



The Himachal Pradesh Apartment Ownership Act, 1978

Act 41 of 1978

Keyword(s):

Apartment, Association of Apartment Owners, Building, Common Areas and Facilities, Common Expenses, Common Profits, Declaration, Limited Common Areas and Facilities, Property

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**THE HIMACHAL PRADESH APARTMENT OWNERSHIP ACT,
1978**

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THE HIMACHAL PRADESH APARTMENT OWNERSHIP ACT, 1978

(ACT No. 41 OF 1978)¹

(Received the assent of the President of India on the 18th December, 1978 and was published in R.H.P. Extra., dated the 6th January, 1979, P. 93-99).

An Act to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property, in Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-ninth Year of the Republic of India, as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Himachal Pradesh Apartment Ownership Act, 1978.

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

1. For the Statement of Objects and Reasons see R.H.P. Extra., dated 16-9-78, p. 1206.

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

2. Application of the Act.—This Act applies only to 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 in section 12 :

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

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) "apartment" means a part of the property having a direct exit to a road, street or highway or to a common area leading to such road, street or highway which together with its undivided interest in the common areas and facilities forms an independent residential unit ;
- (b) "association of apartment owners" means the association formed in accordance with the provisions made in the bye-laws ;
- (c) "building" means a building containing two or more apartments or more than one building each containing two or more apartments comprised in the same property ;
- (d) "common areas and facilities" includes—
 - (1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building,
 - (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exits of the building,
 - (3) the easements, cellars, yards, gardens, parking areas, shopping centres, schools, garages and storage spaces,
 - (4) the premises for the lodging of janitors or persons employed for the management of the property,
 - (5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning, sewerage, etc.,
 - (6) the elevators, tanks, pumps, motors, compressors, pipes and ducts and in general all apparatus and installations existing for the common use,
 - (7) such other common facilities as may be specially provided for in the declaration,

- (8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;
- (e) "common expenses" means expenses of administration, maintenance, repair or replacement of the common areas and facilities and all other sums assessed against the apartment owners by the association of apartment owners;
- (f) "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;
- (g) "competent authority" means the estate manager as notified by the Housing Department of the Government of Himachal Pradesh;
- (h) "declaration" means the instrument by which the property is submitted to the provisions of this Act as hereinafter provided;
- (i) "limited common areas and facilities" means those common areas and facilities which may be designated in the declaration as reserved for use of certain apartment or apartments to the exclusion of other apartments;
- (j) "owner" in relation to a property or part thereof or an apartment, includes, for the purposes of this Act excepting the provisions of sub-section (1) of section 5 thereof, a lessee of such property or part or of such apartment, where the lease is for a period of twenty years or more;
- (k) "prescribed" means prescribed by rules made under this Act; and
- (l) "property" comprises the land, the building and the common areas and facilities.

4. A member of a co-operative society to be the owner of the apartment for limited purpose.—Where a co-operative society is the owner of a property or any part thereof, a member of such society in legal occupation of an apartment comprised in such property or such part shall be deemed to be the owner of such apartment within the meaning of the provisions of this Act excepting those of sub-section (1) of section 5.

5. An apartment to be transferable and heritable property.—(1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

(2) An apartment, together with its undivided interests in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that no apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be partitioned or sub-divided for any purpose whatsoever.

(3) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, but subject to the provisions of section 14 of this Act, any person,—

- (a) acquiring by purchase, or

(b) taking lease of, for a period of twenty years or more, an apartment comprised in property submitted to the provisions of this Act, shall,—

(i) in respect of the said apartment, be subject to the provisions of this Act, and

(ii) execute and register the said apartment in such form, in such manner and within such period as may be prescribed, undertaking to comply, strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the declaration.

(4) Any transfer made in contravention of the provisions of sub-section (3) shall be void.

6. Benamidar of an apartment to be deemed to be the real owner thereof.—

Where an apartment is transferred to one person for a consideration paid or provided by another person for his own benefit, the transferee shall, notwithstanding anything in the Transfer of Property Act, 1882 (4 of 1882), or in the Indian Trusts Act, 1882 (2 of 1882), or in any other law for the time being in force, be deemed to be the real owner of such apartment, and no court shall entertain any claim of the person, paying or providing the consideration for title in such apartment on the ground that he did not intend to pay or provide such consideration for the benefit of the transferee and that the transferee is his benamidar, or on any other ground.

7. 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.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered without the consent of all the apartment owners expressed in an amended declaration duly executed and registered as provided in this Act. The percentage of 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 other person shall bring any action for partition or division of any part thereof, unless the property has been withdrawn from the provisions of this Act.

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

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

(6) The association of apartment owners 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 apartment from time to

time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein, or accessible therefrom, or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other apartments.

8. Compliance with bye-laws, covenants etc.—Each apartment owner shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the declaration. Failure to comply with any of the same shall be a ground for an action to recover damages or for other relief or reliefs at the instance of the manager or the board of managers on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner.

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

10. Encumbrances against apartments.—During the period the property remains subject to this Act, no encumbrance of any nature shall be created against the property. During such period an encumbrance may, however, be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to each apartment, in the same manner as in relation to any other separate parcel of property subject to individual ownership.

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

12. Contents of declaration.—(1) The declaration referred to in section 2 shall be submitted in such form and in such manner, as may be prescribed, and shall contain the following particulars, namely:—

- (a) description of the property;
- (b) nature of interest of the owner or owners in the property;
- (c) existing encumbrance, if any, affecting the property;
- (d) description of each apartment containing its location, approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;
- (e) description of the common areas and facilities;
- (f) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;
- (g) value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities to each apartment and its owner for all purposes, including voting; and
- (h) such other particulars as may be prescribed.

(2) The declaration referred to in sub-section (1) may be amended under such circumstances and in such manner as may be prescribed.

13. A declaration or an instrument to be submitted before the competent authority and to be dealt with by him.—(1) Any declaration referred to in section 2 or any amendment thereto or any instrument referred to in sub-section (3) of section 5, shall, in the first instance, be submitted, in a duplicate, within fifteen days from the date of its execution, to the competent authority along with copies of site plans, building plans and relevant title deeds.

(2) On receipt of a declaration or an amendment thereto or an instrument referred to in sub-section (1), the competent authority shall,—

(a) after holding such inquiry, as it may consider necessary for the purpose, examine the declaration, the amendment or the instrument, as the case may be, to ascertain whether—

(i) the property concerned comes within the purview of this Act, and

(ii) the declaration, the amendment or the instrument is in order;

(b) by an order in writing, giving reasons therefor, accept or reject the declaration, the amendment or the instrument; and

(c) in case of acceptance, immediately return the declaration, the amendment or the instrument along with all the enclosures to the owner or owners, as the case may be, for registration, within fifteen days of the date of return.

(3) Any person, being aggrieved by an order of rejection, may, within thirty days from the date of such order or within such further period as the appellate authority may allow on sufficient ground being shown, appeal to the State Government, whose order on the appeal shall be final.

(4) Any order referred to in clause (b) of sub-section (2) or in sub-section (3) shall not be called into question in any court of law.

14. Withdrawal from the provisions of the Act.—(1) All the apartment owners may withdraw property from the provisions of this Act by an instrument executed to that effect.

(2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the apartment owners and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

(3) Any encumbrance 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 herein.

15. Instrument of declaration etc. compulsorily registerable.—(1) All instruments relating to the declaration or any amendment thereto referred to in section 12 of the withdrawal of a property from the provisions of this Act referred to in section 14 of the instrument referred to in sub-section (2) of section 5 shall be deemed to be instruments compulsorily registerable within the meaning of clause (d) of sub-section (1) of section 17 of the Registration Act, 1908 (16 of 1908).

(2) The withdrawal provided in section 14 shall in no way bar the subsequent re-submission of the property to the provisions of this Act.

16. Bye-laws.—(1) Every property shall be administered in accordance with such bye-laws as may be framed by the competent authority with the prior approval of the State Government.

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

- (a) the manner in which the association of apartment owners is to be formed, the election of a board of managers from amongst the apartment owners, the number of persons constituting the board, the number of members of such board; to retire annually, the powers and duties of the board; the honorarium, if any, of the members of the board, the method of removal from office of members of the board; the powers of the board to engage the services of a secretary or manager, delegation of powers and duties to such secretary or manager;
- (b) method of calling meetings of the apartment owners and the number to constitute a quorum;
- (c) election of a president who shall preside over the meetings of the board and of the association of apartment owners;
- (d) maintenance, repair and replacement of the common areas and facilities and payments therefor;
- (e) manner of collecting share of the common expenses from the apartment owners;
- (f) any other matter considered to be necessary for the administration of the property.

17. Separate assessment.—Notwithstanding anything to the contrary in any other law for the time being in force, each apartment (of a property including its percentage of undivided interest in the common areas and facilities thereof) the owner of which does not own any other apartment in such property, shall be deemed to be a separate unit for the purpose of assessment of municipal rates and taxes.

18. Charge for property of common expenses.—All sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment prior to all other charges, except charge, if any, on the apartment for payment of municipal rates and taxes.

19. Liability for unpaid common expenses.—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.

20. Penalty.—(1) If the owner of any apartment subject to the provisions of this Act, contravenes—

- (a) any of the provisions of section 9 or section 10,
- (b) any bye-law, that may be framed by the competent authority, or
- (c) any covenant, condition or restriction set forth in the declaration to which he is subject or a party,

he shall, at the instance of the manager, or the board of managers on behalf of the association of the apartment owners, an aggrieved apartment owner or

in a proper case, the competent authority, on conviction before a magistrate, be liable to a fine which may extend to rupees one thousand, or to a term of imprisonment which may extend to six months, or to both, and in case of continuing contravention, to additional fine which may extend to rupees fifty for every day during which such contravention continues after conviction for the first such contravention.

(2) Any contravention punishable under sub-section (1) may, where prosecution lies or is instituted at the instance of or by the manager or the board of managers on behalf of the association of the apartment owners, be compounded by such association, either before or after the institution of the prosecution, on payment of, for credit to its fund, such sum as it may think fit.

(3) The provisions of this section shall apply without prejudice to those of sections 8, 18, and 19.

21. Power to make rules.—The State Government may, by notification in the Official Gazette, make¹ rules for carrying out the purposes of this Act.

22. Rules and bye-laws to be laid before State Legislature.—Every rule or bye-law made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rules or bye-laws, as the case may be, or decides that the rules or bye-laws should not be made, the rule or bye-law 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 an annulment shall be without prejudice to the validity of anything previously done under that rule or bye-law.

23. Power to remove difficulty.—If any difficulty arises in giving effect to the provisions of this Act the Government may, by order published in the Official Gazette, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of such difficulty.

24. Removal of doubts.—For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882 (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 as those provisions apply in relation to any other immovable property.

25. Severability.—If any provision of this Act or any section, sentence, clause, phrase or word, 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. Rules framed *vide* notification No. Avas-1-A (3) 579 dated 18th April, 1980 published in RHP dated 12-7-1980 P. 741-742 (appended).