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LEGISLATIVE SUPPLEMENT

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PART I
LEGISLATIVE DEPARTMENT

Notification

The 27th September, 1983

No. 13-Leg./83.—The following Act of the Legislature of the State of Haryana received the assent of the Governor of Haryana on the 26th September, 1983, and is hereby published for general information :—

Haryana Act No. 10 of 1983

THE HARYANA APARTMENT OWNERSHIP ACT, 1983.

AN

ACT

to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property and matters connected therewith.

BE it enacted by the Legislature of the State of Haryana in the Thirty-fourth Year of the Republic of India as follows :—

1. (1) This Act may be called the Haryana Apartment Ownership Act, 1983. Short title and commencement.

(2) It extends to the whole of the State of Haryana.

(3) This Act shall come into force in such areas and on such dates as the State Government may, by notification, appoint and different dates may be appointed for different areas.

2. 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 declaration as hereinafter provided : Application of Act.

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

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

Definitions.

(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 ;

(b) "apartment owner" means the person or persons owning an apartment and 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 the apartment owners acting as a group in accordance with the bye-laws and the 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 exits of the building ;
 - (3) the basements, cellars, yards, gardens, parking area and storage spaces ;
 - (4) the premises for the lodging of janitors or persons employed for the management of the property ;
 - (5) installation 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 existing maintenance and safety or normally in common use ;
- (g) "common expenses" means—
 - (1) all sum 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 association of apartment owners ;
- (4) expenses declared as common expenses by the provisions of this Act, or by the declaration or the by-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 ;
- (i) "competent authority" means the Director, Town and Country Planning Department, Haryana and includes a person for the time being appointed by the Haryana Government, by notification, to exercise and perform all or any of the powers and functions of the competent authority under this Act and the rules made thereunder ;
- (j) "declaration" means the instrument by which the property is submitted to the provisions of this Act and includes the amended declaration ;
- (k) "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 jointly in possession or residence ;
- (l) "limited common areas and facilities" means those common areas and facilities designated in the declaration and reserved for use of certain apartment or apartments to the exclusion of other apartments ;
- (m) "majority" or "majority of apartment owners" means the apartment owners with 51 per cent or more of the votes in accordance with the percentage assigned in the declaration to the apartments for voting purposes ;
- (n) "person" includes a joint family ;
- (o) "prescribed" means prescribed by the rules made under this Act ;
- (p) "property" means the land, the building, all improvements and structures thereon, owned in free-hold 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.

Status of apartments.

4. Each apartment, together with its undivided interest in the common areas and facilities, appurtenant to such apartment, shall for all purposes constitute heritable and transferable immoveable property within the meaning of any law for the time being in force in the State of Haryana.

Ownership of apartment.

5. (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment in accordance with the declaration.

(2) Each apartment owner shall execute a deed of apartment in relation to his apartment in the manner prescribed.

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 apartments 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 and 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 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 thereof, to have access to each apartment from 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 repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

7. Each apartment owner shall comply strictly with the bye-laws, regulations, covenants, conditions and restrictions, set forth in the declaration or in the deed of 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. Compliance with covenants, bye-laws.

8. No apartment owner shall do any work which would jeopardise the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament or add any material structure or excavate any additional basement or cellar without the prior consent of other apartment owners. Prohibition of certain works.

9. (1) Subsequent to the recording of the declaration as provided in this Act and while the property remains subject to this Act, no encumbrance of any nature shall thereafter arise or be effective against the property. During such period, encumbrances may arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, in the same manner and under the same conditions in every respect as encumbrances may arise or be created upon or against any other separate parcel of property subject to individual ownership : Encumbrances against apartments.

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 shall be the basis for a charge or any encumbrance under the provisions of the Transfer of Property Act, 1882 against the apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such 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 consent of each apartment owner and shall be the basis for a charge or encumbrance under the Act aforesaid against each of the apartments and shall be subject to the provisions of sub-section (2).

(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 proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the percentage appearing in the declaration. Subsequent to any such payment, discharge or other satisfaction,

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(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.

12. (1) The deed of apartment shall include the following particulars, Contents of deed of apartment, namely :—

- (a) description of the land as provided in section 11 or the postal address of the property, including in either case the liber, page and date of executing the declaration, the date and serial number of its registration under the Indian 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 ;
- (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 ; and
- (e) any further details which may be 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 respect of each apartment and the floor plans of the buildings referred to in sub-section (2) shall be registered under the Indian Registration Act, 1908.

Declaration, deeds of apartments and copies of floor plans to be registered.

(2) Simultaneously with the registration of the declaration, there shall be filed alongwith it a set of the floor plans of the buildings 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 declarations and deeds of apartments under the Haryana Apartment Ownership Act

1983" 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 Sub-Registrar of the Sub-District in which the property containing the apartment is situated, or if there is no Sub-Registrar for the area, to the Registrar of the District in which such property is situated, 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.

(5) The Sub-Registrar or as the case may be, the Registrar shall register the declaration alongwith the floor plans of the building and the deed of apartment in the register and also enter particulars in the index kept under sub-section (3). Any person acquiring an apartment of any apartment owner shall be deemed to have notice of the declaration and deed of apartment.

(6) Except as provided in this section, the provisions of the Indian Registration Act, 1908 shall, *mutatis mutandis*, apply to the registration of such declarations and deeds of apartments and the words and expressions used in this section but not defined in this Act shall have the meaning assigned to them in the Indian Registration Act, 1908.

Removal
from
provisions
of Act.

14. (1) All the apartment owners may remove a property from the provisions of this Act by any instrument to that effect duly executed :

Provided that the holders of all charges and other encumbrances affecting any of the apartments may 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 sub-
sequent
resubmission
of property
to Act.

15. The removal provided for in section 14 shall in no way bar the subsequent resubmission of the property to the provisions of this Act.

Bye-laws.

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 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, the tenure of such Board and that the term of at least one third of the members of such Board shall expire annually ; the powers and duties of the board, the method of appointment

and removal from office of Secretary, 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 any or all of them ;

- (b) the method of calling meeting of the Board of Manager or of the apartment owners including the procedure of voting and quorum;
 - (c) the election of a President from among the members of the Board of Managers to 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 resolution shall be recorded;
 - (e) the election of a Treasurer who shall keep the financial records and books of accounts;
 - (f) the maintenance, repair and replacement of the common areas and facilities and payments therefor;
 - (g) the manner of collecting from the apartment owners their share of the common expenses;
 - (h) the 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 the regulations governing 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 apartment owners;
 - (k) the percentage of the votes required to amend the bye-laws and the procedure for such amendments.
- (3) The bye-laws may also provide for the following matters, namely:—
- (a) subject to the provisions of this Act, provisions 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 lease out certain areas of the property for the purposes for which the same are meant and for distribution of resulting proceeds to the apartment owners as income or application thereto in reduction of their common charges for maintaining the said property;

- (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.

Liability
towards
common
expenses.

17. No apartment owner shall be entitled to exempt himself from the liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment.

Separate
assessment.

18. Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and its percentage of undivided interest in the common area and facilities appurtenant to such apartment (being an apartment submitted to the provisions of this Act) shall be deemed to be separate for the purposes of assessment to tax on lands and buildings leviable under such law and shall be assessed and taxed accordingly. The building, the property or any of the common areas and facilities shall not be deemed to be separate property for the purpose of the levy of such tax.

Charge on
property
for com-
mon ex-
penses.

19. All sums assessed by the association of apartment owners towards the share of the common expenses chargeable to any apartment and remaining unpaid, shall constitute a charge on such apartment prior to all other charges, except charge, if any, on the apartment for payment of the Government and local taxes, and all sums unpaid on a first mortgage of the apartment.

Joint and
several
liability of
vendee etc.
for unpaid
common
expenses.

20. Upon the transfer of an apartment, the transferee of the apartment shall be jointly and severally liable with the transferor for all unpaid assessments for his share of the common expenses upto the time of the transfer without prejudice to the transferee's right to recover from the transferor the amount paid by the transferee therefor. Any such transferee shall be entitled to a statement from the Secretary or Board of Managers, setting forth the amount of the unpaid assessment against the transferor and such transferee and such apartment shall not be liable for nor shall be subject to a charge for any unpaid share of common expenses against such apartment accrued prior to such transfer 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 amount as shall be required or requested. Such insurance coverage shall be for the property in the name of such Manager or the Board of Managers or the association of the apartment owners as trustee for each of the apartment owners in the percentages specified in the declaration. Premiums shall be deemed to be a part of 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,
destruction
or damage.

22. If within sixty days of the date of damage to or destruction of all or part of the property it is not determined by the association of apartment owners to repair, reconstruct or rebuild, in that event :—

- (a) the property shall be deemed to be owned in common by apartment owner;

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- (b) the undivided interests 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 owners 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 herein ; and
- (d) the property shall be subject to an action for partition at the suit of any apartment owner in which event the net proceeds of the 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.

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.

24. (1) All apartment owners, tenants of such owners, employees of owners and tenants or any other person who may in any manner use property or any part thereof submitted 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. Act to be binding on apartment owners, tenants etc.

(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.

25. (1) The State Government may, by notification, make rules for carrying into effect the provisions of this Act. Power to make rules.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the House of the State Legislature while it is in session for a total period of ten days which may be comprised in one session or in successive sessions, and if before the expiry of the session in which it is laid or the session immediately following the House agrees in making any modification in the rule or the House agrees that the rule should not be made the rules shall have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity or anything previously done or omitted to be done under that rule.

A. S. GARG,

Joint Secretary to Government, Haryana,
Legislative Department.

THE SCHEDULE

No. of Demand	Services and purposes	Major Head	Sums not exceeding		Total	Major Head	Sums not exceeding		Total	Total (Revenue and Capital)
		Revenue	Grants made by Legislative Assembly	Charged on the Consolidated Fund		Capital	Grants made by Legislative Assembly	Charged on the Consolidated Fund		
1	2	3	4	5	6	7	8	9	10	11
			Rs	Rs	Rs		Rs	Rs	Rs	Rs
8	Buildings and Roads	259—Public Works	—	42,250	42,250		—	—	—	42,250
						Capital Outlay on Public Works	—	26,78,760	26,78,760	26,78,760
						Capital Outlay on Medical	—	39,495	39,495	39,495
			—	42,250	42,250		—	27,18,255	27,18,255	27,60,505
11	Urban Development	284—Urban Development	1,85,00,000	—	1,85,00,000		—	—	—	1,85,00,000
13	Social Welfare and Rehabilitation	288—Social Security and Welfare (excluding Civil Supplies)	14,26,000	—	14,26,000	Capital Outlay on Social Security and Welfare	—	—	—	14,26,000
			14,26,000	—	14,26,000		12,84,000	—	12,84,000	12,84,000
							12,84,000	—	12,84,000	27,10,000
20	Forest	307—Soil & Water Conservation (Forest portion)	10	—	10		—	—	—	10
		313—Forest	10	—	10		—	—	—	10
			20	—	20		—	—	—	20
Total Expenditure met from Revenue and Capital			1,99,26,020	42,250	1,99,68,270		12,84,000	27,18,255	40,02,255	2,39,70,525