

**GOVERNMENT OF WEST BENGAL
LEGISLATIVE DEPARTMENT**

West Bengal Act XVI of 1972

**THE WEST BENGAL APARTMENT OWNERSHIP
ACT, 1972.**

[Passed by the West Bengal Legislature.]

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 5th July, 1972.]

[5th July, 1972.]

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

WHEREAS it is expedient to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property;

It is hereby enacted in the Twenty-third Year of the Republic of India, by the Legislature of West Bengal, as follows :—

1. (1) This Act may be called the West Bengal Apartment Ownership Act, 1972.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

(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. 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 10 :

Application
of the Act.

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.

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

Definitions.

(a) “apartment” means part of a 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;

(Section 3.)

- (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 four or more apartments;
- (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 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 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 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 under the Housing Directorate of the Government of West Bengal;
- (h) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided;

XVI of 1972.]

(Sections 4, 5.)

- (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 the other apartments;
- (j) "prescribed" means prescribed by rules made under this Act;
- (k) "property" comprises the land, the building and the common areas and facilities.

4. (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

An apartment to be transferable and heritable property.

(2) An apartment, together with its undivided interest 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 subdivided for any purpose whatsoever.

5. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration.

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 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.

(Sections 6—10.)

(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.

Compliance
with bye-
laws,
covenants,
etc.

6. 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.

Certain work
prohibited.

7. 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.

Encum-
brances
against
apartments.

8. 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 such apartment, in the same manner as in relation to any other separate parcel of property subject to individual ownership.

Common
profits and
expenses.

9. 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.

10. (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;

XVI of 1972.]

(Sections 11—13.)

- (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 appertaining to each apartment and its owner for all purposes, including voting;
- (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.

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

Withdrawal
from the
provisions of
the Act.

(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.

12. (1) All instruments relating to the Declaration or any amendment thereto referred to in section 10 or the withdrawal of a property from the provisions of this Act referred to in section 11 shall be deemed to be instruments compulsorily registrable within the meaning of clause (b) of sub-section (1) of section 17 of the Registration Act, 1908.

Instruments
of
Declaration
etc.,
compulsorily
registrable.

16 of 1908.

(2) The withdrawal provided for in section 11 shall in no way bar the subsequent re-submission of the property to the provisions of this Act.

13. (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.

Bye-laws.

(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 among the apartment owners, the number of persons constituting the Board, the number of members of such

(Section 14—18.)

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.

Separate
assessment.

14. Notwithstanding anything to the contrary contained in any law for the time being in force, each apartment and its percentage of undivided interest in the common areas and facilities shall be deemed to be a separate property for the purpose of assessment of municipal rates and taxes.

Charge for
property of
common
expenses.

15. 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.

Liability for
unpaid
common
expenses.

16. 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 up to the time of the sale.

Power to
make rules.

17. The State Government may make rules for carrying out the purposes of this Act.

Removal of
doubts.

18. For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882, shall, in so far as they are not 4 of 1882.
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.