 (12-5-2008)*
```

- £ Maharashtra Ordinance No.VI of 1990 was repealed by Mah. 15 of 1990, s. 3(1).
- †† Sections 3 and 4 of Mah. 10 of 1995 read as follows:-

Savings.

"3. Nothing in this Act shall render any person liable to be convicted of any offence in respect of anything done or omitted to be done, during the period commencing on the 1st day of April 1995 and ending on the date of publication of this Act in the *Official Gazette*, if such act or omission was not an offence but for the retrospective extensions of duration of the principal Act, by this Act.

Removal of doubt.

- 4. For the removal of doubt, it is hereby declared that the principal Act, which was to expire after the 31st March 1995 having been retrospectively extended from the 1st April 1995 shall be deemed never to have expired at any time and all its provisions as amended and extended by this Act shall, subject to the provisions of section 3 of this Act, be deemed to be continuously in force".
 - @ Sections 3 and 4 of Mah. 49 of 2000 read as follows:-

Savings.

"3. Nothing in this Act shall render any person liable to be convicted of any offence in respect of anything done or omitted to be done, during the period commencing on the 1st day April 2000 and ending on the date of publication of this Act in the Official Gazette, if such act or omission was not an offence but for the retrospective extension of duration of the principal Act, by this Act.

Removal of doubt.

- 4. For the removal of doubt, it is hereby declared that the principal Act, which was to expire after the 31st March 2000 having been retrospectively extended from the 1st April 2000 shall be deemed never to have expired at any time and all its provisions as amended and extended by this Act shall, subject to the provisions of section 3 of this Act, be deemed to be continuously in force".
 - @@ Sections 4 and 5 of Mah. 37 of 2005 read as under :-

Savings.

"4. Nothing in this Act shall render any person liable to be convicted of any offence in respect of anything done or omitted to be done, during the period commencing on the 1st day April 2005 and ending on the 16th May 2005, if such act or omission was not an offence but for the retrospective extension of duration of the principal Act, by this Act.

Removal of

- 5. For the removal of doubt, it is hereby declared that the principal Act, which was to expire after the 31st March 2005, having been retrospectively extended with effect from the 1st April 2005 by this Act, shall be deemed never to have expired at any time and all its provisions as amended and extended by this Act shall, subject to the provisions of section 4 of this Act, be deemed to be continuously in forces".
 - ££ Maharashtra Ordinance No.III of 2005 was repealed by Mah. 37 of 2005, s. 6.

^{*}This indicates the date of commencement of Act.

Maharashtra Ownership Flats (Regulation of the promotion of 1963: Mah. XLV construction, sale, management and transfer) Act, 1963

An Act to regulate ** in the State of Maharashtra, the promotion of the construction of, the sale and management, and the transfer of flats on ownership basis.

WHEREAS, it has been brought to the notice of the State Government that, consequent on the acute shortage of housing in the several areas of the State of Maharashtra, sundry abuses, malpractices and difficulties relating to the promotion of the construction of, and the sale and management and transfer of flats taken on ownership basis exist, and are increasing;

AND WHEREAS, the Government in order to advise itself as respects the manner of dealing with these matters, appointed a committee by Government Resolution in the Urban Development and Public Health Department, No. S. 248-79599-F, dated the 20th May 1960, to inquire into and report to the State Government on the several matters referred to aforesaid with the purpose of considering measures for their amelioration;

AND WHEREAS, the aforesaid Committee has submitted its report to Government in June 1961, which report has been published for general information;

AND WHEREAS, it is now expedient after considering the recommendations and suggestions made therein, to make provision during the period of such shortage of housing, for the regulation of the promotion of the construction, sale and management and transfer of flats taken on ownership basis in the State of Maharashtra; It is hereby enacted in the Fourteenth Year of the Republic of India as follows:—

(1) This Act may be called the Maharashtra Ownership Flats Short title, (Regulation of the promotion of construction, sale, management and transfer) ²[extent and Act, 1963.

commencement.l

- (2) It extends to the whole of the State of Maharashtra.
- (3) This section shall come into force at once; and the remaining provisions of this Act shall come into force in ³[such] areas, and on dates as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different areas.

2. In this Act, unless the context otherwise requires, —

Definitions.

- ⁵ [(a) "Competent Authority" means a Competent Authority appointed under section 5A;]
- 6 [(a-1) "Flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, show-room or shop or godown 7[or for carrying on any industry or business] (and includes a garage), the premises forming part of a building 8[and includes an apartment.]

Explanation.— Notwithstanding that provisions is made for sanitary, washing, bathing or other convenience as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained;

- (b) "prescribed" means prescribed by rules made under this Act;
- (c) 9["promoter" means a person and includes a partnership firm or a body or association of persons whether registered or not] who constructs or causes to be constructed a block or building of flats 10 [or apartments]

The words "for certain period" were deleted by Mah. 37 of 2005, s. 2.

- ² These words were substituted for the words "extent, commencement and duration" by Mah. 37 of 2005, s. 3(b).
- Greater Bombay on 10th day of February, 1964 (vide G. N., U. D. & P. H. D., No. FOE. 1062/432/ Unification (a), dated the 8th February 1964). Sub-sections (4) and (5) were deleted the by Mah. 37 of 2005, s. 3(a).

Clause (a) was inserted by Mah. 4 of 2008, s. 2(a).
Clause (a) was renumbered by Mah. 4 of 2008, s. 2(a).
These words were inserted and shall be deemed always to have been inserted by Mah. 36 of 1986,

These words were added, by Mah. 15 of 1971, Sch.

These words were substituted for the words and figure "promoter" means "person" by Mah. 4 of 2008, s. 2(b).

¹⁰ These words were inserted by Mah. 15 of 1971, Sch.

3

Maharashtra Ownership Flats (Regulation of the promotion of [1963: Mah. XLV construction, sale, management and transfer) Act, 1963

> for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;

(d) "Registrar" means the Registrar as defined in the Maharashtra Mah. Co-operative Societies Act, 1960, or, as the case may be, in the *Companies XXIV Act, 1956;

1961.

(e) "to construct a block or building of flats 1 [or apartments]" includes I of to convert a building or part thereof into flats '[or apartments];

1956.

²[(f) the expressions, "apartment" and "apartment owner" shall have the meanings, respectively assigned to them in the Maharashtra Mah. Apartment Ownership Act, 1970.]

XV of 1971.

General

- 3. (1) Notwithstanding anything in any other law, a promoter who intends liabilities to construct or constructs a block or building of flats, all or some of which are of promoter. to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned.
 - (2) A promoter, who constructs or intends to construct such block or building of flats, shall--
 - (a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorneyat-law, or by an Advocate of not less than three years standing, ³[and having been duly entered in the Property card or extract of Village Forms VI or VII and XII or any other relevant revenue record;]
 - (b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such
 - (c) give inspection in seven days' notice or demand, of the plans and specifications of the building 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 buildings, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the building;
 - (f) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly);
 - (g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken, 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 flats are taken or agreed to be taken;
 - (h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons, who have taken or are to take the flats;

These words were inserted by Mah. 15 of 1971, Sch.

 $^{^{2}}$ Clause (f) was added by Mah. 15 of 1971, Sch.

³ These words were added by Mah. 36 of 1986, s. 3(a).

^{*} Now see Companies Act, 2013.

Maharashtra Ownership Flats (Regulation of the promotion of 1963 : Mah. XLV] construction, sale, management and transfer) Act, 1963

- (i) not allow persons to 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 flat 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 documents in such manner as may be prescribed; and give on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor;
- ¹[(1) 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 flats;
- (m) when the flats are advertised for sale, disclose inter-alia in the advertisement the following particulars, namely :-
 - (i) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;
 - (ii) the price of the flat including the proportionate price of the ccommon areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which the instalments thereof may be paid;
 - (iii) the nature, extent and description of the common areas and facilities; and
 - (iv) the nature, extent and description of limited common areas and facilities, if any;]
 - $^{2}[(n)]$ sell flats on the basis of the carpet area only:

Provided that, the promoter may separately charge for the common areas and facilities in proportion to the carpet area of the flat.

Explanation.— For the purposes of this clause, the carpet area of the flat shall include the area of the balcony of such flat.].

4. 3[(1)] Notwithstanding anything contained in any other law, a Promoter promoter who intends to construct or constructs a block or building of flats, accepting all or some of which are to be taken or are taken on ownership basis, shall, advance before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written enter into agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under 4[the Registration Act, 1908 (hereinafter in this section referred to as "the Registration Act")] registered. ⁵[and such agreement shall be in the perscribed form.].

payment or deposit to agreement

XVI of 1908.

These Clauses were added by Mah. 36 of 1986, s. 3(b).

² Clause (n) was added by Mah. 23 of 2008, s. 2.

³ Section 4 was renumbered as sub-section (1) of that section by Mah. 5 of 1984, s. 2(1).

⁴ These words, figures and brackets were substituted for the words and figures "the Indian Registration Act, 1908", by Mah. 5 of 1984, s. 2(1).

⁵ These words were substituted for the portion begining with the words "and such agreement" and ending with the words "may be prescribed" by Mah. 36 of 1986, s. 4(a).

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- $^{1}[(1A)]$ The agreement to be prescribed and sub-section (1) shall contain inter alia the particulars as specified in clause (a); and to such agreement there shall be attached the copies of the documents specified in clause (b),-
 - (a) particulars,-
 - (i) if the building is to be constructed, the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force;
 - (ii) the date by which the possession of the flat is to be handed over to the purchaser;
 - (iii) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;
 - (iv) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which instalments thereof may be paid;
 - (v) the precise nature of organisation to be constituted of the persons who have taken or are to take the flats;
 - (vi) the nature, extent and description of limited common areas and facilities;
 - (vii) the nature, extent and description of limited common areas and facilities, if any;
 - (viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold;
 - (ix) statement of the use of which the flat is intended and restriction of its use, if any;
 - (x) percentage of undivided interests in the limited common areas and facilities, if any, appertaining to the flat agreed to be sold;
 - (b) copies of documents,—
 - (i) the certificate by an Attorney-at-law or Advocate under clause (a) of sub-section (2) of section 3;
 - (ii) Property Card or extract of village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed;
 - (iii) the plans and specifications of the flat as approved by the concerned local authority].
- ²[(2) Any agreement for sale entered into under sub-section (1) shall be presented by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration, within the time allowed under sections 23 to 26 (both inclusive) to the said Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assign or agent as laid down in sections 34 and 35 of the said Act also within the time

Provided that, where any agreement for sale is entered into, or is purported to be entered into, under sub-section (1), at any time before the commencement of the Maharashtra Ownership Flats (Regulation of the Mah.V promotion of construction, sale, management and transfer) (Amendment and Validating Provisions) Act, 1983, and such agreement was not presented for registration or was presented for registration but its execution was not admitted before the registration officer by the person concerned, before the commencement of the said Act, then such document may be presented at the proper registration office for registration, and its execution may be admitted, by any of the persons concerned referred to above in this sub-section, on or before the 31st December 1984, and the registering officer shall accept such document for registration, and register it under the Registration Act, as if it were presented, and its execution was admitted, within the time laid down in the Registration Act:

¹ Sub-section (1A) was inserted by Mah. 36 of 1986.

² Sub-section (2) was added by Mah. 5 of 1984, s 2(2).

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Provided further that, on presenting a document for registration as aforesaid if the person executing such document or his representative, assign or agent does not appear before the registering officer and admit the execution of the document, the registering officer shall cause a summons to be issued under section 36 of the Registration Act requiring the executant to appear at the registration office, either in person or by duly authorised agent, at a time fixed in the summons. If the executant fails to appear in compliance with the summons, the execution on the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly. If the executant appears before the registering officer as required by the summons but denies execution of the document, the registering officer shall, after giving him a reasonable opportunity of being heard, if satisfied that the document has been executed by him, proceed to register the document accordingly.].

Mah.V 1984.

XLVII

section 4, whether entered into before or after the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, Management and transfer) (Amendment and Validating Provisions) Act, 1983, remains unregistered for any reason, then notwithstanding anything contained in any law for the time being in force, or in any judgement, decree or order of any Court, it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.].

¹[4A. Where an agreement for sale entered into under sub-section (1) of Effect of nonregistration agreement required to registered under section 4.

1963. IV of 1882.

5. The promoter shall maintain a separate account in any bank of sums Promoter to taken, by-him, from-persons-intending to take or-who-have taken-flats, as-maintain advance or deposit, including any sums so taken towards the share capital account of for the formation of co-operative society or a company, or towards the sums taken outgoings (including ground rent, if any, municipal or other local taxes, or deposit taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); and he shall hold therefor the said moneys for the purposes for which they were given and shall disburse and the moneys for those purposes and shall on demand in writing by an officer appointed by general or special order by the State Government for the purpose, make full and true discloure of all transactions in respect of that account.

disburse purposes for which

²[5A. The State Government may, by notification in the Official Gazette Competent appoint an officer, not below the rank of the District Deputy Registrar of Authority. Co-operative Societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas, for the purposes of exercising the powers and performing the duties under sections 5, 10 and 11 of this Act.].

6. A promoter shall, while he is in possession and where he collects Responsibility from persons who have taken over flats or are to take over flats sums for the for payment payment of outgoings even thereafter, pay all outgoings (including ground rent, municipal or other local taxes, taxes on income, water-charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any), until he transfers property to the persons taking over

of outgoings till property

¹ This section was inserted by Mah. 5 of 1984, s.3.

² Section 5A was inserted by Mah. 4 of 2008, s.4.

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the flats, or to the organisation of any such persons, 1[where any promoter fails to pay all or any of the outgoings collected by him from the persons who have taken over flats or are to take over flats, before transferring the property to the persons taking over the flats or to the organisation of any such persons, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges (if any) to the authority or person to whom they are payable and to be responsible for any legal proceedings which may be taken therefor by such authority or persons].

After plans and specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flats; and defects noticed within ⁵[three years] to be rectified.

- 7. (1) After the plans and specifications of the building as approved by the local authority as aforesaid, are disclosed or furnished to the persons who agrees to take one or more flats, the promoter shall not make-
 - (i) any alteration in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that persons;
 - ²[(*ii*) any other alterations or additions in the structure of the building without the previous consent of all the persons who have agreed to take the flats in such building].
- (2) Subject to sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid; and if any defect in the building or material used, or if any unauthorized change in the construction is brought to the notice of the promoter within a period of ³[three years] from the date of handing over possession, it shall wherever possible be ractified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such person shall be entitled to receive reasonable compensation for such defect or change. Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction, 4[or as to whether it is reasonably possible for the promoter to rectify any such defect or change, or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be, or is not rectified by the promoter,] the matter shall, on payment of such fee as may be prescribed, 6[and within a period of three years from the date of handing over possession, be referred for decision,-
 - (i) in an urban agglomeration as defined in clause (n) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976, to such competent 33 of authority authorised by the State Government under clause (d) of section 1976. 2 of that Act, and

This portion was added and was deemed always to have been added by Mah. 36 of 1986, s.5.

² Clause (ii) was substituted and was deemed always to have been substituted by Mah. 36 of 1986, s.6(a).

³ These words were substituted and were deemed always to have been substituted for the words "one year" by Mah. 36 of 1986, s 6(b)(i).

⁴ These words were deemed always to have been inserted by Mah. 11 of 1970, s. 3.

⁵ These words were substituted for the words "a year" by Mah. 36 of 1986, s. 6(c).

⁶ This portion was substituted for the portion begining with the words "be referred" and ending with the words "shall be final" by Mah. 36 of 1986, s.6(b)(ii).

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Mah. XXVIII of 1977.

(ii) in any other area, to such Deputy Chief Engineer, or to such other Officer of the rank equivalent to that of Superintending Engineer in the Maharashtra Service of Engineers, of a Board established under scetion 18 of the Maharashtra Housing and Area Development Act, 1976,

as the State Government may, by general or special order, specify in this behalf. Such competent authority, Deputy Chief Engineer or, as the case may be, the other officer of a Board shall, after inquiry, record his decision, which shall be final.].

Mah XXXVI

 1 [7A. For the removal of doubt, it is hereby declared that clause (ii) of Removal of sub-section (1) of section 7 having been retrospectively substituted by clause (a) of section 6 of the Maharshtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Act, 1986 (hereinafter in this section referred to as "the Amendment Act"), it shall be deemed to be effective as if the said clause (ii) as so substituted has been in force at all material times; and the expression "or construct any additional structures" in clause (ii) of sub-section (1) of section 7 as it existed before the commencement of the Amendment Act and the expression "constructed and completed in accordance with the plans and specifications as aforesaid "and "any unauthorised change in the construction" in sub-section (2) of section 7 shall, notwithstanding anything contained in this Act or in any Agreement, or in any judgement, decree or order of any Court, be deemed never to apply or to have applied in respect of the construction of any other additional building or structures constructed or to be constructed under a scheme or project of development in the layout after obtaining the approval of a local authority in accordance with the building rules or building bye-laws or Development Control Rules made under any law for the time being in force.].

8. If—

- (a) the promoter fails to give possession in accordance with the amount paid with interest for terms of his agreement of a flat duly completed by the date specified, or failure to any further date or dates agreed to by the parties, or
- (b) the promoter for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period time of three months if those reasons still exist,

then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat (with simple interest at nine per cent. per annum from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances.

9. No promoter shall, after he executes an agreement to sell any flat, No mortgage or create a charge on the flat on the land, without the previous etc., to be consent of the persons who take or agree to take the flats, and if any such created consent of the persons who take or agree to take the flats, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 4 is registered, it shall not affect the right and interest of such persons.

Refund of interest for give possession within specified time or further allowed.

execution of agreement for sale.

¹ Section 7A was inserted by Mah. 36 of 1986, s.7.

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Promoter to take steps formation society or company.

10. 1[(1)] As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration operative of the organisation of persons who take the flats as Co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a Co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act:

²[Provided that, if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the Competent Mah. Authority may, upon receiving an application from the persons who have XXIV taken flats from the said promoter, direct the District Deputy Registrar, 1961. Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society:

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants, request and giving the concerned promoter a reasonable opportunity of being heard.].

¹[(2) If any property consisting of building is constructed or to be constructed ³[and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing and registering Mah. a Declaration as provided by that Act] then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, accordingly; and in such cases, it shall not be lawful to form any co-operative XXIV society or company.

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Promoter to convey title, etc., and execute documentsaccording to agreement.

11. ⁵[(1)] A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers 6[or apartment owners], his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

¹ Section 10 was renumbered as sub-section (1) of that section and sub-section (2) was added by Mah. 15 of 1971, Sch.

² Provisos were added by Mah. 4 of 2008, s. 5.

³ This portion was substituted for the portion beginning with "and the apartment takers propose to submit" and ending with "as required by that Act" by Mah. 53 of 1974, s. 6(a)

The words "and each apartment owner shall be entitled to the exclusive ownership and possession of his apartment as provided in the first mentioned Act" were deleted, by Mah. 53 of 1974,

 $^{^5}$ Section 11 was renumbered as sub-section (1) of the said section and sub-sections (2) to (5) were inserted by Mah.4 of 2008, s. 6.

⁶ These words were inserted by Mah. 15 of 1971, Sch.

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- ¹[(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).
- (3) If the promoter fails to execute the conveyance in favour of the Cooperative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.
- (4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate 16 of Registeration Officer under the Registeration Act, 1908, certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour-of-the-applicant, as-deemed-conveyance.
- (5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned 16 of appropriate Registeration Officer appointed under the Registeration Act, 1908, the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained 16 of in the Registration Act, 1908, issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'.].
 - 12. (1) Every person who has executed an agreement to take a flat shall General pay at the proper time and place the price, his proportionate share of the of flatmunicipal 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 flats 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 a flat and who, without reasonable excuse, fails to comply with or contravenes sub-section (1) shall, on conviction, be punished with fine which may extend to two thousand rupees.

liabilities

¹ Sub-sections (2) to (5) were inserted by Mah. 4 of 2008, s. 6.

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Manager not to cut withheld, curtail or essential supply or service.

- $^{1}[12A.~(1)~
 m{No}$ person, who is a promoter, or who is in-charge of management or connected with the management of a block or building of flats, whether as member of a managing committee, director, secretary or reduce otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person, cut off, withhold, or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken or agreed to be taken by him.
 - (2) The person who has taken or agreed to take the flat or the occupier may, if the manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.
 - (3) If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service, and that it was cut off or withheld or curtailed or reduced by the manager without just and sufficient cause, the Court shall make an order directing the manager to restore such supply or service before a date to be specified in the order. COURT
 - (4) The manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter, be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees.
 - (5) Notwithstanding anything contained in any law for the time being in force,—
 - (α) in Greater Bombay, the Court of Small Causes, Bombay,
 - (b) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court, and
 - (c) elsewhere, the Court of the Civil Judge (Senior Division),

IX of 1887.

shall have jurisdiction to decide any application made under subsection (2), and no other Court shall have jurisdiction to entertain such application. No appeal shall lie from any order made on such application; but in Greater Bombay a bench of two judges of the Court of Small Causes, Bombay, which shall not include the Judge who made such order, and elsewhere the District Court, may for the purpose of satisfying itself that the order made was according to law, call for the case in which such order was made and the Bench or Court aforesaid or the District Judge or any Judge to which the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit.

Retrospective effect and saving.

XXIX 1964.

Section 12A was inserted by Mah. 29 of 1964, s. 2. Section 4 of Mah. 29 of 1964 reads as under :-

[&]quot;4. The amendments made by sections 2 and 3 shall be deemed to have been inserted in the principal Act and shall be deemed to have come into force in Greater Bombay, on the 10th day of February 1964; but nothing therein shall render any person liable to be convicted of any offence in respect of any act or omission by him before the commencement of this Act, if such act was not an offence under the principal Act, at that date, but for the provisions herein inserted. But if any person has cut off, withheld or in any manner curtailed or reduced, any essential supply or service in respect of any flat at any time before the commencement of the Maharashtra Ownership Flats (Regulation of promotion of construction, sale, management and transfer) (Amendment) Act, 1964, and continues or allows the continuance thereof after such commencement, he shall be liable to of the penalties provided in that aforementioned section 2.".

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- (6) Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine, or with both.
- (7) The offence under sub-section (6) shall be cognizable, and shall not be triable by any Court inferior to that of a '[Metropolitan Magistrate, or a Judicial Magistrate of the First Class].

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

Explanation II.—For the purposes of this section, witholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority.].

²[13. (1) Any promoter who, without reasonable excuse, fails to comply Offences by with or contravenes, the provisions of sections 3, 4, 5 [save as provided in promoters sub-section (2) of this section], 10 or 11 shall, on conviction be punished with 5[and imprisonment for a term which may extend to three years or with fine, or consequences with both.

conviction.]

- (2) Any promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section 5 shall, on conviction, be punished with imprisonment for a term which may extend to five years, or with fine, or with both.
- (3) Any promoter who, without reasonable excuse, fails to comply with or, contravenes, any other provision of this Act or any rule made thereunder, shall, if no other penalty is expressly provided for the offence, or punished, on conviction, ³[with imprisonment for a term which shall not be less than six-months-but-which-may-extend-to-one-year-or-with-fine-which-shall-not-beless than Ten Thousand rupees but which may extend to Fifty Thousand rupees or with both].
- ⁴[(4) When any promoter is convicted of any offence under this Act, except offence under section 12A, such promoter shall be disqualified from undertaking construction of flats for a period of five years from the date of such conviction. However, such disqualification shall not affect the permission for construction of flats already granted before incurring such disqualification and shall also not debar the promoter from seeking or being granted any additional requisite permissions which may be required from the concerned local authorities for completion of constructions already undertaken by him.
- (5) The Competent Authority shall, on such conviction of a promoter under this Act, subject to the orders of the appellate court, if any, or after the expiry of the appeal period, forward the name of the convicted promoter to the local authorities under his jurisdiction, with a direction that such promoter shall not be granted permission under the relevant law for undertaking any construction of flats during the period of such disqualification, specifically mentioning such period.

¹ These words were substituted for the words "Presidency Magistrate, or a Magistrate of the First Class "by Mah. 12 of 1986, s.3.

² Sections 13 and 13A were substituted for the original section 13 by Mah. 36 of 1986, s. 8.

³ These words were substituted for the words "with imprisonment for a term which may extent to one year, or with fine which may extend to ten thousand rupees, or with both," by Mah. 4 of. 2008, s.7(α).

⁴ These sub-sections were added by Mah. 4 of 2008, s.7(b).

⁵ These words were inserted by Mah. 4 of 2008, s.7(c).

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- Maharashtra Ownership Flats (Regulation of the promotion of [1963 : Mah. XLV construction, sale, management and transfer) Act, 1963
- (6) On receiving such intimation from the Competent Authority, notwithstanding anything contained in any other law for the time being in force, the concerned local authority shall not grant such promoter any permission or licence under the relevant law for construction of flats for a period for which the promoter is so disqualified].

Power of sentences under this

13A. Notwithstanding anything contained in the Code of Criminal II of Magistrate Procedure, 1973, it shall be lawful for a Metropolitan Magistrate or a Judical to pass Magistrate of the First Class to pass on any person convicted of any offence under this Act a sentence of imprisonment or of fine or both as provided in Act, the relevant section of this Act, in excess of his powers under section 27 of the said Codel.

Competent Authority shall be deemed to be a sufficient Authority within the meaning of section 21 of the Indian Penal Code. $^{1}[{f 13B}.$ The Competent Authority shall be deemed to be a public servant 45 of

Proceedings Authority to be judicial proceedings.

13C. All proceedings before a Competent Authority shall be deemed to 45 of Competent be the judicial proceedings for the purposes of sections 193 and 228 of the 1860. Indian Penal Code.

Competent be Civil 1973. certain purposes.

13D. Every Competent Authority shall be deemed to be a Civil Court deemed to for the purposes of sections 345 and 347 of the Code of Criminal Procedure, 2 of

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Indemnity

13E. No suit, prosecution or any other legal proceedings shall lie against for acts any competent Authority in respect of anything which is in good faith done good faith. or purported to be done by him under this Act].

Offences by companies.

14. (1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of business by 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 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 also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) " company " means 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.

¹ The Sections 13B to 13E were inserted by Mah. 4 of 2008, s. 8.

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- 15. (1) The State Government may, subject to the condition of previous Power to publication, by notification in the Official Gazette, make rules for carrying make rules. into effect the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—
 - (a) under section 3, the particulars as respects the design and the materials to be used in the construction of the building and the other information and documents to be disclosed, the manner in which disclosure to be made and the documents of which true copies shall be given by the promoter;
 - ¹[(b) under section 4, the form of agreement;]
 - (c) under section 10, the period within which the promoter shall submit an application for registration of a co-operative society or a company;
 - (d) under section 11, the period within which the promoter shall execute the conveyance;
 - (e) any other matter which has to be, or may be, prescribed by rules.
- (3) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification 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 or omitted to be done under that rule.
- 16. The provisions of this Act, except where otherwise provided, shall Act to be in IV of be in addition to the provisions of the Transfer of Property Act, 1882, and addition to shall take effect notwithstanding anything to the contrary contained in any contract.

Transfer of Property Act and to over-ride contract to the contrary.

17. As respects flats which on the commencement of this Act have already Application been constructed, or converted, the provisions of sections 2,6,8,9, of certain 10,11,12,13,14,15 and 16 apply with the following modifications, that is to provisions say,—

to flats already in

- (a) in section 2, in clause (c), the words "means a person who existence. constructs " shall be read as if the words " means a person who has constructed " had been substituted;
- (b) in section 8, if the date specified or agreed to has already passed at the commencement of this Act, then the promoter shall give possession within three months from such commencement of this Act; and if for any

Clause (b) was substituted for the original by Mah. 36 of 1986, s. 9.

reasons beyond his control and of his agent, the promoter has been unable to give possession of the flat within three months from such commencement, he shall give possession thereof within a period of three months thereafter, or a further period of three months if those reasons still exist; and thereafter the promoter shall be liable on demand to refund the amounts on the terms and conditions provided in the said

- (c) in section 9, the words and figures "after the agreement referred to in section 4 is registered" shall be read as if the words "after the commencement of this Act" had been substituted;
- (d) in section 10, the words "As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period" shall be read as if the words "Where the minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within three months from the commencement of this Act" had been substituted;
- (e) in section 11, the words and figure "in accordance with the agreement executed under section 4" shall be read as if the words "in accordance with any agreement made in respect thereof" had been substituted, and the words "within the prescribed period" shall be read as if the words "within three months from the commencement of this Act" had been substituted.

Act not to apply to Housingand Area Development Authority and Boards.

16

section;

¹[18. Nothing in this Act shall apply to the Maharashtra Housing Mah. Area Development Authority and the Boards established under the Maharashtra Housing and Area Development Act, 1976].

Maharashtra Housing and Area Development Act, 1976].

¹ Section 18 was substituted for the original by Mah. 12 of 1986, s.4.

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GOVERNMENT OF MAHARASHTRA LAW AND JUDICIARY DEPARTMENT

MAHARASHTRA ACT No. XV OF 1971.

THE MAHARASHTRA APARTMENT OWNERSHIP ACT, 1970.

(As modified upto the 4th March 2016)

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1971: Mah. XV]

THE MAHARASHTRA APARTMENT OWNERSHIP ACT, 1970

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SCHEDULE.

H 510-1

MAHARASHTRA ACT No. XV OF 19711

[THE MAHARASHTRA APARTMENT OWNERSHIP ACT, 1970.]

(This Act received the assent of the President on the 12th day of February 1971; assent was first published in the Maharashtra Government Gazette, on the 19th February 1971).

Amended by Mah. 6 of 1974† (13-3-1974)* Amended by Mah. 53 of 1974 (1-1-1975)* Amended by Mah. 14 of 1986 (31-1-1986)*

An Act to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property.

WHEREAS, it is expedient to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property, and to provide for matters connected with the purposes aforesaid; It is hereby enacted in the Twentyfirst Year of the Republic of India as follows:-

1. (1) This Act may be called the Maharashtra Apartment Ownership Act, 1970.

Short title. extent and commencement.

- (2) It extends to the whole of the State of Maharashtra.
- (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 ² as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for
- 2. This Act applies only to property, the sole owner or all of the owners of which Application submit the same to the provisions of this Act by duly executing and registering a of Act. Declaration as hereinafter provided:

Provided that, no property shall be submitted to the provisions of this Act, ³[unless it is used or proposed to be used for residence, office, practice of any profession or for carrying on any occupation, trade or business or for any other type of independent use:]

- ¹ For Statement of Objects and Reasons, see Maharashtra Government Gazette, 1970, Part V, Extra, p. 343-344.
- (A) 10th day of August 1972 in the areas of (1) Municipal Corporation of Greater Bombay, (2) New Bombay, (3) Municipal Corporation of the City of Pune, (4) Corporation of the City of Nagpur, (5) Municipal Corporation of the City of Solapur and (6) Municipal Councils of Akola, Amravati, Aurangabad, Jalna, Beed, Dhule, Jalgaon, Ichalkaranji, Kolhapur, Nanded, Malegaon, Nashik, Latur, Osmanabad, Udgir, Basmatnagar, Parbhani, Pimpri-Chinchwad, Islampur, Ambernath, Dombivali, Thane, Hinganghat and Pulgaon.
 - (Vide G.N., U.D., P.H. & H.D., No. FOB. 1071/26752-I, dated the 10th August 1972).
- (B) 28th day of May 1982 in the areas within the limits of (1) the Kalyan Municipal Council in Thane district, and (2) the Ulhasnagar Municipal Council in Thane district.
 - (Vide G.N., H. & S.A.D., No. MAD. 1180/(329)/II(ii), dated 28th May 1982).
- (C) 1st day of May 1983 in the area within the limits of Ahmednagar Municipal Council of Ahmednagar district.
 - (Vide G.N., H. & S.A.D., No. MAO. 1182/1613/D-II, dated 16th April 1983).
 - (D) 1st day of April 1986 in the area of the villages of Tarapur and Boisar in Thane district. (Vide G.N., H. & S.A.D., No. 1085/(7758)/II, dated 31st March 1986).
- (E) 27th day of November 1987 in the area within the limit of Shrirampur Municipal Council of Ahmednagar district.
- (Vide G.N., H. & S.A.D., No. 1087 (9238)/II, dated 27th November 1987).
- (F) 20th day of June 1990 in the Municipal areas of Sangli, Miraj, Tasgaon, Vita, Ashta Municipal Councils in Sangli district.
 - (Vide G.N., H. & S.A.D., No. 1088/262/D-II, dated 18th June 1990).
- (G) 1st day of January 1996 in the Municipal areas within the limits of Satara and Karad Municipal Councils in Satara district.
 - (Vide G.N., H. & S.A.D., No. MHS. 3895/(27)/DVP-2, dated 27th December 1995).
- These words were substituted for the words "unless it is mainly used, or proposed to be used for residential purposes" by Mah. 53 of 1974, s. 2.
 - †Mah. Ordinance No. II of 1974 was repealed by Mah. 6 of 1974, s. 7.
 - *This indicates the date of commencement of the Act

¹[Provided further that the sole owner or all the owners of the land may submit such land to the provisions of this Act with a 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 either by annexing a copy of the instrument of lease to be executed to the Declaration or otherwise.]

Definitions.

2

- 3. In this Act, unless the context otherwise requires,—
- (a) "apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors or part or parts thereof in a building, ²[intended to be used for residence, office, practice of any profession, or for carrying on any occupation, trade or business 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;
- (b) "apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration;
- (c) "apartment number" means the number, letter, or combination thereof designating the apartment in the Declaration;
- (d) "Association of Apartment Owners" means all of the apartment owners acting as a group in accordance with the bye-laws and Declaration;
- (e) "building" means a building containing five or more apartments, or two or more buildings, each containing two or more apartments, with a total of five or more apartments for all such buildings, and comprising a part of the property;
- (f) "common areas and facilities", unless otherwise provided in the Declaration or lawful amendments thereto, means—
 - (1) the land on which the building is located;
 - (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exists of the building:
 - (3) the basements, cellars, yards, gardens, parking areas and storage spaces;
 - (4) the premises for the lodging of janitors or persons employed for the management of the property;
 - (5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
 - (6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use ;
 - (7) such community and commercial facilities as may be provided for in the Declaration : and
 - (8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;
 - (g) "common expenses" means,-
 - (I) all sums lawfully assessed against the apartment owners by the Association of Apartment Owners;
 - (2) expenses of administration, maintenance, repair or replacement of the common areas and facilities:

¹ This proviso was deemed always to have been added by Mah. 6 of 1974, s. 2.

 $^{^2}$ These words were substituted for the word "intended to be used for residential purposes" by Mah. 53 of 1974, s. 3(I).

- (3) expenses agreed upon as common expenses by the Association of Apartment Owners:
- (4) expenses declared as common expenses by the provisions of this Act, or by the Declaration or the bye-laws;
- (h) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;
 - ¹[(i) "Competent authority",—

Mah.

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Mah. XXIV

of 1961.

- (1) in relation to buildings constructed or to be constructed by the Housing and Area Development Authority established under section 3, or a Housing and Area Development Board established under section 18 of the Maharashtra Housing and Area Development Act, 1976, or by a company, means the Deputy Chief Engineer or the officer referred to in sub-section (2) of section 7 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963; and
- (2) in any other case, means the Registrar of Co-operative Societies as defined in the Maharashtra Co-operative Societies Act, 1960;]
- (j) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, ²[as provided by section 2], and such Declaration as from time to time may be lawfully amended;
- (m) "joint family" means an undivided Hindu family, and in the case of other persons, a group or unit, the members of which are by custom joint in possession or residence:
- (n) "limited common areas and facilities" means those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;
- (o) "majority" or "majority of apartment owners" means the apartment owners with 51 per cent. or more of the votes in accordance with the percentages assigned in the Declaration to the apartments for voting purposes;
 - (p) "person" includes a joint family;
 - (q) "prescribed" means prescribed by rules made under this Act;
- (r) "property" means the land, the building, all improvements and structures * and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been, or are intended to be, submitted to the provisions of this Act.
- 4. ⁵[Subject to the provisions of the second proviso to section 2 of this Act, Status of each apartment], together with its undivided interest in the common areas and apartments. facilities, appurtenant to such apartment, shall for all purposes constitute heritable

¹ Clause (i) was substituted for the original by Mah. 14 of 1986, s. 2(a)

² These words and figures were substituted for the words "as hereinafter provided" by Mah. 53 of 1974,

³ Clauses (k) and (l) were deleted by Mah. 14 of 1986, s. 2(b).

⁴ The words "all owned in freehold or held on lease or as occupant under any law relating to land revenue" were deemed always to have been deleted by Mah. 6 of 1974, s. 3.

⁵ These words and figure were deemed always to have been substituted for the words "Each apartment" by Mah. 6 of 1974, s. 4.

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and transferable immoveable property within the meaning of any law for the time being in force in the State;

and accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings, remedies and to penalty, forfeiture and punishment as any other immoveable property, or make a bequest of the same under the laws applicable to the transfer and succession of immoveable property.

Ownership of apartments.

- **5**. (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment ¹[in accordance with the Declaration executed and registered as required by section 2 of this Act].
- (2) Each apartment owner ²[shall execute a Deed of Apartment] in relation to his apartment in the manner prescribed for the purpose.

Common areas and facilities.

- **6.** (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property and such percentage shall reflect the limited common areas and facilities.
- (2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall have a permanent character, and shall not be altered without the consent of all of the apartment owners expressed in an amended Declaration duly executed and registered as provided in this Act. 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.
- (3) 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, unless the property has been removed from the provisions of this Act as provided in sections 14 and 22. Any covenant to the contrary shall be null and void.
- (4) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.
- (5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided herein and in the bye-laws.
- (6) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Manager or Board of Managers, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repairs and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

¹ These words and figure were deemed always to have been added by Mah. 6 of 1974, s. 5.

² These words were substituted for the words "shall execute a Declaration that he submits his apartment to the provisions of this Act and a Deed of Apartment" by Mah. 53 of 1974, s. 4.

7. Each apartment owner shall comply strictly with the bye-laws and with the Compliance administrative rules and regulations adopted pursuant thereto, as either of the same with may be lawfully amended from time to time, and with the covenants, conditions and bye-laws and restrictions set forth in the Declaration or in the Deed to his apartment. Failure to administrative comply with any of the same shall be a ground for an action to recover sums due, for provisions. damages or injunctive relief or both maintenable by the Manager or Board of Managers on behalf of the Association of Apartment Owners, or, in a proper case, by an aggrieved apartment owner.

8. No apartment owner shall do any work which could jeopardize the soundness or Certain safety of the property, reduce the value thereof or impair any easement or hereditament work nor may any apartment owner add any material structure or excavate any additional prohibited. basement or cellar without in every such case the unanimous consent of all the other apartment owners being first obtained.

9. (1) Subsequent to recording the Declaration as provided in this Act, and while Encumbrances the property remains subject to this Act, no encumbrance of any nature shall against thereafter arise or be effective against the property. During such period encumbrances apartments; removal may arise or be created only against each apartment and the percentage of undivided from interest in the common areas and facilities appurtenant to such apartment, in the same encumbrances, manner and under the same conditions in every respect as encumbrances may arise or effect of be created upon or against any other separate parcel of property subject to individual part

Provided that, if during the period any encumbrance has arisen or been created against such apartment and the percentage of undivided interest in the common areas and facilities, appurtenant to such apartment, no apartment and such percentage of undivided interest shall be partitioned or sub-divided in interest:

Provided further that, no labour performed or materials furnished with the consent or at the request of an apartment owner or his agent or his contractor or sub-contractor IV of shall be the basis for a charge or any encumbrance under the provisions of the Transfer 1882. of Property Act, 1882, against the apartment of 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 the owner of any apartment in the case of emergency repairs thereto. Labour performed and material furnished for the common areas and facilities if duly authorised by the Association of Apartment Owners the Manager or Board of Managers in accordance with this Act, the declaration or 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 provisions of sub-section (2) of this section.

(2) 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 by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the percentages appearing in the Declaration. Subsequent to any such payment, discharge or other satisfaction, 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, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the person having a charge or any other encumbrance from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

Common profits and expenses.

10. 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 in the common areas and facilities.

Contents of Declaration.

- 11. (1) The Declaration shall contain the following particulars, namely:—
- (a) Description of the land on which the building and improvements are or are to be located; and whether the land is freehold or leasehold ¹[and whether any lease of the land is to be granted in accordance with the second proviso to section 2 of this Act];
- (b) Description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed;
- (c) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;
 - (d) Description of the common areas and facilities;
- (e) Description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;
- (f) Value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities, appertaining to each apartment and its owner for all purposes, including voting; and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the Declaration;
- (g) Statement of the purposes for which the building and each of the apartments are intended and restricted as to use;
- (h) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located;
- (i) 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 part of the property;
- (j) Any other details in connection with the property which the person executing the Declaration may seem desirable to set forth consistent with this Act;
- (k) The method by which the Declaration may be amended, consistent with the provisions of this Act.
- (2) A true copy of each of the Declaration and bye-laws and all amendments to the Declaration or the bye-laws shall be filed in the office of the competent authority.

Contents of Deeds of Apartments.

- **12.** (1) Deeds of apartments shall include the following particulars, namely:—
- (a) Description of the land as provided in section 11 of this Act of the post-office address of the property, including in either case the liber, page and date of executing [Registration XVI Act, 1908], and the date and other reference, if any, of its filing with the competent of authority.
- (b) The apartment number of the apartment in the Declaration and any other data necessary for its proper identification.

¹ These words and figure were deemed always to have been added by Mah. 6 of 1974, s. 6.

² These words and figures were substituted for the words and figures "Indian Registration Act, 1908" by Mah. 14 of 1986, s. 3.

- (c) Statement of the use for which the apartment is intended and restrictions on its use, if any.
- (d) The percentage of undivided interest appertaining to the apartment in the common areas and facilities.
- (e) Any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and this Act.
- (2) A true copy of every Deed of Apartment shall be filed in the office of the competent authority.
- 13. (1) The Declaration and all amendments thereto and the Deed of Apartment in Declarations, respect of each apartment and the floor plans of the buildings referred to in sub- Deeds of XVI section (2) shall all be registered under the ¹[Registration Act, 1908].

Apartments and copies of floor plans to be

- (2) Simultaneously with the registration of the Declaration there shall be filed registered. alongwith it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, there shall be recorded prior to the first conveyance of any apartment, an amendment to the Declaration to which shall be attached a verified statement of an architect certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the apartment as built.
- (3) In all registration offices a book called "Register of Declaration and Deeds of Apartments under the Maharashtra Apartment Ownership Act, 1970" and Index relating thereto shall be kept. The book and the Index shall be kept in such form and shall contain such particulars as the State Government may prescribe.
- (4) It shall be the duty of every Manager or Board of Managers to sent to the Sub-Registrar of the sub-district in which the property containing the apartment is situate, or if there is no Sub-Registrar for the area, to the Registrar of the district in which such property is situate, a certified copy of the Declaration and Deed of Apartment made in respect of every apartment contained in the building forming part of the property together with a memorandum containing such particulars as the State Government may prescribe.
- (5) The Sub-Registrar, or as the case may be, the Registrar shall register the Declaration alongwith floor plans of the building and the Deed of Apartment in the Mah. Register of Declarations and Deeds of Apartments under the Maharashtra Apartment Ownership Act, 1970 and shall also enter particulars in the Index kept under subsection (3). Any person acquiring any apartment of any apartment owner shall be deemed to have notice of the Declaration and of the Deed of Apartment as from the date of its registration under this section.

XVI (6) Except as provided in this section, the provisions of the ¹[Registration Act, 1908], shall mutatis mutandis apply to the registration of such Declaration and Deeds of 1908 Apartments and the words and expressions used in this section but not defined in this XVI Act, shall have the meanings assigned to them in the [Registration Act, 1908]. 1908.

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¹ These words and figures were substituted for the words and figures "Indian Registration Act, 1908" by Mah. 14 of 1986, s. 4.

Removal from provisions of Act. **14.** (1) All the apartment owners may remove a property from the provisions of this Act by an instrument to that effect duly executed:

Provided that, the holders of all charges and other encumbrances affecting any of the apartments consent thereto or agree, in either case by instruments duly executed that their charges or encumbrances be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

- (2) Upon removal of the property from the provisions of this Act, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.
- Removal no bar to subsequent resubmission of property to Act.
- **15.** The removal provided for in the preceding section shall in no way bar the subsequent resubmission of the property to the provisions of this Act.

Bye-laws, their contents.

- **16.** (1) The administration of every property shall be governed by bye-laws a true copy of which shall be annexed to the Declaration. No modification of or amendment to the bye-laws shall be valid, unless set forth in an amendment to the Declaration, and such amendment is duly recorded, and a copy thereof is duly filed with the competent autority.
 - (2) The bye-laws shall provide for the following matters, namely:—
 - (a) The election from among the apartment owners of a Board of Managers, the number of persons constituting the same, and that the terms of at least one-third of the members of such Board shall expire annually; the powers and duties of the Board; the compensation, if any, of the members of the Board; the method of removal from office of members of the Board; and whether or not the Board may engage the services of a Secretary, a Manager or Managing Agent, and specifying which of the powers and duties granted to the Board by this Act or otherwise may be delegated by the Board to either or both of them;
 - (b) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, shall constitute a quorum;
 - (c) Election of a President from among the members of the Board of Managers who shall preside over the meetings of such Board and of the Association of Apartment Owners;
 - (d) Election of a Secretary who shall keep a minute book wherein resolutions shall be recorded;
 - (e) Election of a Treasurer who shall keep the financial records and books of accounts;
 - (f) Maintenance, repair and replacement of the common areas and facilities and payments therefor;
 - (g) Manner of collecting from the apartment owners their share of the common expenses;
 - (h) Designation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities;
 - (i) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;

- (j) Such restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartement owners;
 - (k) The percentage of the votes required to amend the bye-laws.
- (3) The bye-laws may also provide for the following matters, namely:—
- (a) Subject to the provisions of this Act, provision for regulating transfer or partition of any apartment and percentage of undivided interest in the common areas and facilities appurtenant to such apartment, subject to such terms and conditions as may be specified in the bye-laws;
- (b) Provisions enabling the Board of Managers to retain certain areas of the building and lease to non-residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or application thereof in reduction of their common charges for maintaining the building;
- (c) Any other provisions not inconsistent with the provisions of this Act, relating to the audit and accounts and administration of the property and annual and special general meetings, annual report and the like.
- 17. No apartment owner may exempt himself from liability for his contribution waiver of towards the common expenses by waiver of the use or enjoyment of any of the common use of areas and facilities, or by abandonment of his apartment.

common areas and facilities: abandonment of apartment.

18. Notwithstanding anything to the contrary contained in any law relating to local Separate authorities, each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment (being an apartment submitted to the provisions of this Act) shall be deemed to be separate property for the purpose of assessment to 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 all suitable rules to carry out the provisions of this section. Neither the building, the property nor any of the common areas and facilities shall be deemed to be separate property for the purposes of the levy of such tax.

19. All sums assessed by the Association of Apartment Owners but unpaid for Charge for the share of the common expenses chargeable to any apartment shall constitute a property of charge on such apartment prior to all other charges except only (i) charge, if any, on common the apartment for payment of Government and municipal taxes, and (ii) all sums unpaid on a first mortgage of the apartment.

20. Upon the sale of an apartment, the purchaser of the apartment shall be jointly Joint and and severally liable with the vendor for all unpaid assessments against the latter or several his share of the common expenses upto the time of the sale without prejudice to the liability of vendor, purchaser's or grantee's right to recover from the vendor the amount paid by the etc., for purchaser or grantee therefore. Any such purchaser shall be entitled to a statement unpaid from the Secretary or Board of Managers, setting forth the amount of the unpaid common assessment against the vendor and such purchaser or grantee shall not be liable for, nor shall the apartment sold be subject to a charge for any unpaid share of common expenses against such apartment accrued prior to such sale or request in excess of the amount therein set forth.

Insurance.

21. The Manager or Board of Managers, if required by the Declaration or the bye-laws or by a majority of the apartment owners, or at the request of a mortgagee having a first mortgage covering an apartment, shall have the authority to, and shall obtain insurance for the property against loss or damage by fire, and such other hazards under such terms and for such amounts as shall be required, or requested. Such insurance coverage shall be written on the property in the name of such Manager or of the Board of Managers of the Association of the Apartement Owners as trustee for each of the apartment owners in the percentages established in the Declaration. Premiums shall be common expenses. Provisions for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

Disposition of property;

- 22. If within sixty days of the date of damage or destruction to all or part of the destruction property, it is not determined by the Association of Apartment Owners to repair, or damage. reconstruct or rebuild, then and in that event,—
 - (a) the property shall be deemed to be owned in common by the apartment owners;
 - (b) the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities;
 - (c) any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided therein;
 - (d) the property shall be subject to an action for partition at the suit of any apartment owner, in which even 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 among all the apartment owners in percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out, all the respective shares of the apartment owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner

Action.

23. Without limiting the rights of any apartment owner, actions may be brought by the Manager or Board of Managers, in either case in the discretion of the Board of Managers 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. 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 Declaration to receive service of process.

Act to be apartment owners, tenants, etc.

- 24. (1) All apartment owners, tenants of such owners, employees of owners and binding on tenants, or any other person that may in any manner use property or any part thereof submitted to the provisions of this Act shall be subject to this Act and to the Declaration and the bye-laws of the Association of Apartment Owners adopted pursuant to the provisions of this Act.
 - (2) All agreements, decisions and determinations lawfully made by the Association of Apartment Owners in accordance with the voting percentages established under this Act, Declaration or bye-laws, shall be deemed to be binding on all apartment owners.

1971: Mah. XV] Maharashtra Apartment Ownership Act, 1970 11

¹[24A. (1) The State Government, by notification in the Official Gazette, may Power to reduce or remit whether prospectively or retrospectively—

exempt from stamp duty, power to refund.

- (a) the stamp duly with which under any law relating to stamp duty for the time registration being in force, instruments or documents executed by or on behalf of a promoter, an court-fees; apartment-owner or association of apartment owners relating to any of the purposes of the Act are respectively chargeable;
- (b) any fee payable by or on behalf of any promoter, apartment-owner or association of apartment owners in relation to the instruments or documents referred to in clause (a) under any law relating to the registration of documents or to courtfees, for the time being in force which the State Government is competent to levy.
- (2) The State 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 State Government may by order determine.]
- 25. (1) The State Government may, subject to the condition of previous publication Power to by notification in the Official Gazette, make rules for carrying into effect the provisions make rules. of this Act.

- (2) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification 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 or omitted to be done under that rule.
- 26. For the removal of doubt, it is hereby declared that the provisions of the Removal of IV of Transfer of Property Act, 1882, shall in so far as they are not inconsistent with the provisions of this Act, apply to every apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment as those provisions apply in relation to any immovable property, and the provisions of this Act shall take effect, notwithstanding anything to the contrary contained in any contract.

27. The ²[enactment] specified in the Schedule hereto shall be amended in the Amendment manner and to the extent specified in the third column thereof.

to certain Acts.

28. If any provision of this Act or any section, sentence, clause, phrase, or word, Severability. 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.

¹ Section 24A was inserted by Mah. 53 of 1974, s. 5.

² This word was substituted for the word "enactments" by Mah. 14 of 1986, s. 5.

SCHEDULE.

(See section 27)

Number and year of enactment 1	Subject or title	Extent of amendment
	2	3

Mah. XLV of 1963.

The Maharashtra
Ownership Flats
(Regulation of the promotion of construction, sale, management and transfer) Act, 1963.

- (1) In section 2—
 - (a) in clause (a), after the words "part of a building" the words "and includes an apartment" shall be added;
 - (b) in clause (c), after the words "building of flats" the words "or apartments" shall be inserted;
 - (c) in clause (e), after the word "flats" at both the places where it occurs, the words "or apartments" shall be inserted;
 - (d) after clause (e), the following shall be added, namely:—
 - "(f) the expressions 'apartment' and 'apartment owner' shall have the meanings, respectively assigned to them in the Maharashtra Apartment Ownership Act, 1970".
- (2) Section 10 shall be renumbered as sub-section (1) of that section and after sub-section (1) so renumbered, the following subsection shall be added, namely:—
 - "(2) If any property consisting of building or buildings is constucted or to be constructed and the apartment takers propose to submit the apartments to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing Declarations and Deeds of Apartments as required by that Act, then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative

Mah. XV of 1971.

Mah. XV of 1971.

Mah. XXIV of 1961.

¹ The entries relating to the Bombay Housing Board Act, 1948 and the Madhya Pradesh Housing Board Act, 1950 were deleted by Mah. 14 of 1986, s. 6.

[1971: Mah. XV Maharashtra Apartment Ownership Act, 1970

13

SCHEDULE—Contd.

Number and year of enactment	Subject or title	Extent of amendment
1	2	3

Societies Act, 1960, accordingly; and in such cases, it shall not be lawful to form any co-operative society or company, and each apartment owner shall be entitled to the exclusive ownership and possession of his apartment as provided in the first mentioned Act.".

(3) In section 11, after the word "flat takers" the words "or apartment owners" shall be inserted.



H 510-4,682 Bks.-3.2016

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Apartment Complex With Only Residential Flats To Be Registered Under Apartment Ownership Act Not Cooperative Societies ...



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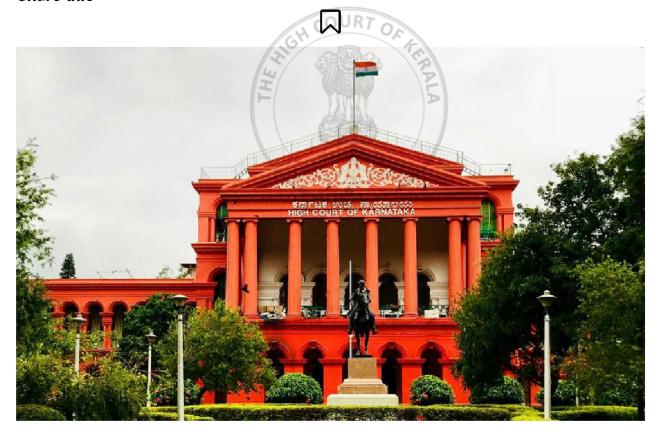
Apartment Complex With Only Residential Flats To Be Registered Under Apartment Ownership Act Not Cooperative Societies Act: Karnataka HC

Mustafa Plumber

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Apartment Complex With Only Residential Flats To Be Registered Under Apartment Ownership Act Not Cooperative Societies ...

The Karnataka High Court has held that to manage and maintain an apartment complex consisting of only residential flats, the association of owners has to be registered under the Karnataka Apartment Ownership Act, 1972, and not under the provision of Karnataka Co-operative Societies Act, 1959.

A single judge bench of **Justice Anant Ramanath Hegde** said "Admittedly, the project referred to above is a residential housing project. There is no commercial unit in the said project. The sale deeds executed in favour of the purchasers of the flats would also indicate that the purchasers have undertaken to subject them to the provisions of the Act of 1972. There is no difficulty in holding that petitioners and members of the proposed respondent No.4 Society are entitled to have registration of an association under the Act of 1972, and there cannot be any association registered under the Act of 1959 to form a society to manage and maintain the Property comprising only residential flats."

Also Read - [Karnataka Police Act] Mandatory To Provide Hearing, Materials Relied Upon By Authority Before Passing Externment Order Against Accused: High Court (/high-court/karnataka-high-court/karnataka-high-court-ruling-reasonable-opportunity-mandatory-externment-orders-section-58-karnataka-police-act-254588?utm_source=internal-artice&utm_medium=also-read)

The petitioners Arunkumar R and others were owners of certain flats built in a project DS-Max Star Nest, at Kengeri. They claimed that the proposed Starnest Apartment Owners Cooperative Society Ltd intended to register a Co-operative Society under the provisions of the Act of 1959. Permission was also granted for the same by the Registrar of Cooperative Societies.

The petitioners contended that they had purchased the residential flats per the terms of the sale deed and wanted to form an association under the provisions of the Act of 1972.

Also Read - Karnataka High Court Reserves Orders In Plea Challenging Centre's Ban On "Ferocious & Dangerous" Dog Breeds (/high-court/karnataka-high-court/karnataka-high-court-reserves-order-petition-against-central-government-ban-rearing-dangerous-dog-breeds-254582?utm_source=internal-artice&utm_medium=also-read)

Apartment Complex With Only Residential Flats To Be Registered Under Apartment Ownership Act Not Cooperative Societies ...

The promoters and the persons supporting them cannot form a cooperative society, having an object to maintain and manage the residential apartment under the Act of 1959, it was argued.

The bench noted that sale deeds executed by the builder would indicate that all the common areas are transferred in favor of the purchasers by the builder/owner while transferring flats. It then said, "In case any flats are still retained by the builder/owner, the builder/owner is under obligation to cooperate with the purchasers of the flats to have an association under the Act of 1972."

Also Read - Karnataka High Court Extends Stay On Centre's Circular Banning Rearing Of 'Ferocious & Dangerous' Dog Breeds (/high-court/karnataka-high-court/karnataka-high-court-extends-stay-central-government-ban-dangerous-dog-breeds-254416?utm_source=internal-artice&utm_medium=also-read)

COURT

Noting that the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act of 1972 and the rules 1975, are applicable only if the property has commercial and residential units, the court said that since the Property does not include the commercial unit, the said Act has no application.

Considering the submissions, the court observed that members who are willing to be members of the proposed Society are also willing to form an association under the Act of 1972 by joining the petitioners.

Also Read - Compassionate Appointment Cannot Be Sought As A Matter Of Right And To A Particular Post: Karnataka High Court (/labour-service/karnataka-high-court-rules-compassionate-appointment-not-right-or-claimable-for-specific-posts-254374? utm_source=internal-artice&utm_medium=also-read)

Thus the court directed the respondent builder to cooperate with the petitioners in forming the association under the Act of 1972.

"Since the project does not involve commercial units the Registrar of Cooperative Societies could not have granted permission dated 18.10.2023. Accordingly, the same is quashed. Respondent No.2 (Registrar) is prohibited from registering the

Apartment Complex With Only Residential Flats To Be Registered Under Apartment Ownership Act Not Cooperative Societies ...

proposed respondent No.4 Society to manage and maintain the residential apartment complex known as "DS-Max Star Nest," the Court concluded.

Appearance: Advocate Beena P K for Petitioners

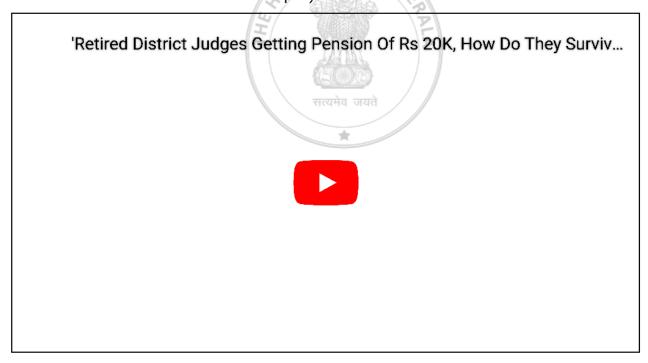
AGA Sidharth Babu Rao for R1 AND R2.

Advocate M S Nagaraj for R4. Citation No: 2024 LiveLaw (Kar) 111

Case Title: Arunkumar R & Others AND State of Karnataka & Others

Case No: Writ Petition No 25528 OF 2023

Click Here To Read/Download Order (https://www.livelaw.in/pdf_upload/arun-kumar-v-state-of-karnataka-526138.pdf)



Tags

Justice Anant Ramanath Hegde (https://www.livelaw.in/tags/justice-anant-ramanath-hegde)

Apartment Ownership Act (https://www.livelaw.in/tags/apartment-ownership-act)

Karnataka Apartment Ownership Act (https://www.livelaw.in/tags/karnataka-apartment-ownership-act)

1

Shantharam Prabhu vs Mr.K. Dayanand Rai on 8 September, 2021

Shantharam Prabhu vs Mr.K. Dayanand Rai on 8 September, 2021

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

CRP NO.96 OF 2021 1 C/W CRP NO.64 OF 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2021

BEFORE URT

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRP NO.96 OF 2021 (SC) C/W CRP NO.64 OF 2021 (SC)

BETWEEN:

- SHANTHARAM PRABHU
 S/O LATE RAMDAS MADHAV PRABHU,
 AGED ABOUT 53 YEARS
- 2. VEENA SHANTHARAM W/O SHRI.SHANTHARAM PRABHU AGED ABOUT 53 YEARS

BOTH ARE R/AT: 'B' BLOCK APARTMENT NO.403 MAURISHKA PARK OPPOSITE SHARADA VIDYALAYA KODIYALBAIL MANGALURU-575003

... PETITIONERS (COMMON)

(BY SRI. ARAVIND BABU.J, ADVOCATE SRI. SURIYA NARAYNAN.G, ADVOCATE)

AND:

1. MR. K. DAYANAND RAI PRESIDENT

MAURISHKA PARK APARTMENT OWNERS ASSOCIATION OPP. SHARADA VIDYALAYA KODIYALBAIL MANGALURU-575003

2. MRS. ANITHA PRABHU

CRP NO.96 OF 2021 2 C/W CRP NO.64 OF 2021

VICE PRESIDENT
MAURISHKA PARK APARTMENT
OWNERS ASSOCIATION
OPPOSITE SHARADA VIDYALAYA
MANGALURU-575003

- 3. MR. DEVDAS S. HEGDE
 SECRETARY
 MAURISHKA PARK APARTMENT
 OWNERS ASSOCIATION
 OPPOSITE SHARADA VIDYALAYA
 MANGALURU-575003
- 4. MRS. APARNA P
 JOINT SECRETARY
 MAURISHKA PARK APARTMENT
 OWNERS ASSOCIATION
 OPPOSITE SHARADA VIDYALAYA
 MANGALURU-575003
- 5. MR. G.P. PADMANABHA SHETTY
 TREASURER
 MAURISHKA PARK APARTMENT
 OWNERS ASSOCIATION
 OPPOSITE SHARADA VIDYALAYA
 MANGALURU-575003
- 6. AMARNATH KUMAR SHETTY
 JOINT TREASURER
 MAURISHKA PARK APARTMENT
 OWNERS ASSOCIATION
 OPPOSITE SHARADA VIDYALAYA
 MANGALURU-575003

... RESPONDENTS (COMMON)

(BY SRI.VIJAYAKRISHNA BHAT.M, ADVOCATE)

IN CRP NO.96 OF 2021 IS FILED UNDER SECTION 18 OF THE KARNATAKA SMALL CAUSE COURT ACT, 1964 AGAINST THE ORDER DATED 04.04.2019 PASSED ON IN SC.NO.26/2019 ON THE FILE OF

THE II ADDITIONAL SENIOR CIVIL JUDGE AND CJM, MANGALURU, D.K. DISMISSING THE IA NO.2 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC FOR RESTORE THE ELECTRICITY TO HIS SCHEDULE APARTMENT.

3

CRP NO.96 OF 2021 C/W CRP NO.64 OF 2021

IN CRP NO.64 OF 2021 IS FILED UNDER SECTION 18 OF THE KARNATAKA SMALL CAUSE COURT ACT, 1964 AGAINST THE ORDER DATED 04.04.2019 PASSED ON IN SC.NO.26/2019 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND CJM, MANGALURU, D.K. DISMISSING THE IA NO.3 FILED UNDER ORDER 7 RULE 11(A) AND (D) OF CPC FOR REJECTION OF PLANT.

THESE PETITIONS COMING ON FOR ADMISSION AND HAVING BEEN RESERVED FOR ORDERS ON 12.08.2021, THIS DAY, PRONOUNCED THE FOLLOWING:

ORDER

CRP No.64/2021:

1. The Plaintiffs are before this Court seeking to set aside the judgment and decree dated 04.04.2019 passed by II Additional Senior Civil Judge & CJM., Mangaluru in S.C.No.26/2019 inasmuch as the plaint in the said suit came to be rejected by allowing I.A.No.3 filed by the respondent therein.

CRP No.96/2021:

2. The Plaintiffs are before this Court seeking to set aside the order dated 04.04.2019 passed by the II Additional Senior Civil Judge & CJM., Mangaluru, D.K., in S.C.No.26/2019 dismissing I.A.No.2 filed by the Plaintiffs for restoration of electricity supply to the Plaintiff's Apartment.

CRP NO.96 OF 2021 FACTS:

- 3. The suit in S.C.No.26/2019 was filed before the Court of Small Causes, Mangalore under Section 26 read with Order VII Rule 1, 2 and 3 of CPC read with Section 13 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and transfer) Act, 1972 (hereinafter for brevity referred to as 'the KOFA'). In the said suit, the Plaintiffs had sought the following reliefs:
- "(a) pass a decree of mandatory injunction in favour of the Plaintiffs and against the Defendant, directing the Defendant, its agents, servants, employees to restore the

electricity supply to the apartment No.403 mentioned in schedule:

- (b) Pass any orders or orders which this Hon'ble Court may deem fit and proper in the facts and circumstances in favour of the Plaintiffs and against the Defendant."
- 4. In the plaint, it was contended that 4.1. The Plaintiffs are the owners of the Apartment bearing No.403 of Maurishka Park "B" Condominium, having purchased the same by CRP NO.96 OF 2021 virtue of the sale deed dated 24.10.2014 as document No.4554 in the office of the Sub-Registrar, Mangalore.
- 4.2. The Plaintiffs contended that they were regular and prompt in making payment of electricity bills and had never refused the payment of any amounts.
- 4.3. It is alleged that recently an association by the name 'Mourishka Park Apartment Owners Association' was formed illegally by few members of the condominium without following the requisite conditions mentioned in the Declaration and Deed of Apartment or mentioned in the Karnataka State Apartment Ownership Act, 1972 or any other law governing the same.
- 4.4. The Association was formed by a few of the owners, not by all the owners; it is not a registered association. The Plaintiffs are not CRP NO.96 OF 2021 agreeable for the same or for certain persons being elected as President or Secretary, or Treasurer.
- 4.5. The said Association is not a legal entity; it is an illegal one and not binding on the plaintiffs. The Plaintiffs approached the trial Court, being aggrieved by the threats held out by the office bearers of the said Association on o6.10.2018 that in the absence of making payments of demands made by them, electricity, water supply, and diesel generator set, etc., would be disconnected.
- 4.6. It was alleged that the Plaintiffs had paid the electricity bills as and when due on invoices raised by the concerned supplier like MESCOM towards actual consumption made by the Plaintiffs month on month.
- 4.7. Electricity was disconnected from time to time, and from 06.10.2018 until 09.11.2018 CRP NO.96 OF 2021 when the suit was filed electricity connection was under disconnection.
- 5. The Plaintiffs had filed an application under Order XXXIX Rule 1 and 2 of CPC seeking a mandatory injunction to the defendants, their agents, etc., to restore the electricity supply and grant such other reliefs.
- 6. The defendants filed their counter-statement to the application filed under Order XXXIX Rule 1 and 2 of CPC. It was contended that 6.1. Plaintiffs had earlier filed a suit in S.C.No.4/2018 on the file of the Civil Judge, Mangaluru, D.K., where identical relief and a mandatory injunction were sought for. 6.2. The mandatory interim injunction sought for in terms of I.A.No.2 filed therein came to be rejected after hearing both sides. Having CRP NO.96 OF 2021 failed in obtaining an order in S.C.No.4/2018, the present application is not maintainable. 6.3. The plaint in S.C.No.4/2018 had

been returned for presentation before the Court of competent Jurisdiction, and it is thereafter that the plaint was presented before the II Additional Senior Civil Judge & CJM., Mangaluru. It is therefore contended that the very same reliefs having been refused earlier, Plaintiffs cannot seek the same reliefs once again.

- 6.4. All the averments in the plaint were denied. It was contended that all the other apartment owners were making payment of the due amount; it was only the Plaintiffs who are not making the payments.
- 6.5. Necessary accounts have been maintained by the Association, which is always available for inspection. It is only on account of non-
- CRP NO.96 OF 2021 payment of the amount due, the services to the Apartment provided by the Association, including the electric supply was disconnected. 6.6. It was further stated that there are 360 apartments in the said complex, none of whom have complained or defaulted. The Association has been formed in terms of the Karnataka Apartment Ownership Act 1972 (for short, 'KAOA').
- 6.7. KAOA is applicable and not the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer Act, 1972) (for short, KOFA) and therefore, Section 13 thereof is not applicable, and the suit has to be dismissed.
- 7. Subsequent thereto, an application under Order VII Rule 11(a) and (d) of CPC came to be filed seeking for rejection of the plaint on the ground that:
 - CRP NO.96 OF 2021 7.1. There does not exist a cause of action, and that the relief sought for is barred by law.
 - 7.2. It was contended that Section 13 of the KOFA, which had been invoked by Plaintiff, is not applicable inasmuch as it was KAOA which will be applicable and in terms of Declaration and Deed of Apartment, necessary steps were taken by the Association in respect of defaulters like the plaintiffs.
 - 7.3. Section 13 of KOFA not being applicable, the suit being wrongly framed is barred under the law and has to be rejected.
 - 8. In reply thereto, the Plaintiffs contended that Section 13 of the KOFA is applicable in terms of the decision of this Court in CRP No.190/2010 (Mr.Gregory Peres vs. Mr.Eigan Alexander Salins) and therefore, sought for dismissal of the said application.

CRP NO.96 OF 2021 8.1. The Plaintiffs have also relied upon the order dated 04.07.2013 passed by this Court in Review Petition No.20/2013 in CRP No.190/2010 (Mr.Eigan Alexander Salins vs. Mr.Gregory Peres) to contend that the grievance against the Manager of the flat and the relief sought for would be covered under Section 13 of KOFA and therefore, it is only KOFA which would

be applicable.

- 9. The trial court, after hearing the parties and considering the application filed under Order VII Rule 11(a) and (d) of CPC, allowed the same and dismissed the application filed by Plaintiffs under Order XXXIX Rule 1 and 2 of CPC for an injunction. While doing so, the trial Court held that:
 - 9.1. The ownership of the Plaintiffs is not in dispute, the Declaration and Deed of Apartment having been submitted are also not in dispute, the Declaration and Deed of CRP NO.96 OF 2021 Apartment were executed prior to the date of sale in favour of the Plaintiffs and the contents of the Declaration and Deed of Apartment would be binding on the Plaintiffs.
 - 9.2. In terms of Declaration and Deed of Apartment, there are certain covenants that have been agreed to be bound to by the owners. In terms thereof, any demand made by the Association is required to be paid by the owners of the Apartments.
 - 9.3. If at all they are aggrieved by the amount of payment sought for, the same is required to be challenged, but so long as there was no challenge, the due amount would be required to be paid.
 - 9.4. In terms of Section 11 of the KAOA, the Declaration and Deed of Apartment have been drafted and contents thereof incorporated in the said Deed, no one can claim exemption of CRP NO.96 OF 2021 payment of the due amounts, and the Court has come to the conclusion that it is the KAOA, which is applicable and not the KOFA.
 - 10. It is aggrieved by the said order that the petitioners who are Plaintiffs are before this Court.
 - 11. Sri Suriya Narayana, learned Counsel for Plaintiffs, would submit that:
 - 11.1. The intent of KAOA is only to make each Apartment heritable and provide for the transfer of the Apartment, and in this regard, he relies upon the object and purpose of KAOA. The same is extracted hereunder.
 - "Consequent upon the shortage of lands in urban areas, the majority of the citizens of urban areas of the State cannot think in terms of owning houses on individual basis. Though there is a tendency to construct multi-storeyed flats, apartments and the like on ownership basis, intending persons cannot purchase flats, tenements, or apartments in multi-storied building as they will not have a marketable title thereto and cannot obtain any loan by mortgaging such flats, tenements, etc. Consequently tenements constructed by the Housing Board for example cannot be CRP NO.96 OF 2021 sold to the tenants who cannot raise any loan on the security of such tenements with the result that an enormous amount of capital will be locked up, which can be utilised for new constructions to meet the increasing demands for housing. It is,

therefore, considered expedient that each Apartment should for all purposes constitute a heritable and transferable immovable property, and that suitable legislation should provide for all matters connected therewith. It is felt that such a measure will not only enable many a person to own his Apartment but it will at the same time enable institutions like Housing Boards to utilise their locked up capital in the construction of new buildings."

- 11.2. Hence he submits that KAOA only deals with the transfer of apartments and does not deal with the maintenance thereof.
- 11.3. In this regard, he refers to the Statement of Objects and reasons of KOFA, which are reproduced hereunder for easy reference:

"Separate law is being made to declare that flats or apartments in multistoried building may, for all purposes, be heritable and transferable immovable Property. Owners of such flats or apartments enjoy exclusive ownership of their flats or apartments while retaining an undivided interest in the common areas and facilities which are to be used and owned by all such owners jointly.

CRP NO.96 OF 2021 An enterprising individual or group of individuals may either construct out of his or their own funds multistoried buildings consisting of a number of self contained flats or apartments and sell them to individuals on ownership basis, or construct such buildings after collecting contributions from intending purchasers of such flats or apartments.

In the interest of the intending purchasers who advance funds it is necessary to regulate the construction, sale, Management and transfer of flats or apartments by individuals or group of individuals who construct such multistoried buildings.

Hence the Bill".

- 11.4. It is the KOFA which deals with the safeguarding of the interest of purchasers of the flats. Hence, it is the KOFA that is applicable to the present case. 11.5. The competent authority under Section 3 (i) of KAOA is the Registrar of the Co-operative Societies.
- 11.6. In terms of Section 2(d) of KOFA, the Registrar is defined to be the Registrar under the Karnataka Co-operative Societies Act, CRP NO.96 OF 2021 1959 or the Registrar as defined under the Companies Act, 1956.
- 11.7. In both cases, where a company has not been formed, the Registrar is the Registrar of Cooperative Societies.
- 11.8. The KAOA does not provide for the Management of the Apartment. Sections 11 and 12 of KAOA relate to particulars to be included in the Declaration and the Deed of Apartment.

11.9. Section 13 of KAOA provides for the registration of Declaration and the Deed of Apartment and annexing of copies of floor plans, which has nothing to do with the Management of the Apartment.

11.10. Sections 10 to 13 of KOFA specifically deal with the responsibility of the Promoter for the formation of Co-operative Society or CRP NO.96 OF 2021 Company, conveying title to the Property, execution of the documents and liabilities of a person who purchases an apartment as also the duties of a manager of the complex. 11.11. Section 12 of KOFA provides for the general liabilities of a person who takes the flat, and Section 13 of KOFA provides for safeguarding of the interest of a person who takes a flat and the right of such person to approach the Court.

11.12. By relying on Rule 9 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sales, Management and Transfer) Rules, 1975 (for short, 'KOFA Rules'), he submits that there is a period prescribed for submission of an application for registration of Co-operative Society or Company of flat purchasers.

CRP NO.96 OF 2021 11.13. In the event of the apartment owners proposing to submit the Apartment to the provision of KAOA by executing Declaration and the Deed of Apartment, the same is required to be informed to the Registrar as defined under Karnataka Co-operative Societies Act, 1959 as soon as possible after the apartment owner/s (not being less than five) have executed such Declaration of deeds of Apartment.

11.14. Declaration and the Deed of Apartment even if executed, would not take away the ambit, scope and purview of Section 13 of KOFA. 11.15. As regards the facts of the present case, he submits that the Declaration and the Deed of Apartment were executed only by the Promoter on 16.03.2007, and none of the apartment takérs/purchasers has signed the Declaration and the Deed of Apartment. The CRP NO.96 OF 2021 fact of execution of registration of Declaration and the Deed of Apartment has not been informed to the Registrar of Co-operative Societies. Hence, he submits that KAOA would also not be applicable. On this ground, he submits that the Plaintiffs have the necessary right in terms of Section 13(2) of KOFA to approach the jurisdictional Court, which cannot be faulted with.

- 12. Shri Vijaykrishna Bhat learned Counsel for the Defendant in the suit submitted as under:
 - 12.1. Mourishka apartment is a residential apartment complex consisting of 360 apartments which is submitted to the provision of KAOA by executing Declaration and the Deed of Apartment on 16.03.2007 as per Section 2 of KAOA.
 - 12.2. The Plaintiffs are the purchasers of one Apartment vide sale deed dated 24.10.2008.

CRP NO.96 OF 2021 In terms of Clause 11 of the sale deed, the Plaintiffs undertook that they will hold and enjoy the Apartment subject to the provision of the KAOA, Declaration and the Deed of Apartment, bye-laws, etc. 12.3. The apartment complex is managed by the Association of Apartment Owners constituted under Declaration and the Deed of Apartment. 12.4. The aspects of

maintenance, expenses relating thereto, etc., are handled by the Association. The expenses collected by the Association are expended on the Property. 12.5. The bye-laws provide for the manner in which the amounts collected by the Association are to be expended, and there is a proper audited account maintained in relation thereto, which is available for anyone to inspect.

CRP NO.96 OF 2021 12.6. The Plaintiffs had not paid the due amounts of maintenance despite several requests and reminders. It is only after follow up, left with no option, the Association disconnected the electricity connection.

12.7. KAOA and KOFA are two different enactments.

They are not supplemental to each other, nor would they apply concurrently to an apartment, they being mutually exclusive. 12.8. KOFA applies only in respect of the protection of interest of a purchaser who has made payment of advances for the construction of the Apartment, liabilities of the Promoter and protection of interest of intending purchasers. 12.9. Under KOFA, society or company of owners for Management of the Apartment by such society or company is contemplated. The primary liability to form such a society is on the Promoter and thereafter, once the society is CRP NO.96 OF 2021 formed, the Management of common areas and facilities would be with the said society. 12.10. KAOA applies to the transfer of the apartments and all matters relating to the apartments, which would include maintenance.

12.11. By referring to Rule 9 of the Rules framed under KOFA, he submits that the said Rule 9 recognises the right of the apartment owners to submit to the provisions of the KAOA by executing a Declaration and Deed Of Apartment.

12.12. Thus, on such submission to KAOA, he states that KOFA would not apply. The provision of KAOA is self-contained. Once the Apartment is submitted to KAOA, the apartment owners would be governed by the provision of KAOA and Declaration and Deed Of Apartment CRP NO.96 OF 2021 submitted thereunder. Hence, KOFA would not be applicable.

- 13. In rejoinder Shri Suriya Narayan Learned Counsel for the Plaintiffs submits as under:
 - 13.1. In terms of Section 10 of KOFA, it was for the Promoter to take steps for formation of the co-operative society for Management of the apartment complex, as such, Board had been formed, and the demands made by the Board had already been paid by the plaintiffs, though of course no co-operative society or company has been formed.
 - 13.2. The Management of the apartment complex cannot cut off, withhold or curtail any services and if any such action is taken, a remedy available to the Plaintiffs was in terms of Section 13 of the KOFA, which Section is reproduced hereunder for easy reference:

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- 13. Manager not to cut off, withhold, curtail or reduce essential supply or service.
- 1. No person, who is a promoter, or who is in charge of Management or connected with the Management of a block or building of flats whether as member of a managing committee, Director, Secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person, cut off, withhold or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken, or agreed to be taken by him.
- 2. The person who has taken or agreed to take the flat or the occupier may, if the Manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.
- 3. If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service and that it was cut off or withheld or curtailed or reduced by the Manager without just and sufficient cause, the Court shall make an order directing the Manager to restore such supply or service before a date to be specified in the order.
- 4. The Manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees.

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- 5. Notwithstanding anything contained in any law for the time being in force,-
- (a) in any area for which a Court of Small Causes is established under the Karnataka Small Causes Courts Act 1964, that Court; and
- (b) elsewhere, the Court of the Civil Judge, shall have Jurisdiction to decide any application made under sub-section (2) of and no other court shall have Jurisdiction to entertain such application. No appeal shall lie from any order made on such application.
- 6. The District Court, may, for the purpose of satisfying itself that the order made on an application made under sub-section (2) was according to law, call for the case in which such order was made and pass such order with respect thereto as it thinks fit.
- 7. Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both.

8. An offence under sub-section (7) shall be a cognisable offence".

13.3. He relies upon the decision of this Court in the Review Petition No.20/2013 filed in CRP No.190/2010 (Mr.Eigan Alexander Salins vs. Mr.Gregory Peres), more particularly CRP NO.96 OF 2021 paras 10 and 15 thereto which are extracted hereunder:

"10. As could be seen from the aims and objects of the second enactment, the Legislature was conscious of both the enactments. The enactment called Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 is the result of Act No.16/73 and was brought into force with effect from 1.4.1975. During that period, the other enactment was also brought into force. If the intention of the Legislature was to make Act No.16/73 to be applicable only to residential buildings, Act No. 16/73 would have indicated so. There is no mention of the word 'residential flat' in Act No.17/73. It must further be noticed from the aims and objects of Act No.17/73 that it provides for ownership of individual apartments in a building and to make such Apartment heritable and transferable Property and to provide for matters connected thereto. It does not provide for Management of the said Apartment. Thus the intention of the Legislature is clear: to provide for ownership of individual Apartment and to make such Apartment heritable and transferable Property for which purpose the provisions of the Act requires registration under Section 17.

15. Therefore it is seen that this enactment caters to all situations, particularly in the instant case the main grievance of the Plaintiffs is essential services have been disconnected. His grievance is against the Manager of the flat and undoubtedly the relief sought for is covered under Section 13 of the Act. Therefore, it is only the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972, which is applicable".

CRP NO.96 OF 2021 13.4. By relying upon the said decision, he submits that the KOFA is an Act enacted for the purpose of protecting the rights of the owners of the premises and delivering the services required by such owners, whereas the KAOA is only as regards the marketability of title and facility of the Apartment.

13.5. In this regard he once again relies upon the statement of objects and reasons of KAOA which is extracted hereinabove and the statement of objects and reasons of KOFA; by extrapolating the statement of objects of KAOA and KOFA he submits that KAOA does not relate to the maintenance and or Management of the Apartment. None of the provisions under the said Act refer thereto, the Management of the Apartment is taken care of by the KOFA and it is the provisions of CRP NO.96 OF 2021 KOFA which would be applicable to the dispute between the parties.

13.6. He, therefore, submits that the plaint as filed under Order VII Rule 11 read with Section 26 and further read with Section 13 of the KOFA is proper and correct, the trial Court ought not to have rejected it. Therefore, he submits that the impugned order be set-aside and the matter be remanded

for fresh consideration of the trial Court on the ground that the said Court has the necessary Jurisdiction, more so in terms of Section 13(5)(a) of the KOFA.

- 14. Heard Sri. Aravind Babu, learned Counsel for the Plaintiffs and Sri. Vijayakumar, learned Counsel for the respondents. Perused papers.
- 15. On the basis of the submissions made, the points which would arise for determination of this Court are:

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- 1) Whether the provisions of KAOA and KOFA are mutually exclusive or are they supplementary to each other?
- 2) Whether once an apartment is submitted to KAOA by execution of a Declaration and Deed of Apartment under KAOA, would the provisions of KOFA apply?
- 3) Would the provisions of KOFA apply if there is no Declaration and Deed of Apartment executed and/or submissions made under the KAOA?
- 4) What is the scope and purview of KAOA and KOFA?
- 5) Would the purchasers be personally required to be parties to the Declaration, Deed of Apartment and bye-laws?
- 6) In the event of KOFA being applicable would the present suit filed before the Small Causes Court at Mangaluru in S.C.No.26/2018 be maintainable?
- 7) What order?
- 16. I answer the above points as under.
- 17. Answer to Point No.1: Whether the provisions of KAOA and KOFA are mutually exclusive or are they supplementary to each other? 17.1. The contention of Sri.Suriya Narayan, learned counsel for the petitioner is that the decision CRP NO.96 OF 2021 of this Court in CRP No.190/2010 and the Review Petition No.20/2013 in CRP No.190/2010 is applicable which has also decided the matter in issue that KAOA is a supplementary enactment to KOFA and as such, any grievance against the Manager of an apartment would have to be taken up as provided under Section 13 of KOFA. 17.2. CRP No.190/2010 had been filed assailing the order dated 02.02.2010 in M.A.No.45/2009 by the II Additional Civil Judge (Sr.Dn.)., Mangalore, D.K., confirming the order dated 15.12.2009 in O.S.No.843/2009 by the IV Additional Civil Judge (Jr.Dn.) & JMFC., Mangalore allowing I.A.No.2 filed under Order XXXIX Rule 1 and 2 of CPC for temporary injunction. The Revision Petition was allowed and this Court held that the suit filed by the Plaintiffs for the relief under Section 13(2) of CRP NO.96 OF 2021 the Act in the Court of Civil Judge (Jr.Dn.) and JMFC., Mangalore was not

maintainable and the said Court had no legal competence or jurisdiction to entertain it. The said suit had to be filed in terms of Sub-Section 5(a) of Section 13 of KOFA before a Court of Small Causes.

17.3. The entire grievance of the Association which had come up in revision was as regards whether the suit could have been filed before the Civil Judge (Jr.Dn.) or it would have to be filed before the Small Causes Court. 17.4. In the Revision Petition as filed and as is clear from the order dated 07.03.2011, there is no contention raised as regards the applicability of KAOA and/or inapplicability of KOFA to the said dispute.

17.5. In Review Petition No.20/2013 filed by the apartment owner, the apartment owner had CRP NO.96 OF 2021 contended that KOFA is not applicable and therefore, it is KAOA, which is applicable and in terms of KAOA, the suit filed before the Civil Judge (Jr.Dn.) & JMFC., Mangalore was maintainable. It is the apartment owner who had contended that the Apartment is covered under the KAOA.

17.6. It is in that background that the matter was considered by this Court in review and this Court was of the opinion that as regards any grievance relating to disconnection of the services, Section 13 of KOFA would be applicable and dismissed the Review Petition. 17.7. The said decision relied upon by the learned counsel for the petitioner is in different perspective of facts inasmuch as it is the apartment owner who had contended that KAOA and not KOFA is applicable. In the present case, the apartment owner contends CRP NO.96 OF 2021 that KOFA is applicable and not KAOA. A reading of the order passed in the Revision Petition as also the order passed in the Review Petition does not indicate as to whether the Apartment was subjected to KAOA by execution of a Declaration, Deed of Apartment and/or byelaws. Only an averment was made by the apartment owner that KAOA would apply.

17.8. The contention raised in the present Review Petition are detailed hereinabove. The contention raised which exfacie are different from that raised in CRP No.190/2010 and/or Review Petition No.20/2013. Hence, I am of the considered opinion that the decision in CRP No.190/2010 or Review Petition No.20/2013 are not applicable to the present facts.

CRP NO.96 OF 2021 17.9. This Court would have to adjudicate on the issues raised by considering all the issues and the relevant provisions applicable thereto, which I propose to do as under:-

17.10. KAOA is stated to be an Act to provide for the ownership of an individual apartment in a building and to make such an Apartment heritable and transferable Property. KAOA is applicable if the owners of the Apartment submit to the provision of the KAOA by duly executing and registering a Declaration and Deed of Apartment. Some of the definitions of the KAOA which are relevant are Sections 3

(a), (b), (d), (e) (f), (g), (i), (j) and (q) which are reproduced hereunder for easy reference:.

"3(a) Apartment" means a part of the Property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residential purposes and with a direct exit to a public street, road or highway or to a common area leading to such street, road, or highway."

CRP NO.96 OF 2021 3(b) "apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration;

3(d) "association of apartment owners"

means all of the apartment owners acting as a group in accordance with the bye-laws and Declaration.

- "3(e) Building" means a building containing four or more Apartment, or two or more buildings, each containing two or more apartments, with a total of four or more apartments for all such buildings, and comprising a part of the Property."
- 3(f) "common areas and facilities" unless otherwise provided in the Declaration or lawful amendments thereto, means,-
- (1) the land on which the building is located; (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes, entrances and exits of the building;
- (3) the basements, cellars, yards, gardens, parking areas and storage spaces; (4) the premises for the lodging of janitors or persons employed for the management of the property;
- (5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and incinerating; (6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use; (7) such community and commercial facilities as may be provided for in the Declaration; and CRP NO.96 OF 2021 (8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use; 3(g) "common expenses" means,- (1) all sums lawfully assessed against the apartment owners by the Association of Apartment Owners, (2) expenses of administration, maintenance, repair or replacement of the common areas and facilities;
- (3) expenses agreed upon as common expenses by the bye-laws;
- (4) expenses declared as common expenses by the provisions of this Act or by the Declaration or the bye-laws:

- 3(i) "competent authority" means in relation to building constructed or to be constructed by the Housing Board, the Secretary of the Housing Board and in any other case, the Registrar of Co- operative Societies as defined in the Karnataka Co-operative Societies Act, 1959;
- 3 (j) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such Declaration as form time to time may be lawfully amended;
- "3(q) property" means the land, the building, all improvements and structures thereon, all owned in freehold or held on lease or as occupant under any law relating to land revenue and all easements, rights and appurtenances belonging thereto, and all articles of personal Property intended for use in connection therewith, which have been, or are intended to be submitted to the provisions of this Act."

CRP NO.96 OF 2021 17.11. In terms of Section 5 of the KAOA, each apartment owner shall be entitled to the exclusive ownership and possession of his Apartment, and each apartment owner is required to execute a Declaration that he/she submits his/her Apartment to the provisions of the Act and a Deed of Apartment in relation to his Apartment. Section 5 of the KAOA is reproduced hereunder for easy reference:

- 5. Ownership of apartments.-
- (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his Apartment.
- (2) Each apartment owner shall execute a Declaration that he submits his Apartment to the provisions of this Act and a Deed of Apartment in relation to his Apartment in the manner prescribed for the purpose.

17.12. Section 6 of KAOA deals with common areas and facilities. Section 6 of KAOA is reproduced hereunder for easy reference:

- 6. Common areas and facilities.-
- (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. Such percentage shall be computed by taking as a basis the value of the Apartment in relation to the value of the property and such CRP NO.96 OF 2021 percentage shall reflect limited common areas and facilities.
- (2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall have permanent character, and shall not be altered without the consent of all of the apartment owners expressed

in an amended Declaration duly executed and registered as provided in this Act. 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.

- (3) 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, unless the property has been removed from the provisions of this Act as provided in sections 14 and 22. Any covenant to the contrary shall be null and void.
- (4) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.
- (5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided herein and in the bye-laws.
- (6) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Manager or Board of Managers, to have access to each apartment form time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency CRP NO.96 OF 2021 repairs therein necessary to prevent damage to the common area and facilities or to another apartment or apartments.
- 17.13. Section 6(5) of KAOA deals with the necessary work of maintenance, repair and replacement of the common areas and facilities. 17.14. Section 7 of KAOA mandates that each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted by the Association as set forth in the Declaration and Deed Of Apartment. Section 7 of KAOA is reproduced hereunder for easy reference:
 - 7. Compliance with covenants, bye-laws and administrative provisions.- Each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended form time to time, and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his Apartment. Failure to comply with any of the same shall be a ground for an action to recover sums due for damages or injunctive relief or both maintainable by the Manager or Board of Managers on behalf of the Association of Apartment Owners or, in a proper case by an aggrieved apartment owner.

CRP NO.96 OF 2021 17.15. Section 11 of KAOA deals with Contents of Declaration, which is reproduced hereunder for easy reference:

- 11. Contents of Declaration.-
- (1) The Declaration shall contain the following particulars, namely:-
- (a) description of the land on which the building and improvements are or are to be located; and whether the land is freehold or leasehold;
- (b) description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed;
- (c) the apartment number of each Apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;
- (d) description of the common areas and facilities;
- (e) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;
- (f) value of the Property and of each Apartment, and the percentage of undivided interest in the common areas and facilities appurtaining to each Apartment and its owner for all purposes, including voting; and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the Declaration;
- (g) statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

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- (h) the name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located:
 - (i) 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 part of the Property;
 - (j) any other details in connection with the Property which the person executing the Declaration may seem desirable to set forth consistent with this Act:

and

- (k) the method by which the Declaration may be amended, consistent with the provisions of this Act.
- (2) A true copy each of the Declaration and bye-laws and all amendments to the Declaration or the bye-laws shall be filed in the office of the competent authority.
- 17.16. Section 12 of KAOA deals with Contents of deeds of Apartments, which is reproduced hereunder for easy reference:
 - 12. Contents of Deeds of Apartments.-
 - (1) Deeds of Apartments shall include the following particulars, namely:-
 - (a) description of the land as provided in section 11 of this Act or the post office address of the Property, including in either case the book, page and date of executing the Declaration the date and serial number of its registration under the Registration Act, 1908 and the date and other reference if any, of its filing with the competent authority;
 - (b) the apartment number of the Apartment in the Declaration and any other data necessary for its proper identification;

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- (c) statement of the use for which the Apartment is intended and restrictions on its use, if any;
- (d) the percentage of undivided interest appurtaining to the Apartment in the common areas and facilities; and
- (e) any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and this Act.
- (2) A true copy of every Deed of Apartment shall be filed in the office of the competent authority. 17.17. Section 13 of KAOA deals with the Declaration and all amendments thereto. Section 13 of KAOA is reproduced hereunder for easy reference:
 - 13. Declarations, deeds of apartments and copies of floor plans to be registered.-
 - (1) The Declaration and all amendments thereto and the Deed of Apartment in respect of each Apartment and the floor plans of the buildings referred to in subsection (2) shall be registered under the Registration Act, 1908.

- (2) Simultaneously with the registration of the Declaration there shall be filed along with it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the buildings as filed with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout location, apartment number and dimensions of the CRP NO.96 OF 2021 apartments as built, there shall be recorded prior to the first conveyance of any apartment, an amendment to the Declaration to which shall be attached a verified statement of an architect certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the Apartment as built.
- (3) In all registration offices a book called "Register of Declarations and Deeds of Apartments under the Karnataka Apartment Ownership Act, 1972" and Index relating thereto shall be kept. The book and the Index shall be kept in such form and shall contain such particulars as may be prescribed.
- (4) It shall be the duty of every Manager or Board of Managers to send to the SubRegistrar of the sub-

district in which the property containing the Apartment is situate, or if there is no Sub-Registrar for the area, to the Registrar of the district in which such property is situate, a certified copy of the Declaration and Deed of Apartment made in respect of every Apartment contained in the building forming part of the property together with a memorandum containing such particulars as may be prescribed. (5) The Sub-Registrar, or as the case may be, the Registrar shall register the Declaration along with floor plans of the building and the Deed of Apartment in the "Register of Declaration and Deeds of Apartments under the Karnataka Apartment Ownership Act, 1972" and shall also enter particulars in the Index kept under sub-section (3). Any person acquiring any apartment or any apartment owner shall be deemed to have notice of the Declaration and of the Deed of Apartment as from the date of its registration under this section. (6) Except as provided in this section, the provisions of the Registration Act, 1908, shall mutatis mutandis apply to the registration of such Declarations and Deeds of Apartments, and the words and expression used in the section but not defined in this Act shall have the meaning assigned to them in the Registration Act, 1908.

CRP NO.96 OF 2021 17.18. Declaration and the Deed of Apartment in respect of each Apartment as also the floor plans of the building showing layout, location, apartment numbers and dimensions of the apartments along with a verified statement of an architect are required to be submitted and registered under the Registration Act, 1908 with the Registrar of Assurances/Sub-Registrar.

17.19. In terms of Section 13 (5) of KAOA, which deals with any person acquiring any Apartment, it is deemed that such person has notice of the Declaration and the Deed of Apartment as from the date of its registration under Section 13 of KAOA.

17.20. Section 14 of KAOA provides for removal of the Apartment from the provision of the Act by effecting an instrument in that regard with CRP NO.96 OF 2021 the concurrence of all holders of all charges and other encumbrances on the Property. Section 14 of KAOA is reproduced hereunder for easy reference:

- 14. Removal from provisions of this Act.-
- (1) All the apartment owners may remove a property form the provisions of this Act by an instrument to that effect duly executed:

Provided that, the holders of all charges and other encumbrances affecting any of the apartments consent thereto or agree, in either case by instruments duly executed, that their charges or encumbrances be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

(2) Upon the removal of the property from the provisions of this Act the property shall be deemed to be owned in common by the apartment owners.

The undivided interest in the property owned in common which shall apportion to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

- 17.21. Section 16 of KAOA provides for bye-laws and their contents and further provides that the administration of every Property shall be governed by bye-laws, which shall be annexed CRP NO.96 OF 2021 to the Declaration. Section 16 of KAOA is reproduced hereunder for easy reference:
 - 16. Bye-laws and their contents.-
 - (1) The administration of every property shall be governed by bye-laws, a true copy of which shall be annexed to the Declaration. No modification of or amendment to the bye-law shall be valid, unless set forth in an amendment to the Declaration and such amendment is duly recorded and a copy thereof is duly filed with the competent authority.
 - (2) The bye-laws shall provide for the following matters, namely:-
 - (a) The election from among the apartment owners, of a Board of Managers, the number of persons constituting the same, and that the terms of at least one-third of the members of such Board shall expire annually: the powers and duties of the Board; the compensation, if any, of the members of the Board;

the method of removal from office of members of the Board; and whether or not the Board may engage the services of a Secretary, a Manager or Managing Agent, and specifying which of the powers and duties granted to the Board by this Act or otherwise may be delegated by the Board to

either or both of them;

- (b) method of calling meetings of the apartment owners; what percentage, if other than a majority of Apartment Owners, shall constitute a quorum;
- (c) election of a President from among members of the Board of managers who shall preside over the meetings of such Board and of the Association of Apartment Owners;
- (d) election of a Secretary who shall keep a minute book wherein resolutions shall be recorded;
- (e) election of a Treasurer who shall keep the financial records and books of accounts;

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- (f) maintenance, repairs and replacement of the common areas and facilities and payments therefor;
- (g) manner of collecting from the apartment owners their share of the common expenses;
- (h) designation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities;
- (i) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;
- (j) such restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners; and
- (k) the percentage of the votes required to amend the bye-laws.
- (3) The bye-laws may also provide for the following matters namely:-
 - (a) subject to the provisions of this Act, provision for regulating transfer or partition of any apartment and percentage of undivided interest in the common areas and facilities appurtenant to such Apartment, subject to such terms and conditions as may be specified in the bye-laws:
 - (b) provisions enabling the Board of Managers to retain certain areas of the building and lease to non-

residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or application thereof in reduction of their common charges for maintaining the building; and

(c) any other provisions, not inconsistent with the provisions of this Act, relating to the audit and accounts and administration of the property and CRP NO.96 OF 2021 annual and special general meetings, annual report and the like.

17.22. No modification or amendment to the bye-

laws would be valid unless duly recorded with the competent authority. In terms of Section 16(2) of KAOA, the bye-laws shall provide for the election, method of calling meetings, election of a President, Secretary, etc., maintenance, repair and replacement, manner of collection of common expenses, designation and removal of persons employed for the maintenance, restrictions on the requirements and use of common areas, voting, etc. 17.23. Section 19 of KAOA provides for charge on the Property on account of common expenses. Section 19 of KAOA is reproduced hereunder for easy reference:

19. Charge on property for common expenses.- All sums assessed by the Association of Apartment owners but unpaid for the share of common expenses chargeable to any apartment shall constitute a charge on such Apartment prior to all other charges, except CRP NO.96 OF 2021 only (i) charge if any on the Apartment for payment of Government and Municipal taxes and (ii) all sums unpaid on a first mortgage of the Apartment.

17.24. Section 20 of KAOA deals with joint and several liability of vendor, etc, for upaid common expenses. Section 20 of KAOA is reproduced hereunder for easy reference:

- 20. Joint and several liability of vendor, etc, for unpaid common expenses.-
- (1) Upon the sale of an apartment, the purchaser of the Apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the latter for his share of the common expenses upto the time of the sale without prejudice to the purchaser's or grantee's right to recover from the vendor the amount paid by the purchaser or grantee therefor.
- (2) A purchaser referred to in sub-section (1) shall be entitled to a statement from the Secretary or Board of Managers, setting forth the amount of the unpaid assessment against the vendor and such purchaser or grantee shall not be liable for, nor shall the Apartment sold be subject to a charge for any unpaid share of common expenses against such Apartment accrued prior to such sale or bequest in excess of the amount therein set forth. 17.25. Section 21 of KAOA deals with the aspect of insurance.

CRP NO.96 OF 2021 17.26. Section 22 of KAOA deals with the disposition of Property., etc. 17.27. In terms of Section 25 of KAOA, the Karnataka Apartment Ownership Rules, 1974 (for short, 'KAOR') has also been formulated. 17.28. In terms of Rule 3 of KAOR, a format for Declaration under Section 2 has been provided.

17.29. In terms of Rule 4 of KAOR, a format for Declaration under Section 5 (2) of each apartment owner has been provided. 17.30. Conveyance of apartments is provided under Rule 5 of KAOR.

17.31. A provision for parties to Deeds of Apartments is made under Rule 6 of KAOR, which reads as under:

- 6. Parties to Deeds of Apartments. In the case of the first Deed of Apartment, the party of the first part shall be either the sole owner or all the CRP NO.96 OF 2021 owners of the Property who has or have executed and registered the Declaration under Section 2 and the party of the second part shall be the apartment owner. In the case of subsequent Deeds of Apartment, the party of the first part shall be the apartment owner and the party of the second part shall be his transferee.
- 17.32. Rule 7 of KAOR deals with contents of Deeds of Apartment, which are reproduced hereunder for easy reference:

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- 7. Contents of Deeds of Apartment.
- (1) The first Deed of Apartment shall be accompanied by a copy of the relevant floor plans of the building field under subsection (2) of Section 13 and by a certificate of an architect certifying that the said floor plan shows the number and dimensions of the Apartment being conveyed and of the immediately adjoining apartments and that said floor plan fully and accurately depicts the layout of the Apartment, its location, dimensions, approximate area, main entrance, common areas and facilities and limited common areas and facilities, if any, to which it has access as built.
- (2) The first and every subsequent Deed of Apartment shall also include the following particulars, namely.
- (a) description of the land as provided Section 11 or the post office address of the Property, including, in either case, the book, page and date of executing the Declaration, the date and serial number of its registration under the Registration Act, 1908, and the date and other reference, if any, of its filing with the competent authority;

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- (b) the apartment number of the Apartment in the Declaration and any other data necessary for its proper identification;
- (c) statement of the use for which the Apartment is intended and restriction on its use, if any;
- (d) the percentage of undivided interest appertaining to the Apartment in the common areas and facilities;

(e) any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and the Act. (3) The provisions of this Rule may be given effect to by referring to the relevant provisions made in the Declaration for the purpose of avoiding repetition of those relevant provisions in the Deed of Apartment (4) The apartment owner shall file a true copy of every Deed of Apartment to which he is a party in the office of the competent authority within thirty days from the date of its execution. 17.33. Form B to the KAOR provides a Form of Declaration to be executed by the owner of the Apartment whereunder it is required that the said owner of the Apartment shall mention about how he derived his ownership and the document under which, he derived his ownership.

CRP NO.96 OF 2021 KOFA 17.34. The Statement of Objects and reasons for KOFA are extracted hereinabove. 17.35. KOFA is stated to be an act to regulate in the State of Karnataka the promotion of the construction of, the sale and Management and the transfer of flats on ownership basis. 17.36. Section 2(c) of KOFA defines "Promoter".

Section 2 (c) is extracted below for easy reference 2(c) "Promoter" means a person who constructs or causes to be constructed a block or building or flats or apartments for the purpose of selling some or all of them to other persons or to a company, co-operative society or other Association of persons and includes his assignees; and where the person who builds and the person who sells are different persons, the terms includes both;

17.37. Section 3 of KOFA relates to the General liabilities of promoters. Section 3 is extracted below for easy reference CRP NO.96 OF 2021

- 3. General liabilities of Promoter.- (1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce or cause to be given or produced the information and the documents hereinafter in this section mentioned. (2) A promoter, who constructs or intends to construct such block or building of flats, shall,-
- (a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Advocate of not less than seven years standing;
- (b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;
- (c) allow inspection on reasonable notice of the plans and specifications of the building 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 (and where there is no written agreement, the details of all agreements) entered into by him with the architects and contractors CRP NO.96 OF 2021 regarding the design, materials and construction of the building;
- (f) specify in writing the date by which possession of the flat is to be handed over;
- (g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken 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 flats are taken or agreed to be taken;
- (h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats;
- (i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given to 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 documents in such manner as may be prescribed and give or 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. 17.38. Section 4 of KOFA imposes an obligation on the Promoter to execute an agreement and for the agreement to be registered before receiving any advance payment.
- CRP NO.96 OF 2021 17.39. In terms of Section 5 of KOFA, the Promoter is required to maintain a separate account of sums taken as advance.
- 17.40. Section 6 of KOFA imposes responsibility on the Promoter for payment of outgoings on the Property including all types of charges, etc., until he transfers the Property to the persons taking over the flats.
- 17.41. In terms of Section 7 of KOFA, the Promoter is not barred from carrying out any alterations or additions.
- 17.42. In terms of Section 8 of KOFA, the Promoter is required to refund amount paid with interest in the event if he being unable to give possession within the specified time. 17.43. There is an embargo under Section 9 of KOFA not to create any mortgage etc., subsequent CRP NO.96 OF 2021 to the execution of sale without the consent of such agreement holder.

17.44. In terms of Section 10 of KOFA, a promoter is required to take steps for the formation of a Co-operative Society or Company as soon as the minimum number of persons required to form a Co-operative society or a Company having taken flats. Section 10 of KOFA is extracted below for easy reference

10. Promoter to take steps for formation of co-operative society or company.- (1) As soon as a minimum number of persons required to form a cooperative society or a company have taken flats, the Promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society, or as the case may be, as a company; and the Promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company. (2) Nothing in sub-section (1) shall affect the right of the Promoter to dispose of the remaining flats in accordance with the provisions of this Act.

CRP NO.96 OF 2021 17.45. In terms of Section 11 of KOFA, Promoter is required to convey title and execute documents.

17.46. Section 12 of KOFA relates to general liabilities of a person who takes a flat viz., to pay at a proper time and place the price of the Apartment, municipal taxes, water and electrical charges, ground rent etc. Section 12 of KOFA is extracted below for easy reference

- 12. General liabilities of a person who takes a flat.-
- (1) Every person who has executed an agreement to take a flat shall pay at the proper time and place, the price, the municipal taxes, water and electricity charges, ground rent (if any), and other public charges payable in respect of the flat taken by him and where a co-operative society or a company of persons taking the flats 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 a flat and who, without reasonable excuse fails to comply with or contravenes sub-section (1) shall, on conviction, be punished with fine which may extend to one thousand rupees.

CRP NO.96 OF 2021 17.47. In terms of Section 13 of KOFA, there is a restriction on a promoter or a person who is in charge of the Management or connected with the Management from cutting, withhold or any manner curtailing or abusing or reducing any essential supply or service enjoyed by a person who has taken a flat without just and sufficient cause. Section 13 is extracted below for easy reference

13. Manager not to cut off, with-hold, curtail or reduce essential supply or service.- (1) No person, who is a promoter, or who is in charge of management or connected with the management of a block or building of flats whether as member of a managing committee, Director, Secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person, cut off, with-hold or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the

flat taken, or agreed to be taken by him.

- (2) The person who has taken or agreed to take the flat or the occupier may, if the Manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.
- CRP NO.96 OF 2021 (3) If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service and that it was cut off or with-held or curtailed or reduced by the Manager without just and sufficient cause, the Court shall make an order directing the Manager to restore such supply or service before a date to be specified in the order.
- (4) The Manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees.
- (5) Notwithstanding anything contained in any law for the time being in force,-
- (a) in any area for which a Court of Small Causes is established under the Karnataka Small Causes Courts Act 1964, that Court; and
- (b) elsewhere, the Court of the Civil Judge, shall have jurisdiction to decide any application made under sub-section (2) of and no other court shall have jurisdiction to entertain such application. No appeal shall lie from any order made on such application.
- (6) The District Court, may, for the purpose of satisfying itself that the order made on an application made under sub-section (2) was according to law, call for the case in which such order was made and pass such order with respect thereto as it thinks fit.
- (7) Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both.
- (8) An offence under sub-section (7) shall be a cognizable offence.
- CRP NO.96 OF 2021 17.48. In the event of a Court coming to a conclusion that the said withholding of service is without a just and sufficient cause, the Court could direct the Manager to restore such supply or service.
- 17.49. In terms of Section 13 (5) of KOFA, a person who takes the flat can approach the Court of Small Causes where established or elsewhere the Court of Civil Judge who has Jurisdiction to decide the same.
- 17.50. Section 14 of KOFA deals with the offences by Promoter.

17.51. Section 15 of KOFA deals with the offences by a company.

17.52. Section 16 of KOFA provides powers to the State Government to make rules.

CRP NO.96 OF 2021 17.53. In furtherance of Section 16, the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1975 (for short, 'KOF Rules') have been effected.

17.54. Rule 3 of KOF Rules provides the manner of making disclosure by the Promoter. 17.55. Rule 4 of KOF Rules requires the Promoter to provide copies of various documents after receipt of legal charges.

17.56. Rule 5 of KOF Rules provides for particulars to be contained in agreement of sale. 17.57. Rule 6 of KOF Rules provides for documents which are required to be annexed to the agreement of sale.

17.58. Rule 9 of KOF Rules provides for submission of application for registration of co-operative society which reads as under:

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9. Form of Memorandum under Section 13(4):- The memorandum required to be filed by the Manager or Board of Managers for the purpose of sub-section (4) of Section 13 shall be in Form E. 17.59. Rule 10 of KOF Rules provides for the time period within which the conveyance has to be effected.

Comparison of KAOA and KOFA 17.60. From the above, it is seen that KAOA deals with all aspects of an apartment used for residential purposes, including ownership of an apartment and matters relating thereto namely details as mentioned above viz., insurance, repairs, assessment, payment of taxes. KAOA is basically premised on Declaration, Deed Of Apartment and Bye-Laws and contents thereof.

17.61. Section 16 of KAOA relates to bye-laws and the contents thereof, which provides for election, method of calling a meeting, CRP NO.96 OF 2021 maintenance, repair and replacement, employment of persons, etc. The relevant provision for the purposes of this matter would be Section 16 (2) (g), which relates to the manner of collecting from the apartment owners their share of the common expenses. The common expenses could be in relation to maintenance of common areas and the like, which is defined under Section 3(g) of the KAOA, which is reproduced hereinabove. 17.62. Section 20 of KAOA deals with liability for unpaid common expenses, which is stated to be that of the owner of the Property. In terms of Section 19 of KAOA, a charge is created on the Property for common expenses. 17.63. Section 12 of the KOFA deals with the payment of municipal taxes, water and electricity charges etc., and the right to disconnect such services.

CRP NO.96 OF 2021 17.64. In terms of Rule 9 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1975, it is stated that where a

co- operative society or a company of persons taking a flat is to be constituted, the Promoter is required to submit an application to the Registrar for registration of the Co-operative Society or a company as the case may be within four months from the date on which the minimum number of persons required to form such organisation have taken flats. 17.65. Rule 9 of KOFA Rules, however, provides that where the apartment takers propose to submit the apartments to the provisions of KAOA by executing Declaration and Deeds of Apartment, the Promoter shall inform the Registrar as defined in the Karnataka Co- operative Societies Act, 1959 as soon as CRP NO.96 OF 2021 possible after the date on which all the apartment owners (being not less than five) have executed such Declarations and Deeds of Apartment.

17.66. Thus, a reading of Rule 9 of KOFA Rules makes it clear that it is not necessary to form a Co-operative Society or a Company. The decision is of the owners and the same could be submitted to the provisions KAOA by executing Declaration and Deed Of Apartment in which case, there is no need to form a Co- operative Society or Company but only information of the execution of Declaration and Deed Of Apartment is to be communicated to the Registrar of the Co- operative Societies, registration thereof having been done before the Registrar of Assurances/Sub-Registrar.

CRP NO.96 OF 2021 17.67. In view of the above discussion, KAOA is clearly dealing with the ownership of the Apartment, transfer of apartments, formation of the Association for the Management of the Building, Property and the management thereof etc., 17.68. Rule 7 of KAOR extracted hereinabove provides for each apartment owner to comply strictly with the bye-laws and with the administration rules and regulations which includes the payment of common expenses in terms of Section 3(g) read with Section 16(2)(g).

17.69. In view thereof, KAOA and KOFA though cannot be said to be mutually exclusive, they cannot also be said to be supplemental to each other.

17.70. Both Acts would apply in different time periods in that KOFA would be applicable until the CRP NO.96 OF 2021 Apartment is subjected to the provisions of KAOA, if the Apartment is not subjected to KAOA, KOFA would continue to apply. Once an Apartment, Building, Property is subjected to the provisions of KAOA by execution of Declaration, Deed of Apartment and Bye Laws KOFA would stop being applicable. 17.71. Thus I Answer Point No.1 by holding that KAOA and KOFA cannot be said to be mutually exclusive nor can they be said to be supplementary to each other in as much as both the acts cannot apply at the same time.

18. Answer to point No.2: Whether once an apartment is submitted to KAOA by execution of a declaration and Deed of Apartment under KAOA, would the provisions of KOFA apply? 18.1. Rule 9 of the KOF Rules, which has been extracted hereinabove, would indicate that a promoter is required to submit an application for registration to the Registrar of a Co-

CRP NO.96 OF 2021 operative Society or the Registrar of Companies, as the case may be, within 4 months from the date on which the minimum number of persons required to form such organisation have taken flats. 18.2. The said KOF Rules also provides for a situation where the apartment takers propose to submit the apartments to the provisions of KAOA by executing

Declaration and Deeds of Apartment as required by that Act, the promoters shall inform the Registrar as defined in the Karnataka Co-operative Societies Act, 1959 as soon as possible after a date on which all the Apartment Owners have executed such Declaration and Deeds of Apartment.

18.3. Though the said Rule or any other provisions of KOFA or Rules framed thereunder do not specifically indicate that when such CRP NO.96 OF 2021 Declaration and Deeds of Apartment is executed under KAOA the Jurisdiction of KOFA is excluded, a meaningful reading would indicate that if Declaration and deeds of Apartment is executed under KAOA and Apartment is subjected to the provisions of KAOA, it is only information that is required to be provided to the Registrar of Co-operative Societies. Such providing of information would essentially imply that there is no registration of a co-operative society which is contemplated since this is an exception created under the said Rule.

18.4. It is only if a Co-operative Society is registered, the said Co-operative society would come within the preview of KOFA and not an Association formed by way of a Declaration and Deed of Apartment being executed under KAOA.

CRP NO.96 OF 2021 18.5. As discussed in answer to point no.1, above Section 7 of KAOA requires compliance with covenants, bye-laws and administrative provisions of the Declaration, Section 11 deals with contents of declaration, Section 12 deals with contents of deeds of Apartment and Section 16 with bye-laws and their contents. 18.6. The bye-laws deal not only with ownership of the Apartment but also deal with all the aspects relating thereto including common areas, maintenance expenses to be borne by apartment owners, more particularly Section 16 (2)(g) relates to the manner of collecting from the apartment owners their share of common expenses which common expenses is defined under Section 3 (g).

- 18.7. Thus in a sense, the Declaration, Deed of Apartment and the bye-laws provide for all aspects relating to the Apartment, Building CRP NO.96 OF 2021 and Property. The interse rights and liabilities of parties being reflected and covered by the said document, it can not be that the provision of KAOA and KOFA would apply at the same time.
- 18.8. Once a Declaration and Deed of Apartment is executed, then the Apartment, Building and Property will come within the preview of the KAOA, it is only in the absence there of that KOFA would apply.
- 18.9. Hence, I answer Point No.2 by holding that once an apartment is submitted to KAOA by execution of a Declaration and Deed of Apartment under KAOA, the provisions of KOFA would not apply, it is only the provisions of KAOA which would apply.

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19. Answer to point No.3: Would the provisions of KOFA apply if there is no Declaration and Deed of Apartment executed and/or submissions made under the KAOA?

19.1. In pursuance of the discussion and the answer to point Nos. 1 and 2, it is clear that when there is a Declaration and Deed of Apartment executed, then it is the KAOA which would be applicable to all the matters relating to the ownership of an apartment and or Management of the Building and Property which would be covered by the Declaration, Deed of Apartment and Bye-laws formulated. Such being the case, it is not envisaged that KOFA is also made applicable.

19.2. In terms of Rule 9 of the KOFA Rules, the execution of a Declaration and Deed of Apartment as also the bye-laws would only have to be informed to the Registrar of Co- operative society.

CRP NO.96 OF 2021 19.3. Thus, conversely if there is no declaration and Deed of Apartment executed, then the Apartment as also the apartment complex would not have been submitted to the KAOA and in such a situation, it is the KOFA which would be applicable, of course many of the provisions of KOFA overlapping with the Real Estate (Regulation and Development) Act, 2016, the provisions thereof would also be applicable.

19.4. I answer Point No.3 by holding that the provision of KOFA would apply if there is no declaration, Deed of Apartment or bye-laws executed and or if the Building and Property not having been submitted to the provision of KAOA.

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20. Answer to Point No.4: What is the scope and purview of KAOA and KOFA?

20.1. As discussed in point Nos.1 and 2, both KAOA and KOFA apply as regards apartments/flats used for residential purpose. In KAOA, it is referred to as Apartment, in KOFA, it is referred to as flat.

20.2. In KOFA, the definition of flat is wider and would also cater to an office unit, whereas an apartment under KAOA relates only to a residential unit.

20.3. Under KOFA a co-operative society or a company to manage the affairs of an apartment complex would have to be formed and registered, if in the case of the co-operative society before the Registrar of a co-operative society and in the case of the company before the Registrar of companies.

CRP NO.96 OF 2021 20.4. When such a co-operative society or a company is formed, it is the Rules and regulations contained in the said constitutional documents of the co-operative society or a company which will apply to a flat as defined under the KOFA under Section 2(a) thereof, which is reproduced hereunder for easy reference:

"2(a) Flats:- means a separate and self- contained set of premises used or intended to be used for residence or office or show room or shop or godown (and includes a garage), the premises forming part of a building;

Explanation: Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained:"

20.5. Thus, KOFA has a larger application in respect of the residence or office or showroom or shop or godown (including garage).

20.6. The perusal of the definition of Apartment in terms of Section 3 (a) of the KAOA indicates CRP NO.96 OF 2021 that it would only apply to an apartment that is used for residential purposes and not as an office or showroom or shop, or godown. Under the KAOA, the Declaration and Deed of Apartment and Bye-laws would have to be executed to deal with and cater to an apartment, Building or Property. 20.7. Section 3(e) of KAOA defines a building as one containing four or more Apartments, or two or more buildings, each containing two or more apartments, with a total of four or more apartments for all such buildings, and comprising a part of the Property. 20.8. Property is defined under Section 3(q) in terms thereof any land, building, all improvements, and structures thereon, all owned in freehold or held on lease or as occupant under any law relating to land revenue and all easements, rights and CRP NO.96 OF 2021 appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been, or are intended to be submitted to the provisions of KAOA.

20.9. Thus, KAOA deals with only a subset of items dealt with by KOFA that is only Apartment used for residential purposes. KAOA would only be applicable if a Declaration, Deed of Apartment and Bye-laws are executed in respect of the said Apartment, Building and Property as defined under Section 3 (a), (e) and (q) of the KAOA respectively. 20.10. In view of the above it is clear that KAOA will not apply in respect of an office or showroom or shop or godown (and includes a garage), dealt with by the KOFA. Thus KOFA will apply to an office or showroom or shop or godown. This being so, for the reason that they cannot CRP NO.96 OF 2021 be made subject to KAOA which only deals with Apartment used for residential purpose. 20.11. Thus, I answer point no.4 by holding that KAOA would apply to Apartment as defined under Section 3(a) of the KAOA used for residential purposes when a Declaration, Deed of Apartment and bye-laws are executed in relation thereto. KOFA would apply to flats as defined under Section 2(a) of the KOFA which includes flats, used or intended to be used for residence, office or showroom or shop or godown. However, if the flat is used for residential purpose and is made subject to KAOA by execution of a declaration, Deed of Apartment and bye-laws KOFA would not apply to residential Apartment, building or Property. KOFA would always apply to an office or showroom or shops or godown since, they cannot be made subject to KAOA. KOFA CRP NO.96 OF 2021 would apply if the Apartment is removed from the purview of KAOA, from and after such removal.

20.12. Declaration, Deed of Apartment and Bye-laws in respect of an apartment building or Property can be executed at any point of time and not necessarily when the Apartment complex is ready or sale made there of. As and when the Declaration, Deed of Apartment and bye-laws is executed under the KAOA the said Apartment, building and Property would come out of the preview of the KOFA and be subject to the provisions of KAOA.

21. Answer to Point No.5: Would purchasers be required to be parties to the Declaration, Deed of Apartment and Bye-laws or could the Promoter or owner/developer subject the same to KAOA by execution of Declaration, Deed of Apartment and Bye-laws prior to such sale?

21.1. One of the contentions raised by Sri. Suriya Narayanan, learned Counsel for the Plaintiff, is CRP NO.96 OF 2021 that the Declaration, Deed of Apartment and Bye-laws were executed by the Promoter of the Property prior to the Plaintiffs purchasing the Property, the Plaintiffs not having executed the same the question of the Plaintiffs being bound by the said Declaration, Deed of Apartment and Bye-laws would not arise.

21.2. Rule 6 of the KAOA Rules, 1974, reads as under as under:-

"6. parties to Deeds of Apartment:- In the case of the first Deed of Apartment, the party of the first part shall be either the sole owner or all the owners of the Property who has or have executed and registered the Declaration under Section 2 and the party of the second part shall be the apartment owner. In the case of subsequent Deeds of Apartment, the party of the first part shall be the apartment owner and the party of the second part shall be his transferee".

21.3. In the present case, Declaration and Deed of Apartment were executed prior to the sale of the Apartment, that is, at a point of time when the sole owner of all the apartments and Property was the promoter/developer, there CRP NO.96 OF 2021 being no sale deed executed in respect of any particular apartment till then. 21.4. In view thereof, in terms of Rule 6 provides that in case of execution of the first Deed of Apartment, the promoter/developer as the sole owner of all the apartments would be entitled to execute and register the Declaration under Section 2 of the KAOA. 21.5. Rule 6 also provides for subsequent Deed of Apartment where the party of first part would be the owner of the Apartment and party of the second part would be his transferee. 21.6. It is not in dispute that Form-B in terms of Rule 4 of the KAOA Rules, 1974 which relates Section 5(2) of the KAOA has been executed by the Plaintiffs when they took sale of the Apartment in question. In the Declaration the Plaintiffs have declared that they are the present owners of the Apartment and that CRP NO.96 OF 2021 they will be bound by the Deed of Apartment and the provision of the KAOA, such being the case Plaintiffs having executed form of Declaration in terms of Form-B, it is not open for the Plaintiffs now to contend that they are not signatories to the first Deed of Apartment and or bye-laws and therefore they are not bound by it.

21.7. When the Plaintiffs purchased the Apartment, they were aware of the Apartment having been subjected to the provision of KAOA. They executed a form of Declaration, and therefore in my considered opinion, they are bound by the Deed of Apartment and bye-laws relating to the Apartment, and they cannot continue to hold the Promoter liable for the maintenance of the Apartment since maintenance of the Apartment is now vested with the owners association constituted under KAOA and are CRP NO.96 OF 2021 therefore liable to make payment of all common expenses as may be demanded by such Association, if there is any doubt the Plaintiffs could have inspected the accounts of the Association as they are entitled to do so in terms of the bye-laws.

21.8. I answer point no.5 by holding that the purchasers as such are not required to be signatories to the Declaration, Deed of Apartment and bye-laws. The promoters could, before the sale of the Apartment being the owner/developer of the Property or in the case of joint development, along with the owner of the land, subject the Apartment, building and Property to KAOA by execution of Declaration Deed of Apartment and Bye-laws. Execution of Form B by any purchaser would automatically bind them to the contents of Declaration Deed of Apartment and Bye-laws already executed and registered.

CRP NO.96 OF 2021

- 22. Answer to point no.6: In the event of KOFA being applicable, would the present suit filed before the Small Causes Court at Mangaluru in S.C.No.26/2018 be maintainable? 22.1. As afore discussed on account of Declaration, Deed of Apartment and Bye-laws having been executed the present Apartment would not come within the preview of KOFA, it is only in the event of such a declaration, Deed of Apartment, bye-laws not being executed then the Apartment would come within the purview of KOFA in terms of Section 13 thereof extracted hereinabove.
- 22.2. Section 13 (4) and (5) of the KOFA are extracted hereinabove.
- 22.3. A flat owner coming within the purview of KOFA can approach as against the action taken by the Manager of the flats for having disconnected any supply or service to the Court of Small Causes established under Karnataka Small Causes Court Act, 1964 or the Court of Civil Judge having Jurisdiction CRP NO.96 OF 2021 seeking for restoration of the supply or service.
- 22.4. In the present case, there being Small Cause Court established in Mangalore, the Court of small causes would have Jurisdiction to adjudicate such a claim made by the flat owners, and SC No.26 of 2018 would be maintainable.
- 22.5. However, since in the present case, the Apartment has been subjected to the provisions of KAOA by execution of Declaration Deed of Apartment and Bye-laws, the remedy provided under Section 13 of the KOFA is not available to the Plaintiffs.

23. To Summarise:

23.1. KAOA would only apply to an apartment where it is used for residential purposes.

A flat or an apartment which is used for an office or showroom or shop or godown (and includes garage) cannot be CRP NO.96 OF 2021 subjected to KAOA and would always continue to be governed by KOFA. 23.2. When an apartment is proposed to be constructed or under construction and agreements are entered into, KOFA would apply insofar as the relationship and/or dispute between the purchaser and the Promoter.

23.3. KOFA would continue to apply if the Apartment is not subjected to KAOA as afore detailed.

23.4. Once an apartment is subjected to KAOA, KOFA would cease to apply and it is only the KAOA, Declaration, Deed of Apartment and bye-laws which would be applicable.

23.5. In the event of an apartment being removed from the provisions of KAOA in CRP NO.96 OF 2021 terms of Section 14 of KAOA, KOFA would come into operation.

23.6. Essentially KAOA, Declaration, Deed of Apartment and bye-laws would be the provisions under which the relationship between an apartment owner and Association of the Apartment, building, property, which would be governed. 23.7. KOFA would apply insofar as the relationship and/or dispute between the purchaser of an apartment and Promoter and any defaults on part of the Promoter. The other enactments like RERA would also be applicable.

23.8. Even when an Apartment is not subjected to KAOA and KOFA applies, the dispute and the relationship between the apartment owner and the Association would be governed in terms of the rules CRP NO.96 OF 2021 and regulations under the Co-operative Society under which the said Association is registered or the terms of articles and memorandum of Association of company under which the said Association is registered.

23.9. If the Association is formed under KOFA, registration of the Association would be required under the Karnataka Co- operative Societies Registration Act and/or the Companies Act depending on whether it is a Co-operative Society or a Company which is to be registered. 23.10. In the event of a declaration, Deed of Apartment and byelaws being executed and the Apartment, building, property is subjected to KAOA, the said documents would have to be registered before the jurisdictional Sub-Registrar CRP NO.96 OF 2021 and the same be informed to the Registrar of the Co-operative Societies. 23.11. There would be no requirement for registration of the Declaration, Deed of Apartment and/or bye-laws with the Registrar of the Co-operative Societies. 23.12. If the property is subjected to KAOA, the proceedings if any would have to be filed before the Civil Court of competent jurisdiction.

23.13. If a Co-operative Society or a Company is formed to manage the property, and the provision of KOFA being applicable the proceedings would have to be filed in terms of Section 13(5) before a Small Causes Court where a Small Causes Court is established, in the absence thereof, before a Civil Court of competent jurisdiction.

CRP NO.96 OF 2021

23.14. All the apartment owners are not required to sign and execute the

Declaration, Deed of Apartment and bye-laws. The Promoter before registration of a sale deed can execute and register the Declaration, Deed of Apartment and bye-laws with the jurisdictional Sub-

Registrar being the owner of the Apartment, building and property.

there is a joint development agreement, the owner of the property would also have to join the execution of the registration of the above documents. Suffice it to say, it is only the persons or entities who have registered title in respect of the property who are required to execute and register the above documents.

CRP NO.96 OF 2021 23.15. On the purchase of the property and registration of the sale deed, the purchaser or apartment taker would have to execute necessary Declaration under Form B of KAOR agreeing to be bound by the said Declaration, Deed of Apartment and bye-laws. The Association when formed could always amend the same in terms of the provisions applicable thereto.

24. Answer to point No.7: What Order?

24.1. In view of the discussion above, since the Apartment in question is subjected to KAOA by execution of a Declaration, Deed of Apartment and bye-laws KOFA would not be applicable, no proceedings could have been initiated under Section 13 (5) before the Small Causes Court, Mangalore the said proceedings not being maintainable is barred under provision of the KAOA, the trial court has CRP NO.96 OF 2021 rightly allowed the application under Order VII of the Rule 11(a) and (b) of the CPC. The petitions stand dismissed Sd/-

JUDGE ln/Prs*



IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945

WP(C) NO. 34824 OF 2014

PETITIONERS:

- 1 V.K. SANKARANKUTTY, AGED 72 YEARS FLAT NO 2A, J M MANOR, KALOOR, COCHIN 17
- J M MANOR FLAT OWNERS ASSOCIATION J M MANOR, KALOOR, COCHIN 17

BY ADV SRI.JACOB MATHEW MANALIL

RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM

COURTO

- 2 SECRETARY, MINISTRY OF LAW AND
 HOUSING , SECRETARIAT, TRIVANDRUM
- 3 INSPECTOR GENERAL OF REGISTRATION OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION, TRIVANDRUM
- 4 THE DISTRICT REGISTRAR
 DISTRICT REGISTRAR'S OFFICE, ERNAKULAM
- 5 SECRETARY, MUNICIPAL CORPORATION OF COCHIN, COCHIN 11

BY ADVS V.P.REJITHA (PUZHAKKALIDOM) SRI. RAJEEV JYOTHISH GEORGE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.02.2024, ALONG WITH WP(C)NOS.9317/2021, 18667/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM **PRESENT**

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945 WP(C) NO. 9317 OF 2021

PETITIONER:

SHWAS HOMES PVT. LIMITED, GROUND FLOOR, SHWAS MYSTIC HEIGHTS-I, KANIYAMPUZHA ROAD, EROOR P.O, ERNAKULAM DISTRICT, PIN-682 306, REPRESENTED BY ITS DIRECTOR SREENI PARAMESWARAN.

BY ADVS. COURT S.VINOD BHAT KUM.ANAGHA LAKSHMY RAMAN SMT.GREESHMA CHANDRIKA.R

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF REGISTRATION, SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 2 INSPECTOR GENERAL OF REGISTRATION, OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION, VANCHIYOOR, THIRUVANANTHAPURAM-695 035.
- DEPUTY COLLECTOR, (DISASTER MANAGEMENT) 3 (COMPETENT AUTHORITY UNDER THE APARTMENT OWNERSHIP ACT), KAKKANAD, COLLECTORATE, ERNAKULAM-682 030
- THE SUB REGISTRAR, OFFICE OF THE SUB-REGISTRAR, 4 TRIPUNITHURA-682 301
- THE DISTRICT REGISTRAR, (REGISTRAR OF SOCIETIES 5 UNDER THE TRAVANCORE COCHIN LITERARY SCIENTIFIC AND CHARITABLE SOCIETIES ACT), OFFICE OF THE DISTRICT REGISTRAR, ERNAKULAM.
- MYSTIC HEIGHTS-3 APARTMENT OWNERS WELFARE 6 ASSOCIATION, KANIYAMPUZHA ROAD, EROOR SOUTH P.O, REPRESENTED BY ITS SECRETARY, PIN-682 306



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- 7 VISWANATH SANKAR, (DELETED), S/O. LATE P. VISWANATHAN, RESIDING AT APARTMENT NO. 12G, MH3 APARTMENTS , KANIYAMPUZHA, EROOR-682 306. (R7 IS DELETED FROM PARTY ARRAY AS PER ORDER DATED 25-10-2021 IN I.A. 3/2021)
- *8 SECRETARY TO GOVERNMENT KERALA STATE HOUSING BOARD, SECRETARIAT, THIRUVANANTHAPURAM. (ADDL R8 IS SUO MOTU IMPLEADED AS PER ORDER DATED 18-03-2022 IN WP(C) 9317/2021)

BY ADVS. JOHNSON GOMEZ S.BIJU (KIZHAKKANELA) JOHN GOMEZ SREEDEVI S. SANJITH JOHNSON DINOOP P.D. M.R.RAJENDRAN NAIR (SR.) SRI.RAJEEV JYOTHISH GEORGE -

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.02.2024, ALONG WITH WP(C)NO.34824/2014 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM **PRESENT**

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945 WP(C) NO. 18667 OF 2022

PETITIONERS:

- DANENDRAN GOPALAN, AGED 60 YEARS, SON OF 1 LATE GOPALAN SANKARAN, RESIDING AT D 4A, WILLINGDON ENCLAVE, THEVARA FERRY ROAD, THEVARA, COCHIN-682013.
- SONI JOHN, AGED 51 YEARS, SON OF LATE V.J JOHN, 2 RESIDING AT B1C, WILLINGDON ENCLAVE, THEVARA FERRY ROAD, THEVARA, COCHIN-682013.

BY ADVS. K.LATHA M.UMA DEVI

RESPONDENTS:

- 1 THE REGISTRAR OF ASSURANCES, (DISTRICT REGISTRAR) EMAKULAM, PERUMPALLIL BUILDINGS, M.G.ROAD, ERNAKULAM-682011
- 2 THE WILLINGDON ENCLAVE OWNERS ASSOCIATION (WEOA) DULY REPRESENTED BY ITS SECRETARY, SHRI. M.S NAIR, B-1A, WILLINGDON ENCLAVE, THEVARA FERRY ROAD, THEVARA, COCHIN 682013.
- 3 DEPUTY COLLECTOR, (DISASTER MANAGEMENT), DISTRICT COLLECTORATE, FIRST FLOOR, CIVIL STATION, KAKKANAD, ERNAKULAM, KERALA PIN-682030 (THE COMPETENT AUTHORITY UNDER THE KERALA APARTMENT OWNERSHIP ACT 1983)
- THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, 4 DEPARTMENT OF REGISTRATION, SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695001
- *5 ADDL.R5: DR.REJI MATHEW , 67 YEARS, S/O LATE PC MATHEW B12B, WILLINGDON ENCLAVE



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CHAKOLAS, HABITAT THEVARA.P.O., KOCHI- 682013

- *6 ADDL.R6: GEORGE P.POOTHICOTE, ADVOCATE, 55 YEARS, S/O.LATE P.G.GEORGE, C12B, WILLINGDON ENCLAVE CHAKOLAS HABITAT, THEVARA P.O., KOCHI-682013
- * 7 ADDL.R7: ABRAHAM K GEORGE , AGED 61 YEARS, S/O G K ABRAHAM D11A , WILLINGDON ENCLAVE CHAKOLAS HABITAT, THEVARA P.O., KOCHI-682013

(ADDL R5 TO R7 ARE IMPLEADED AS PER ORDER DATED 06-01-2023 IN IA 3/2022)

*8 MATHEW CHAKOLA, AGED ABOUT 60 YEARS, MANAGING DIRECTOR, M/S CHAKOLAS HABITAT PRIVATE LIMITED, THEVARA FERRY ROAD, THEVARA, ERNAKULAM (ADDL R8 IS IMPLEADED AS PER ORDER IN IA NO.1/2023 DATED 06.02.2024)

> BY ADVS. TARA PREM LAL K.JOSEPH Uma Devi NISHA G.THARAMAL SARIMOL KAREETHARA P.MURALEEDHARAN (THURAVOOR) T.A.LUXY SURESH SUKUMAR ANZIL SALIM ADITHYA S. PUTHEZHATH K.JAJU BABU (SR.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.02.2024, ALONG WITH WP(C)NO.34824/2014 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM **PRESENT**

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945 WP(C) NO. 20630 OF 2021

PETITIONERS:

- C.S.KUMAR, AGED 75 YEARS, DOOR NO.180, BHADRA, 1 ORCHID GARDENS, THIRUVANKULAM P.O., THRIPPUNITHURA, ERNAKULAM DISTRICT-682 305.
- 2 PRABHAKARAN THAZHATHEKALATHIL, AGED 66 YEARS CORAL REEF, MALOTH ROAD, THEVARA, KOCHI, NOW RESIDING AT DEEPA PRABHA, N4-A10, CIDCO-PO, AURANGABAD, MAHARASHTRA-431 001.

BY ADV A.K.HARIDAS

RESPONDENTS:

- THE STATE OF KERALA, REPRESENTED BY SECRETARY 1 TO GOVERNMENT, DEPARTMENT OF LAND REVENUE, THIRUVANANTHAPURAM-695 001.
- 2 THE COMPETENT AUTHORITY UNDER KAOA AND THE DEPUTY COLLECTOR (D AND M), DISTRICT COLLECTORATE, CIVIL STATION, KAKKANAD P.O., ERNAKULAM-682 030.
- 3 TATA REALTY AND INFRASTRUCTURE LTD., GOSHREE-PACHALAM LINK ROAD, MARINE DRIVE, KOCHI-682 018, REPRESENTED BY ITS MANAGER.
- 4 TRITVAM APARTMENT OWNERS ASSOCIATION, TRITVAM APARTMENTS, GOSHREE-PACHALAM LINK ROAD, MARINE DRIVE, KOCHI-682 018, REPRESENTED BY ITS SECRETARY.
- 5 SUNIL KUMAR, S/O.N.PANKAJAKSHAN, SECRETARY OF RESPONDENT 4, T-3-8D, TRITVAM, GP LINK ROAD, MARINE DRIVE, KOCHI-682 018.
- ASHOK GOPINATH, TREASURER OF RESPONDENT 4, 6 IC-7C, TRITVAM, GP LINK ROAD, MARINE DRIVE KOCHI-682 018.



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* 7 TRITVAM RESIDENTS WELFARE ASSOCIATION, HAVING REGISTERED OFFICE AT TRITVAM, GIDA ROAD, MARINE DRIVE, KOCHI REPRESENTED BY ITS SECRETARY, ASHRAF P.M (ADDL R7 IS IMPLEADED AS PER ORDER IN IA NO.1/2023 DATED 06.02.2024)

> BY ADVS. V.ABRAHAM MARKOS JOHNSON GOMEZ S.MUHAMMED HANEEFF JOHN GOMEZ SREEDEVI S. S.BIJU (KIZHAKKANELA) P.G.CHANDAPILLAI ABRAHAM ALEXANDER JOSEPH MARKOS SHARAD JOSEPH KODANTHARA RAJANA JOSE M.H.ASIF ALI ARAVIND T. RAMESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.02.2024, ALONG WITH WP(C)NO.34824/2014 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM **PRESENT**

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945 WP(C) NO. 21317 OF 2021

PETITIONERS:

- KENT MAHAL APARTMENT OWNERS ASSOCIATION 1 INFOPARK KARIMUGAL ROAD, BRAHMAPURAM P.O, PUTHEKURISH, VADAVUCODE, KERALA, PIN-682303. REPRESENTED BY ITS SECRETARY, MR.JOMON A., AGED 43 YERARS, S/O GEORGE ABRAHAM, FLAT NO T3/8A1, KENT MAHAL, INFOPARK KARIMUGAL ROAD, BRAHMAPURAM P.O, PUTHENKURISH, VADAVUCODE, KERALA, PIN-682303.
- KENT OAKVILLE APARTMENT OWNERS ASSOCIATION 2 ROOM KENT OAKVILE BENEDICT ROAD, VAZHAKALA, KOCHI, PIN-682021, REPRESENTED BY ITS SECRETARY, RAJESH CHUNDAYIL MADATHIL, AGED 42 YEARS, S/O K V KRISHNA KUMAR, RESIDING AT ROYAL OAK, FLAT NO.4 A4, KENT OAKVILLE BENEDICT ROAD, VAZHAKALA, KOCHI, PIN-682021.

BY ADVS. JOHNSON GOMEZ S.BIJU (KIZHAKKANELA) SANJAY JOHNSON JOHN GOMEZ SREEDEVI S. **ENLIN MARY RODRIGUS** MOHAMED SHEHARAN DINOOP P.D. SANJITH JOHNSON

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF REGISTRATION, SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
- 2 DEPUTY COLLECTOR (DISASTER MANAGEMENT), (COMPETENT AUTHORITY UNDER THE APARTMENT OWNERSHIP ACT), KAKKANAD COLLECTORATE, ERNAKULAM, PIN-682030.



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- 3 KENT CONSTRUCTIONS PRIVATE LIMTED, DOOR NO.63/3441-A166 KENT HAIL GARDEN FIRS FLOOR, STADIUM LINK ROAD, NEAR JAWAHARLAL NEHRU INTL. STADIUM, PALARIVATTOM, KOCHI, KERALA-682025.
- ADDL.R4. SECRETARY TO GOVERNMENT 4 KERALA STATE HOUSING BOARD, SECRETARIAT, THIRUVANANTHAPURAM. (IS SUO MOTU IMPLEADED AS PER ORDER DATED 18-03-2022 IN WP(C) 21317/2021).
- * 5 KERALA REAL ESTATE REGULATORY AUTHORITY, REPRESENTED BY ITS CHAIRMAN, 6TH FLOOR, TRINITY CENTRE, OPP CHAITHANYA EYE HOSPITAL, TC NO. 14/4354, ${\tt KESAVADASAPURAM,\ PATTOM\ P.O\ ,\ THIRUVANANTHAPURAM}$ (ADDL R5 IS IMPLEADED AS PER ORDER IN IA NO.1/24 DATED 06.02.2024)

BY ADV C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.02.2024, ALONG WITH WP(C).34824/2014 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

COURT



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JUDGMENT

[WP(C) Nos.34824/2014, 9317/2021, 18667/2022, 20630/2021, 21317/2021]

This Court had passed an interim order in these batch of cases on 29.01.2024 which is self explanatory and is, therefore, extracted for ease of reading.

Prima facie, as matters now stand, the provisions of the Kerala Apartment Ownership Act, 1983 (the 'Act' for short), have not been made mandatory, as is evident from Section 2 thereof.

- 2. While some of the petitioners in this batch of matters require the 'Act' to be made compulsory; the others maintain that as long as it has not been made so, they cannot be forced to sign declarations, or their apartments brought under its ambit without their juncture.
- 3. Learned Government Pleader Sri.Rajeev Jyothish George, submitted that this controversy has already caught the attention of the Government and that they have constituted a Committee to decide whether the 'Act' should be made mandatory, by amending Section 2. He submitted that, if the petitioners are so interested, they can be given an opportunity of being heard by the said Committee.
- 4. The learned counsel for the petitioners in W.P. (C).Nos.34824/2014, 21317/2021 and 18667/2022 submitted that, they would be happy to be given an opportunity of being heard by the Committee, so that they could place their objections before the same; while the learned counsel for the petitioners in other writ petitions submitted that, their assertions are only that as long as the statute is not made mandatory, registration cannot be allowed without the juncture of all the owners.
- 5. In the afore circumstances, I direct the learned Government Pleader to obtain instructions from the respondents as to when the Committee has scheduled its next meeting, so that the willing petitioners in these cases can be heard.

List for further consideration on 06.02.2024.

2. Today, the learned Government Pleader - Sri.Rajeev



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Jyothish George, submitted that the Government has constituted a High Level Committee to identify and rectify discrepancies, if any, between the Apartment Ownership Act, 1983 and Real Estate Regulatory Authority Act, 2016; and that it is scheduled to meet on 22.02.2024. He explained that the Convener of the Committee is the Secretary of the Real Estate Regulatory Authority ('RERA'); and that all the petitioners, as well as any other citizen, can approach it with their recommendations, so that they can look into the same, particularly from the angle of deciding whether the Apartment Ownership Act, 1983, must be made mandatory; and as to the points of conflict, if any, between the said Act and the Real Estate Regulatory Authority Act, 2016.

3. Sri.Jacob Mathew Manalil and Sri.Johnson Gomez – learned counsel appearing for some of the petitioners in these cases, submitted that their clients are willing to appear before the Committee and place their suggestions for its consideration; however, arguing vehemently that, even going by the Apartment Ownership Act, 1983, *de hors* Section 2 thereof, it is obvious that it has the nature of being mandatory for all Apartment Complexes.



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They, however, acceded that Section 2, as it presently stands in the Apartment Ownership Act, 1983, causes some concern; and therefore, prayed that liberty be reserved to their clients to approach this Court again, in future, if it becomes so warranted.

- Sri.Vinod Bhat and Sri.A.K.Haridas learned counsel 4. appearing for some of the other petitioners - who opposes the registration of apartments under the Apartment Ownership Act, 1983, without their juncture - also submitted that they will use the opportunity to appear before the Committee and impress upon them the need for retaining Section 2 as is presently available; further arguing that there is no dispute between the Apartment Ownership Act, 1983 and the 'RERA' Act. They prayed that the interim order granted by this Court in their respective Writ Petitions maintained, until such time as the recommendations of the Committee are considered by the Government and appropriate orders issued.
- 5. It is thus obvious from the afore rival positions adopted by the various counsel that, as matters now stand, the issues impelled in these Writ Petitions are under the consideration of the



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Government of Kerala, for which, they have constituted the afore High Level Committee. The question whether the Apartment Ownership Act, 1983, is mandatory, or to be deemed to be mandatory; and whether, as per its present tenor, registrations can be allowed without the junction of all the owners of apartments, are issues which certainly will have to be considered by the Committee, taking note of the rival and dialectical versions to be placed by them before the various stakeholders. It would not be, therefore, prudent for this Court to enter into it at this time and answer these issues one way or the other; though I am of the firm view that certain specific time frames will have to be fixed, for the Committee to make their recommendations and for the Government to consider further actions, including the amendment of the Act, as may be warranted.

In the afore circumstances, with the consent of both sides, I dispose of these Writ Petitions in the following manner:

a) I leave liberty to the petitioners in these cases, as also any other person who may be interested, to appear before the Committee on 22.02.2024 and in the subsequent meetings and



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present their versions, including suggestions before it, in a written form, to be presented through its Convener.

- b) The Committee will on receipt of the afore suggestions and after fixing a time frame for completion of same, which shall be a minimum of two weeks after 22.02.2024 deliberate upon the issues, after hearing every necessary party and will take a final decision as to the recommendations to be made before the Government, viz a viz, the points of reference given to them. A final report in this regard, containing their recommendations, shall be placed by the Committee before the Government within a period of three months from 22.02.2024.
- the Committee, will consider the same and take a final decision, including as to the amendment to be carried out with respect to the relevant legislations, or to any modifications/requirements to be brought in, leading to appropriate action being completed on it, as expeditiously as is possible, but not later than three months thereafter. In the event any amendment is found warranted, action for same shall be completed; for which purpose, an additional two



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months is hereby granted.

- d) Until such time as the afore is completed and necessary orders issued by the Government in terms of directions (c) above, the interim order granted in these cases will continue to be in force; with a further clarification that any registration of declarations made under the Apartment Ownership Act, 1983, without the consent and concurrence of all owners, as far as WP(C)No.9317/202 is concerned, will not visit the petitioners therein or any other unwilling person, with any coercive consequences. This will, however, depend upon the final decision to be taken by the Government in terms of the afore directions.
- e) Needless to say, the liberty of the petitioners to approach this Court for any valid reason, either during the pendency of the afore ordered exercise or thereafter, are left open; for which purpose, all rival contentions are also left undecided.

Sd/-

RR

DEVAN RAMACHANDRAN
JUDGE



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APPENDIX OF WP(C) 9317/2021

PETITIONER EXHIBITS	3
EXHIBIT P1	COPY OF SALE DEED NO. 356/1/2013 DATED 06.02.2013.
EXHIBIT P2	COPY OF LETTER NO. D4/8828/2017 DATED 11.10.2017 ISSUED BY 3RD RESPONDENT.
EXHIBIT P3	COPY OF LETTER DATED 13.11.2017 SENT BY THE PETITIONER TO THE 3RD RESPONDENT.
EXHIBIT P4	COPY OF THE ORDER DATED 13.04.2018 IN W.P.C NO. 6988/2018 OF HIGH COURT OF KERALA.
EXHIBIT P5	COPY OF PETITION I.A. 9134/2018 IN W.P.C NO. 6988/2018 OF HIGH COURT OF KERALA.
EXHIBIT P6	COPY OF THE LETTER DATED 15.10.2018 SENT BY THE PETITIONER TO THE SUB REGISTRAR, TRIPUNITHURA.
EXHIBIT P7	COPY OF ORDER DATED 28.11.2019 IN W.P.C NO. 23281/2019 OF HIGH COURT OF KERALA.
EXHIBIT P8	COPY OF THE JUDGMENT DATED 13.11.2014 IN W.P.C NO. 15790/2006 OF HIGH COURT OF KERALA.
EXHIBIT P9	COPY OF APPLICATION DATED 28.11.2020 SENT BY THE PETITIONER TO THE INFORMATION OFFICER, SUB REGISTRAR'S OFFICE, TRIPUNITHURA.
EXHIBIT P9(A)	COPY OF THE REPLY NO. RTI.67/2020 DATED 21.12.2020 FROM STATE PUBLIC INFORMATION OFFICER, TRIPUNITHURA.
EXHIBIT P9(B)	COPY OF CIRCULAR NO. R.R.(6)-30383/2015 DATED 23.06.2018 OF REGISTRATION INSPECTOR GENERAL , THIRUVANANTHAPURAM.
EXHIBIT P9(C)	COPY OF REGISTERED FLOOR PLAN OF MYSTIC HEIGHTS III.
EXHIBIT P10	COPY OF LETTER DATED 08.03.2021 SENT BY THE PETITIIONER TO THE INFORMATION OFFICER (DEPUTY COLLECTOR, DISASTER MANAGEMENT), KAKKANAD.
EXHIBIT P10(A)	COPY OF LETTER NO. 8828/17/D4 DATED 16.03.2021 ISSUED BY PUBLIC INFORMATION OFFICER AND JUNIOR SUPERINTENDENT, DISASTER MANAGEMENT, COLLECTORATE, ERNAKULAM.
EXHIBIT P10(B)	COPY OF CERTIFICATE OF REGISTRATION NO. 8828/2017/D4 DATED MARCH, 2021.
EXHIBIT P11	COPY OF FORM A OF DECLARATION UNDER



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	SECTION 5(2), READ WITH SECTION 11(1) OF KERALA APARTMENT OWNERSHIP ACT, 1983.
EXHIBIT P11(A)	COPY OF FORM B OF DEED OF APARTMENT.
EXHIBIT P11(B)	COPY OF PLAN OF MYSTIC HEIGHTS III.
EXHIBIT P11(C)	COPY OF LIST OF APARTMENT OWNERS (MYSTIC HEIGHTS III APARTMENT).
EXHIBIT P12	COPY OF COMPLETE PLAN.
RESPONDENT EXHIBITS	5
Exhibit R6-A	A TRUE COPY OF THE AGREEMENT FOR SALE DATED 27TH FEBRUARY 2008 ENTERED INTO BETWEEN THE PETITIONER AND ONE OF THE APARTMENT OWNERS
Exhibit R6 B	A TRUE COPY OF THE CONSTRUCTION AGREEMENT DATED 27TH FEBRUARY 2008 ENTERED INTO BETWEEN THE PETITIONER AND ONE OF THE APARTMENT OWNER
Exhibit R6 C	A TRUE COPY OF THE APPROVED SITE PLAN PRODUCED BEFORE THE TRIPUNITHURA MUNICIPALITY FOR OBTAINING BUILDING PERMIT NO BA 49/07-08 DATED 14/4/08 DATED 14/4/2007
Exhibit R6D	A TRUE COPY OF THE APPROVED FLOOR PLAN OF FLOOR NO 1 TO 17 IS PRODUCED BEFORE THE TRIPUNITHURA MUNICIPALITY FOR OBTAINING BUILDING PERMIT NO BA-49/07-08 DATED 14/4/2007
Exhibit R6E	A TRUE COY OF THE APPROVED FLOOR PLAN OF FLOOR NO 18 IS PRODUCED BEFORE THE TRIPUNITHURA MUNICIPALITY FOR OBTAINING BUILDING PERMIT NO BA 49/07/08 DATED 14/4/2007



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APPENDIX OF WP(C) 18667/2022

PETITIONER EXHIBITS	
Exhibit P1	THE TRUE COPY OF BYE LAWS OF THE WILLINGDON ENCLAVE OWNERS ASSOCIATION.
Exhibit P2	THE TRUE COPY OF A SPREADSHEET DISPLAYING THE MAINTENANCE CHARGES PAID BY EACH APARTMENT.
Exhibit P3	TRUE COPY OF SALE DEED NO. 1484 OF 1998.
Exhibit P4	TRUE COPY OF THE JOINT RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE B AND C BLOCK DATED 13TH APRIL, 2022
Exhibit P5	TRUE COPY OF THE EMAIL DATED 22/9/2022 ISSUED BY MR.TISSAN THACHANKARY TO THE MANAGER OF THE 2ND RESPONDENT
Exhibit P6	TRUE COPY OF THE EMAIL DATED 14TH SEPTEMBER, 2022 ISSUED BY MR.GEORGE POOTHICODE TO THE 2ND RESPONDENT
Exhibit P7	TRUE COPY OF EMAIL DATED 14/9/2022 ISSUED BY MR.MOTI JACOB TO THE 2ND RESPONDENT
RESPONDENT EXHIBITS	
Exhibit R5(a)	TRUE COPY OF THE COMMUNICATION DATED 12/10/2022



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APPENDIX OF WP(C) 20630/2021

PETITIONER	EXHIBITS	
Exhibit P1		TRUE COPY OF SALE DEED OF THE 1ST PETITIONER WITH 3RD RESPONDENT DATED 17.08.2020.
Exhibit P2		TRUE COPY BUYERS AGREEMENT DATED 25.06.2014 BETWEEN 2ND PETITIONER AND 3RD RESPONDENT.
Exhibit P3		TRUE COPY OF THE BYE-LAWS OF 4TH RESPONDENT.
Exhibit P4		TRUE COPY JUDGMENT OF THIS HON'BLE COURT DATED 18.11.2020 IN WPC NO.24053/2020.
Exhibit P5		A TRUE COPY OF CERTIFICATE PROPERLY ISSUED BY 2ND RESPONDENT OF FILING FORM A/B ISSUED BY 2ND RESPONDENT 18.12.2020.
Exhibit P6		ORDER DATED 25.01.2021 IN RP NO.69 OF 2021 RESTORING WPC 24053 OF 2020 FOR FURTHER ADJUDICATION.
Exhibit P7		INTERIM ORDER DATED 25.01.2021 PASSED BY THIS HON'BLE COURT IN WPC NO.24053/2020 FOR ISSUING CERTIFICATE OF FILING FORM A/FORM-B BY 2ND RESPONDENT.
Exhibit P8		TRUE COPY OF DISPUTED CERTIFICATE OF REGISTRATION ISSUED BY 2ND RESPONDENT IN FAVOUR OF 4TH RESPONDENT ALLEGEDLY UNDER KAOA.
Exhibit P9		FINAL ORDER DATED 10.03.2021 PASSED BY THE HON'BLE COURT IN WPC NO.24053 OF 220 CLOSING THE PETITION.
Exhibit P10)	COPY OF THE COMPLAINT FILED BY 4TH RESPONDENT HEREIN DATED 05.04.2021 BEFORE RERA FOR REGISTRATION UNDER KAOA.
Exhibit P11	L	TRUE COPY OF THE E-MAIL SENT BY 5TH RESPONDENT TO THE OWNERS AND ALLOTTEES DATED 05.04.2021.
Exhibit P12	2	TRUE COPY OF THE INTERIM REPORT OF 4TH RESPONDENT DATED 03.06.2021 BY 5TH RESPONDENT CLAIMING REGISTRATION UNDER KAOA.
Exhibit P13	3	CERTIFICATE OF REGISTRATION OF MYSTIC HEIGHTS 3 APARTMENT OWNERS ASSOCIATION ALLEGEDLY UNDER KAOA IN WHICH 5TH RESPONDENT HAVE INTEREST.



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APPENDIX OF WP(C) 21317/2021

PETITIONER	EXHIBITS	
Exhibit P1		A TRUE COPY OF THE RELEVANT PAGES OF DECLARATION IN FORM A ANNEXED WITH FORM E DATED 25/08/2021 FILED BY SECRETARY OF PETITIONER NO.1.
Exhibit P2		A TRUE COPY OF THE DEED OF APARTMENT OF FORM B FILED BY SECRETARY OF PETITIONER NO.1.
Exhibit P3		A TRUE COPY OF THE BYE LAW DATED 28/06/2021 APPROVED BY THE APARTMENT OWNERS OF KENT MAHAL APARTMENT COMPLEX THAT CONFIRMS THE PROVISIONS OF SECTION 16 OF THE KAOA.
Exhibit P4		A TRUE COPY OF THE RELEVANT PAGES OF DECLARATION IN FORM A ANNEXED WITH FORM E DATED 16/09/2021 FILED BY SECRETARY OF PETITIONER NO.2.
Exhibit P5		A TRUE COPY OF THE RELEVANT PAGES OF THE DEED OF APARTMENT DATED 16.09.2021 IN FORM B FILED BY SECRETARY OF PETITIONER NO.2.
Exhibit P6		A TRUE COPY OF THE BYE LAW APPROVED BY THE APARTMENT OWNERS OF KENT OAKVILLE APARTMENT THAT CONFIRMS THE PROVISIONS OF SECTION 16 OF THE KAOA.
Exhibit P7		A TRUE COPY OF THE RECEIPT DATED 07.09.2021 ISSUED BY THE RESPONDENT NO.2 TO THE PETITIONER NO.1.
Exhibit P8		A TRUE COPY OF THE RECEIPT DATED 20.09.2021 ISSUED BY THE RESPONDENT NO.2 TO THE PETITIONER NO.2.
Exhibit P9		A TRUE COPY OF THE LETTER DATED 27/08/2021 SUBMITTED BY THE PETITIONER NO.1 BEFORE THE RESPONDENT NO.2
Exhibit P10)	A TRUE COPY OF THE LETTER DATED 20/09/2021 SUBMITTED BY THE PETITIONER NO.2 TO THE RESPONDENT NO.2.
Exhibit P11		A TRUE COPY OF THE ORDER DATED 13.04.2018 PASSED BY THE HONOURABLE HIGH COURT OF KERALA IN WPC NO.6988/2018.
Exhibit P12		A TRUE COPY OF THE JUDGMENT DATED 10TH MARCH 2021 PASSED BY THIS HONOURABLE COURT IN WPC NO.24053 OF 2020.
Exhibit P13	}	A TRUE COPY OF THE LETTER DATED 30.10.2021 ISSUED BY THE RESPONDENT N.3 TO THE



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		PETITIONER NO.2.
Exhibit	P14	A TRUE COPY OF THE CERTIFICATE OF REGISTRATION UNDER THE KAOA ISSUED BY RESPONDENT NO.2 TO TRITVAM APARTMENT OWNERS ASSOCIATION.
Exhibit	P15	A TRUE COPY OF THE CERTIFICATE NO.8828/2017/D4 DATED FEBRUARY 2021 ISSUED BY THE RESPONDENT NO.2 TO MYSTIC HEIGHTS- 3.
Exhibit	P16	A TRUE COPY OF THE COURT STATUS IN WPC NO.9317 OF 2021 FROM THE WEBSITE OF THE KERALA HIGH COURT.
Exhibit	P17	A TRUE COPY OF THE RECEIPT NO.D4- 428227/2021/TDCEKM DATED 07/09/2021 ISSUED BY RESPONDENT NO.2 TO PETITIONER NO.1.
Exhibit	P18	A TRUE COPY OF THE RECEIPT NO.D4-432598/2021/T DC EKM DATED 20/09/2021 ISSUED BY RESPONDENT NO.2 TO PETITIONER NO.2.
Exhibit	P19	A TRUE COPY OF THE RECEIPT NO.D4-448910/2021/T DC EKM DATED 09/11/2021 ISSUED BY RESPONDENT NO.2 TO PETITIONER NO.2.
Exhibit	P20	A TRUE COPY OF THE LETTER DATED 29/11/2021 SUBMITTED BY PETITIONER NO.1 TO RESPONDENT NO.2.
Exhibit	P21	A TRUE COPY OF THE LETTER DATED 29/11/2021 SUBMITTED BY PETITIONER NO. 1 TO RESPONDENT NO.2.



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APPENDIX OF WP(C) 34824/2014

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE CIRCULAR FROM 2ND RESPONDENT DATED 01-08-2011 EXHBIIT P2 TRUE COPY OF THE REPORT IN MALAYALA MANORAMA DAILY



BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

WP(C) No.

of 2024

PETITIONER: ANANDA PADMANABHAN

RESPONDENT: UNION OF INDIA & OTHERS

AFFIDAVIT

- I, Ananda Padmanabhan, aged 29 years, S/o N. Viswanathan Nair, residing at 6D, Eco Paradise, Stadium Link Road, Kaloor, Kochi 682018, do hereby solemnly affirm and state as follows:
 - 1. I am the Petitioner in the Writ Petition. I know the facts of the case and I am competent to swear this Affidavit.
 - 2. It is submitted that the documents produced along with the Writ Petition are the true copy of the originals.
 - 3. It is further submitted that there will not be any undue gain or advantage to me or anyone related to me by filing this Writ Petition.
 - 4. It is further submitted that the Petitioner has not filed any other petitions before any other court for similar reliefs;

All the facts stated above are true to the best of my knowledge, belief and information.

Dated this the 4th Day of April 2024

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me in my office on this the 4th Day of April 2024

Counsel for the Petitioner

VAKALATH

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

of 2024 WP(C) No.

PETITIONER: ANANDA PADMANABHAN **RESPONDENT: UNION OF INDIA & OTHERS**

I, Ananda Padmanabhan, aged 29 years, S/o N. Viswanathan Nair, residing at 6D, Eco Paradise, Stadium Link Road, Kaloor, Kochi - 682018, do nereby appoint and retain Sri. Johnson Gomez, S.Biju (Kizhakknela), Sanjay Johnson, John Gomez, Sanjith Johnson, Ann Maria Sebastian, Arun Johny, Deebu R, Abin Jacob Mathew Advocate to appear for me/us in the above suit (Appeal or Petition) and to conduct and prosecute (or defend)the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein.I empower the said Pleader to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to produce in Court, any money, documents, or valuables Security on my/our behalf to apply for their returns and to receive back the same, to apply for and obtain copies of all documents in the record of the proceedings, to draw any moneys that may be payable to me in the above suit or matter and I/We do further empower my/our Pleader to accept on my/our behalf service of money of all or any appeals or petitions filed in any court of appeal, reference or revision with regard to the said suit or matter, before the disposal of the same in this Hon'ble Court and I/We do hereby agree that everything lawfully done or made by the said Pleader in the conduct of the suit or matter shall be as valid and binding on me as if done by me/us in person.

Signed this the 25th day of March, 2024

Name of parties:-

1) Ananda Padmanabhan

In the presence of:- Advocate Clerk Sunil Kumar Reg. No. 6/98 Sund Kumar Signed by the Party known to me in my presence on this the 25th day of March, 2024

Accepted Sanjay Johnson Johnson Gomez K/671/2018

ccepted K/2010/201

epted John Gomez Arun Johny K/1947/2022

dcepted Sanjith Johnson K/988/2021

Accepted

Accepted

K/474/1992

Abin Jacob Mathew K/3258/2022 Deebu R

K/2869/2022

ACCEPTED