

# APARTMENT LAW eMANUAL

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*For Association of Apartment Owners  
in Uttar Pradesh*

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*For internal use.*

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**UTTAR PRADESH APARTMENT  
(PROMOTION OF CONSTRUCTION, OWNERSHIP &  
MAINTENANCE) ACT 2010**



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No. 398(2)/LXXIX-V-1-10-1(ka) 12-2010

Dated Lucknow, March 19 , 2010

**NOTIFICATION****Miscellaneous**

In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Adhiniyam, 2010 (Uttar Pradesh Adhiniyam Sankhya 16 of 2010) as passed by the Uttar Pradesh Legislature assented to by the Governor on March 18, 2010

**THE UTTAR PRADESH APARTMENT (PROMOTION OF  
CONSTRUCTION, OWNERSHIP AND MAINTENANCE)**

**ACT, 2010**

(U.P. Act no. 16 of 2010)

[As passed by the Uttar Pradesh Legislature)

**AN****ACT**

to provide for the ownership of an individual apartment in a building of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto.

IT IS HEREBY enacted in the sixty first year of the Republic of India as follows:-

**CHAPTER I****PRELIMINARY**

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| <b>Short title,<br/>extent and<br/>Commencement</b> | 1. (1) This Act may be called the Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Act, 2010.<br>(2) It extends to the whole of State of Uttar Pradesh.<br>(3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.   |
| <b>Application</b>                                  | 2. 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.  |
| <b>Definitions</b>                                  | 3. In this Act, unless the context otherwise requires,—<br>(a) "allottee" in relation to an apartment, means the person to whom such apartment has been allotted, sold or otherwise transferred by the promoter;<br>(b) "apartment" means a part of any property, intended for any type of independent use, including enclosed spaces located on one or more floors or any part or parts thereof, in a building to be used for residential or official purposes or for the purpose of practicing any |

profession, or for carrying on any occupation, trade or business (excluding shopping malls and multiplexes) or for such other use as may be prescribed, and with a direct exit to a public street, road or to a common area leading to such street, road and includes any garage or room (whether or not adjacent to the building in which such apartment is located) provided by the promoter for use by the owner of such apartment for parking or, as the case may be, for the residence of any domestic aide employed in such apartment;

- (c) "apartment number" means the number, letter or combination thereof, designating an apartment;
- (d) "apartment owner" means the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more;
- (e) "association of apartment owners" means all the owners of the apartments therein, acting as a group in accordance with the bye-laws;
- (f) "board" means the Board of Management of an Association of Apartment Owners elected by its members under the bye-laws;
- (g) "building" means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, each containing two or more apartments with a total of four or more apartments in all such buildings;

Provided that an independent house constructed in a row with independent entry and exit, whether or not adjoining to other independent houses, shall not constitute a building.

- (h) "bye-laws" means the bye-laws made under this Act;
- (i) "common areas and facilities" means—
  - (i) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;
  - (ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;
  - (iii) the basements, cellars, yards, parks, gardens, community centres and parking areas of common use;
  - (iv) the premises for the lodging of janitors or persons employed for the management of the property;
  - (v) installations of central services, such as, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating and sewerage;
  - (vi) the elevators, tanks, pumps, motors, fans, cable pipe line (TV, gas, electricity etc.) rain water harvesting system, compressors, ducts and in general all apparatus and installations existing for common use;

- (vii) such other community and commercial facilities as may be specified in the bye-laws; and
- (viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;
- (j) "common expenses" means—
  - (i) expenses of administration, maintenance, repair or replacement of the common areas and facilities, utilities, equipments and machineries and all other sums assessed against the owners of apartment by the Association of Apartment Owners.
  - (ii) expenses declared as common expenses by the provisions of this Act or by the bye-laws, or agreed upon by the Association of Apartment Owners;
- (k) "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;
- (l) "competent authority" means any person or authority authorised by the government by notification to perform the functions of the competent authority under this Act for such areas as may be specified in the notification;
- (m) "declaration" means declaration referred to in section 12;
- (n) "deed of apartment" means the Deed of Apartment referred to in section 14;
- (o) "government" means the Government of Uttar Pradesh;
- (p) "independent areas" means the areas which have been declared but not included as common areas for joint use of apartments and may be sold by the promoter without the interference of other apartment owners;
- (q) "joint family" means a Hindu undivided family, and in the case of other persons, a group or unit, the members of which are by custom, joint in possession or residence;
- (r) "local authority" means the Development Authority established under the Uttar Pradesh Urban Planning and Development Act, 1973 or Controlling Authority established under the Uttar Pradesh (Regulation of Building Operations) Act, 1958 or Special Area Development Authority established under the Uttar Pradesh Special Area Development Authorities Act, 1986 or the Uttar Pradesh Housing and Development Board established under the Uttar Pradesh Housing and Development Board Act, 1965 or the Industrial Area Development Authority established under the Uttar Pradesh Industrial Area Development Authorities Act, 1976 or the Uttar Pradesh Cooperative Housing Federation established under the Uttar Pradesh Cooperative Housing Societies Act, 1965 or the Municipal Corporation constituted under the Uttar Pradesh Municipal Corporations Act, 1959 or the municipality established under the Uttar Pradesh Municipalities Act, 1916, having jurisdiction over the site of property;

- (s) "limited common areas and facilities" means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments;
- (t) "manager" means the Manager of an Association of Apartment Owners appointed under the bye-laws;
- (u) "person" includes a firm and a joint family, and also includes a group housing co-operative society;
- (v) "Prescribed" means prescribed by rules made under this Act;
- (w) "promoter" means a person, company, firm, Association or co-operative society, as the case may be, by which, or by whom the building has been constructed;
- (x) "property" means the land, the building, and all improvements and structures thereon, 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;

## CHAPTER II

### DUTIES AND LIABILITIES OF PROMOTERS

#### **General liabilities of promoter**

4. (1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of following to an intending purchaser and the Competent Authority:-
  - (a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed;
  - (b) all encumbrances, if any, on such land or building, and any right, title, interest or claim of any person in or, over such land or building;
  - (c) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;
  - (d) detail of all common areas and facilities as per the approved layout plan or building plan;
  - (e) the nature of fixtures, fittings, and amenities, which have been or proposed to be provided;
  - (f) the details of the design and specifications of works or and standards of the material which have been or are proposed to be used in the construction of the building, together with the details of all structural, architectural drawings, layout plans, no objection certificate from Fire Department, external and internal services plan of electricity, sewage, drainage and water supply system etc. to be made available with the Association;

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- (g) all outgoings, including ground rent, municipal or other local taxes, water and electricity charges, revenue assessments, maintenance and other charges, interest on any mortgage or other encumbrance, if any, in respect of such land, building and apartments;
  - (h) such other information and documents as may be prescribed.
- (2) Every promoter shall,
- (a) specify in writing the date by which, construction of the apartment is to be completed subject to force majeure clause and intimation sent to such purchaser;
  - (b) declare the penalty for delay in completion of the building and also penalty in the event of non-payment of instalment by the purchaser;
  - (c) declare the conditions for cancellation or withdrawal of allotment and the extent of compensation either way in the event of violations of any of the conditions.
  - (d) give the intending purchaser, on payment of photocopying charges, true copies of the documents referred to in this section.

- (3) Where a building or apartment is proposed to be constructed by a promoter, the Jal Sansthan or the Uttar Pradesh Power Corporation Limited or the local authority, may supply water and electricity respectively on a temporary basis on intimation of approval of the plan by the prescribed sanctioning authority:

Provided that the Jal Sansthan or the Uttar Pradesh Power Corporation Limited or the local authority may, on an intimation from the prescribed sanctioning authority, disconnect such supply of water and electricity as the case may be, if the promoter proceeds with the construction of building contrary to the approved plan, except for such deviations as are within the permissible limits:

Provided further that no such disconnection of supply of water and electricity, as the case may be, shall be made by the Jal Sansthan or Uttar Pradesh Power Corporation Limited or Local Authorities without first giving a show cause notice and providing opportunity of hearing for intended disconnection and also recording reasons in writing thereof.

- (4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into and registered with the office of concerned registering authority. The promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the owner:

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without the previous consent of the intending purchaser, project Architect, project Engineer and

obtaining the required permission of the prescribed sanctioning authority, and in no case he shall make such alterations as are not permissible in the building bye-laws.

- (5) An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building bye-laws. The completion certificate shall be obtained by promoter from prescribed authority within the period of two years from the date of sale agreement. Provided that if the construction work is not completed within the stipulated period, with the permission of the prescribed authority;

Provided further that if the completion certificate is not issued by the prescribed sanctioning authority within three months of submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months.

*Explanation:* For the purposes of this sub-section "completion" means the completion of the construction works of a building as a whole or the completion of an independent block of such building, as the case may be.

- (6) After obtaining the completion certificate as provided in sub-section (5) and handing over physical possession of the apartments to the allottees, it shall be the responsibility of the promoter to hand over the possession of the common areas and facilities and also the originals of the plans and documents to the Association of apartment owners formed and registered under sub-section (2) of section-14.

Provided that handing over of physical possession of the common areas and facilities under this sub-section shall be completed within a period of one year from the date of issue of completion certificate or the date by which seventy five percent of the apartments have been handed over to the allottees, whichever is earlier, subject to the condition that the promoter shall be responsible for the sale and transfer of the balance apartments.

- (7) The promoter shall maintain the common areas and facilities till the Association is formed in accordance with the conditions laid down in sub section (2) of section-14 and shall be entitled to levy proportionate maintenance charges as specified in the declaration.
- (8) The promoter shall be responsible upto two years after handing over the apartments regarding construction and structural defects in the building constructed by him and he shall get such defects removed at his own cost, failing which he shall liable to pay compensation for the losses incurred by him for such defects.
- (9) The promoter shall pay all local taxes including house tax, water tax, sewer tax, until and unless subleases have been executed in favour of the apartment owners

### CHAPTER III

#### RIGHTS AND OBLIGATIONS OF APARTMENT OWNERS

**Rights of  
Apartment  
Owners**

5. (1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him.
- (2) Every person who becomes entitled to the exclusive ownership and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.
- (3) (a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority.
- (b) 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 apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.
- (4) The common areas and facilities shall not be transferred and remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, and any covenant to the contrary shall be void.
- (5) Each apartment owner may use the common areas and facilities in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.
- (6) The necessary work relating to maintenance, repair and modification or relocation of the common areas and facilities and the making of any additions or improvements thereto, shall be carried out only in accordance with the provisions of this Act and the bye-laws.
- (7) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Board or Manager to have access to each apartment from time to time during reasonable hours for the maintenance, repairs or replacement of any of the common areas or facilities therein, or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to any other apartment or apartments.

**Obligation of  
Apartment  
Owners**

6. (1) Each apartment owner shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Deed of Apartment, and failure to comply with any of them shall be a ground for action to recover sums due for damages, or for injunctive relief, or both, by the Manager or Board on behalf of the Association of Apartment Owners or in a proper case, by an aggrieved apartment owner.

- (2) No apartment owner shall do any work which would be prejudicial to the soundness or safety of the property or reduce the value thereof or impair any easement or heriditament or shall add any material structure or excavate any additional basement or cellar or alter the external facade without first obtaining the consent of all the apartment owners.

*Explanation:* In this section, reference to apartment owners shall be construed, in relation to a building in any block, pocket or other designated area, the apartment owners of the concerned building in such block, pocket or other designated area.

#### CHAPTER IV OWNERSHIP, HERITABILITY AND TRANSFERABILITY OF APARTMENTS

**Apartment to be heritable and transferable**

7. Each apartment, together with the undivided interest in the common areas and facilities appurtenant to such apartment, shall, for all purposes constitute a heritable and transferable immovable property within the meaning of any law for the time being in force, 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 or punishment as any other immovable property or make a bequest of the same under the law applicable to the transfer and succession of immovable property.

Provided that where the allotment, sale or other transfer of any apartment has been made by any group housing co-operative society or association in favour of any member thereof, the transferability of such apartment and all other matters shall be regulated by the law, which may provide a transfer fee at a maximum rate of 2 percent but not less than 1 percent in any case of the sale value, applicable to such group housing co-operative society or association whosoever maintains the common areas and facilities. The transfer fee shall no be leviable in case of heritability.

**Ownership of apartment shall be subject to conditions**

8. Where any allotment, sale or other transfer of any apartment has been made, whether before or after the commencement of this Act, in pursuance of any promise of payment, or part payment, of the consideration thereof, the allottee or transferee, as the case may be, shall not become entitled to the ownership and possession of that apartment or to a percentage of undivided interest in the common areas and facilities appurtenant to such apartment until full payment has been made of the consideration thereof together with interest, if any due thereon, and where any such allottee or transferee has been inducted into the possession of such apartment or any part thereof in pursuance of such allotment or transfer, he shall, until the full payment of the consideration has been made continue to remain in possession thereof on the same terms and conditions on which he was so inducted into possession of such apartment or part thereof. There shall not be any hidden charges.

All sale consideration shall be fixed either at the time of agreement to sale or when the purchases are made final in writing as per provisions of this Act;

**Right of re-entry**

9. (1) Where any land is given on lease by a person (hereafter in this section referred to as the lessor) to another person (hereafter in this section referred to as the lessee, which term shall include a person in whose favour a sub-lease of such land has been granted), and any building has been constructed on such land by the lessee or by any other person authorised by him or claiming through him, such lessee shall grant in respect of the land as many sub-leases as there are apartments in such building and shall execute separate deeds of sub-lease in respect of such land in favour of each apartment owner before handing over the possession of apartment in such building to him. The lessor shall be duty bound to supply the plans and other legal documents to the lessee.

Provided that no sub-lease in respect of any land shall be granted except on the same terms and conditions on which the lease in respect of the land has been granted by the lessor and no additional terms and conditions shall be imposed by the lessee except with the previous approval of the lessor.

- (2) Where the lessee has any reason to suspect that there had been any breach of the terms and conditions of the sub-lease referred to in sub-section (1), he may himself inspect the land on which the building containing the concerned apartment has been constructed, or may authorise one or more persons to inspect such land and make a report as to whether there had been any breach of the terms and conditions of any sub-lease in respect of such land and, if so, the nature and extent of such breach, and for this purpose, it shall be lawful for the lessee or any person authorised by him to enter into, and to be in, the land in relation to which such breach has been or is suspected to have been committed.
- (3) Where the lessee or any person authorised by him makes an inspection of the land referred to in sub-section (1), he shall record in writing his findings on such inspection [a true copy of which shall be furnished to the apartment owner by whom such breach of the terms and conditions of sub-lease in respect of the land appurtenant to the apartment owned by him has been committed (hereinafter referred to as the defaulting apartment owner)] and where such findings indicate that there had been any breach of the terms and conditions of the sub-lease in respect of such land, the lessee may, by a notice in writing, require the defaulting apartment owner to refrain from committing any breach of the terms and conditions of the sub-lease in respect of such land, or to pay in lieu thereof such composition fees as may be specified in the notice in accordance with such scales of composition fees as may be prescribed.
- (4) The defaulting apartment owner who is aggrieved by any notice served on him by the lessee under sub-section (3) may, within thirty days from the date of service of such notice, prefer an appeal to the Court of the District Judge having jurisdiction (hereinafter referred

to as the District Court), either challenging the finding of the lessee or any person authorised by him or disputing the amount of composition fees as specified in the notice, and the District Court may, after giving the parties a reasonable opportunity of being heard, confirm, alter or reverse those finding or may confirm, reduce or increase the amount of composition fees or set aside the notice.

- (5) Where, on the breach of any terms and conditions of any sub-lease in respect of any land, any composition fees become payable, the defaulting apartment owner shall be deemed to have been guilty of such breach and in default of payment thereof it shall be lawful for the lessee to recover the amount of the composition fees from the defaulting apartment owner as arrears of land revenue.
- (6) Where any composition fees are paid whether in pursuance of the notice served under sub-section (3) or in accordance with the decision of the District Court or a higher court on appeal, no further action shall be taken by the lessee for the breach of the terms and conditions of the sub-lease in respect of the land in relation to which payment of such composition fees has been realised.
- (7) If the defaulting apartment owner omits or fails to refrain from committing any breach of the terms and conditions of the sub-lease in respect of the land or, as the case may be, omits or fails to pay the composition fees in lieu thereof—
  - (i) in accordance with the notice issued by the lessee under sub-section (3); or
  - (ii) where the finding of the lessee or the person authorised to inspect the land about any breach of the terms and conditions of any sub-lease in respect of the land or the amount of composition fees specified in the notice issued by the lessee are altered by the District Court on appeal or by any higher court on further appeal, in accordance with the decision of the District Court or such higher court, as the case may be;

the lessee shall be entitled,—

- (a) where no appeal has been preferred under sub-section (4), within sixty days from the date of service of the notice under sub-section (3), or
- (b) where an appeal has been preferred under sub-section (4), within sixty days from the date on which the appeal is finally disposed of by the District Court or, where any further appeal is preferred to a higher court, by such higher court,

to exercise the right of re-entry in respect of the undivided interest of the lessee in the land appurtenant to the apartment owned by the defaulting apartment owner, and where such right of re-entry cannot be exercised except by the ejectment of the defaulting apartment owner from his apartment, such right of re-entry shall include a right to eject the defaulting apartment owner from the concerned apartment:

Provided that no such ejection shall be made unless the defaulting apartment owner has been paid by the lessee such amount as compensation for such ejection as may be determined in accordance with the prescribed scales of compensation.

- (8) No appeal preferred under sub-section (4) shall be admitted, unless twenty-five per cent of the composition fees specified in the notice served on the defaulting apartment owner has been deposited to the credit of the District Court in savings bank account to be opened by the District Court in any branch of an approved bank:

Provided that the District Court may, on sufficient cause being shown, either remit or reduce the amount of such deposit, and the interest accruing on such deposit, shall ensure to the credit of defaulting apartment owner by whom such deposit has been made:

Provided further that the amount of such deposit together with the interest due thereon shall be distributed by the District Court in accordance with the decision in such appeal, or where any further appeal has been preferred against such decision, in accordance with the decision in such further appeal.

- (9) The defaulting apartment owner, who is aggrieved by the amount offered to be paid to him under the proviso to sub-section (7) as compensation for ejection from his apartment may, within thirty days from the date of such offer, prefer an appeal to the District Court and the District Court may, after giving the parties a reasonable opportunity of being heard, maintain, increase or reduce the amount of compensation.
- (10) On the ejection of the defaulting apartment owner from the apartment under sub-section (7), the lessee by whom such ejection has been made may make a fresh allotment of the concerned apartment to any other person on such terms and conditions as he may think fit.
- (11) Where any lessee omits or fails to take any action either in accordance with the provisions of sub-section (2) or sub-section (3) or sub-section (7) the lessor may, in the first instance, require the lessee by a notice in writing to take action against the defaulting apartment owner under sub-section (2) or sub-section (3) or, as the case may be, under sub-section (7), within a period of ninety days from the date of service of such notice, and in the event of the omission or failure of the lessee to do so within such period, the lessor may himself take action as contained in sub-section (2) or sub-section (3) or sub-section (7), and the provisions of sub-section (4) to sub-section (6) and sub-section (8) to sub-section (10), shall, as far as may apply to any action taken by him as if such action had been taken by the lessee.
- (12) For the removal of doubts, it is hereby declared that no work in any apartment by the owner thereof shall be deemed to be a breach of the terms of the sub-lease in respect of the land on which the building containing such apartment has been constructed unless the work is prohibited by sub-section (2) of section 6.

- Purchase or person taking lease of apartments from apartment owners to execute an undertaking**
10. Notwithstanding anything contained in the Transfer of Property Act, 1882 (Act No. 4 of 1882), or in any other law for the time being in force, any person acquiring any apartment from any apartment owner by gift, exchange, purchase or otherwise, or taking lease of an apartment from an apartment owner shall—
- (a) In respect of the said apartment, be subject to the provisions of this Act; and
- (b) Execute and register an instrument in such form, in such manner and within such period as may be prescribed giving an undertaking to comply with the covenants, conditions and restrictions, subject to which such apartment is owned by the apartment owner aforesaid.
- Encumbrances against apartments**
11. (1) The owner of each apartment may create any encumbrance, only against the apartment owned by him by executing an instrument and registering it in the office of the registering authority and the percentage of the undivided interest in the common areas and facilities appurtenant to such apartment in the same manner and to the same extent as may be created in relation to any other separate parcel of property subject to individual ownership:
- Provided that where any such encumbrance is created, the apartment in relation to which such encumbrance has been created shall not be partitioned or sub-divided.
- (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 the undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance on payment of the fractional or proportional amounts attributable to each of the apartments affected and on such payment, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free of the charge or encumbrance so removed.
- Provided that such partial payment shall not prevent the person having a charge or any of the encumbrance from proceeding to enforce the rights, in relation to the amount not so paid, against any other apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment.

## CHAPTER V

### DECLARATION OF BUILDING AND DEED OF APARTMENT

- Contents of Declaration**
12. (1) The declaration shall be submitted by a promoter in the office of the competent authority in respect of a building constructed after the commencement of this Act in such form, within such period and in such manner as may be prescribed and shall contain full and true particulars of the following, namely :-
- (a) description of the land on which the building and improvements are, or are to be located, and whether the land is free hold or lease hold;

- (b) description of the building stating the number of stories and basements, the number of apartments and principal materials of which it is or is to be constructed;
  - (c) the number of each apartment and a statement of its location, approximate area, number of rooms and the 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 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 the facilities appertaining to each apartment and its owner for all purposes, including voting;
  - (g) particulars of encumbrances, if any, on the property of apartment and its undivided interest at the date of the declaration;
  - (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.

- Registration of Deed of Apartment** 13. No promoter or an apartment owner shall transfer or hand over the possession of any apartment constructed after the commencement of this Act without executing an appropriate transfer deed and also getting it registered under the provisions of the Registration Act, 1908 and it shall also be incumbent for such promoter or apartment owner to enclose a true copy of the declaration made under section 12 to such deed of transfer.

## CHAPTER VI

### ASSOCIATION OF APARTMENT OWNERS AND BYE-LAWS FOR THE REGISTRATION OF THE AFFAIRS OF SUCH ASSOCIATION

- Association of apartment owners and bye-laws relating thereto** 14. (1) There shall be an Association of Apartment Owners for the administration of the affairs in relation to the apartments and the property appertaining thereto and for the management of common areas and facilities :

Provided that where any area has been demarcated for the construction of buildings, whether such area is called a block or pocket or by any other name, there shall be a single Association of Apartment Owners in such demarcated area.

- (2) It shall be the joint responsibility of the promoter and the apartment owners to form an Association. The promoter shall get the Association registered when such number of apartments have been handed over to the owners which is necessary to form an

association or 33% of apartments, whichever is more, by way of sale, transfer or possession, provided the building has been completed alongwith all infrastructure services and completion certificate obtained from the local authority.

- (3) In a case, where an association of the apartments owners of a building has not been formed, on the intended date of execution of a deed of apartment in favour of prospective apartment owner, it shall be obligatory for a prospective apartment owner to become member of the association within a period of 4 weeks on receipt of a written intimation about the formation of such association.
- (4) Where an association of an apartment owners exist on the intended date of transfer of an apartment, it will be obligatory for the prospective apartment owner to become member of such association before execution of a deed of an apartment in his favour.
- (5) On formation of the Association of the Apartment Owners under sub-section (2) above, the management of the affairs of the apartments regarding their common areas and facilities shall be deemed to be transferred from the promoter to the Association which shall thereupon maintain them,  
Provided that till all the apartments are sold or transferred, the promoter shall proportionately share the maintenance cost of common areas and facilities.
- (6) The Government may by notification in the gazette frame model bye-laws in accordance with which property referred to in sub-section (1) shall be administered by the Association of Apartment Owners and the Association shall, at its first meeting, make its bye-laws in accordance with the model bye-laws so framed, and in making its bye-laws the Association of Apartment Owners shall not make any departure from, variation of, addition to, or omission from, the model bye-laws aforesaid except with the prior approval of the competent authority.
- (7) The model bye-laws framed under sub-section (5) shall provide for the following, among other matters, namely:—
  - (a) the manner in which the Association of Apartment Owners is to be formed;
  - (b) the election, from among apartment owners, of a Board of Management by the members of the Association of Apartment Owners;
  - (c) the number of apartment owners constituting the Board, the composition of the Board and that one-third of members of the Board shall retire annually;
  - (d) the powers and duties of the Board;
  - (e) the honorarium, if any, of the members of the Board;
  - (f) the method of removal from office of the members of the Board;
  - (g) the powers of the Board to engage the services of a Manager;

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- (h) delegation of powers and duties of the Board to such Manager;
  - (i) method of calling meetings of the Association of Apartment Owners and the number of members of such Association of Apartment Owners;
  - (j) election of a President of the Association of Apartment Owners from among the apartment owners, who shall preside over the meeting of the Board and of the Association of Apartment Owners;
  - (k) election of a Secretary to the Association of Apartment Owners from among the apartment owners, who shall be an ex-officio member of the Board and shall keep two separate minutes books, one for the Association of the Apartment Owners and the other for the Board, pages of each of which shall be consecutively numbered and authenticated by the President of the Association of Apartment Owners, and shall record, in the respective minutes books, the resolutions adopted by the Association of Apartment Owners or the Board, as the case may be;
  - (l) election of a Treasurer from among the apartment owners, who shall keep the financial records of the Association of Apartment Owners as also of the Board;
  - (m) maintenance, repair and replacement of the common areas and facilities and payment therefor;
  - (n) manner of collecting from the apartment owners or any other occupant of apartments, share of the common expenses;
  - (o) resignation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities;
  - (p) restrictions with regard to the use and maintenance of the apartments and the use of the common areas and facilities, as may be necessary to prevent unreasonable interference in the use of each apartment and of the common areas and facilities by the several apartment owners;
  - (q) any matter which may be required by the Competent Authority to be provided for in the bye-laws for the proper or better administration of the property;
  - (r) such other matters as are required to be, or may be, provided for in the bye-laws.
- (8) The bye-laws framed under sub-section (5) may also contain provisions, not inconsistent with this Act—
- (a) enabling the Board to retain certain area of the building for commercial purposes and to grant lease of the areas so retained, and to apply the proceeds of such lease for the reduction of the common expenses for maintaining the building, common areas and facilities, and if any surplus is left after meeting such expenses, to distribute such surplus to the apartment owners as income;

- (b) relating to the audit of the accounts of the Association of Apartment Owners and of the Board, and of the administration of the property;
- (c) specifying the times at which and the manner in which annual general meetings and special general meetings of the Association of Apartment Owners shall be held and conducted;
- (d) specifying the time at which and the manner in which, the annual report relating to the activities of the Association of Apartment Owners shall be submitted;
- (e) specifying the manner in which the income derived and expenditure incurred by the Association of Apartment Owners shall be dealt with or as the case may be, accounted for.

**Insurance**

15. (1) The Board or Manager-
- (a) shall have, if requested so to do by a mortgagee having a first mortgage covering an apartment, the authority to, and
  - (b) shall, if required so to do by the bye-laws or by a majority of the apartment owners,
 

Obtain insurance for the property against loss or damage by fire or other hazards under such terms and for such amounts as requested or required.
- (2) Such insurance coverage shall be written on the property in the name of such Board or Manager as trustee for each of the apartment owners in the percentages specified in the bye-laws.
- (3) The premia payable in respect of every such insurance shall be common expenses.
- (4) The provisions of sub-section (1) to (3) shall be without prejudice to the right of each of the apartment owner to insure his own apartment for his benefit.

**Disposition of property, destruction or damage**

16. If within sixty days of the date of damage or destruction to all, or part of any property, or within such further time as the competent authority may, having regard to the circumstances of the case, allow, the Association of Apartment Owners does not determine to repair, reconstruct or re-build such property, 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;
  - (d) the property shall be subject to an action for partition at the suit of any apartment owners in which event, 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 amongst all the apartment owners in the percentage equal to the percentage of undivided interest owned by each apartment owner in the property after paying out, all the respective shares of the apartment owners to extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

**Action**

17. (1) Without prejudice to the rights of any apartment owner, action may be brought by the Board or Manager, in either case in the discretion of the Board 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.
- (2) The 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 bye-laws to receive service of process.

**CHAPTER VII****COMMON PROFITS, COMMON EXPENSES AND OTHER MATTERS****Common profits, common expenses and other matters**

18. (1) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest of the apartment owners in the common areas and facilities.
- (2) Where the apartment owner is not in the occupation of the apartment owned by him the liability to the common expenses payable in respect of such apartment shall be the joint and several liability of the apartment owner and the person in occupation of the apartment.

**Apartment owner not to be exempt from liability for contribution by waiver of the use of the common areas and facilities**

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

**Common expenses to be a charge on the apartment**

20. (1) All sums assessed by the Association of Apartment Owners, but unpaid for the share of the common expenses chargeable to any apartment, shall constitute a charge on such apartment prior to all other charges except only-
- (i) the charge, if any, on the apartment for payment of Government and Municipal taxes; and
- (ii) all the sums unpaid on a first mortgage of the apartment.

- (2) The Association of Apartment Owners may approach the Competent Authority with a request for recovery of amount lying unpaid for a period of more than 12 months and which is due towards the common expenses payable in respect of an apartment, and the Competent Authority, on being satisfied, shall take appropriate action for its recovery from the owner of that apartment as arrears of land revenue

**Separate assessments**

21. (1) Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be deemed to be separate property for the purpose of assessment of tax on lands and building leviable under such law and shall be assessed and taxed accordingly; and for this purpose a local authority shall make suitable regulations to carry out the provisions of this section.
- (2) Neither the building nor the property nor the common areas and facilities referred to in sub-section (1), shall be deemed to be separate properties for the purpose of the levy of such taxes.

**Board to cut off, withhold, curtail or reduce essential supply of service**

- 22 (1) If an apartment owner ;
- (a) either willfully violates or evidently threatens to violates the provision of sub-section (1) or sub-section (2) of section 6, or
- (b) fails to pay the common expenses, which are payable by him under this Act for a period of more than 6 months,
- the general body of the Association of Apartment Owners concerned may, after giving notice of not less than seven days to such apartment owner, may pass a resolution to cut off withhold or in any manner curtail or reduce, any essential supply or service enjoyed by such apartment owner;

Provided that such Association of Owners shall not take any action in furtherance of the resolution referred to above unless a certified copy is sent each to the competent Authority and the concerned Apartment owner by registered or speed post and one month expires from the date of its being sent and its copy is displayed at some conspicuous place of the building.

*Explanation:* It is clarified that the power to take action under this sub section shall not prejudice the other rights and remedies of the Association of Apartment Owners available under this Act or under any other law for the time being in force.

- (2) If an apartment owner is aggrieved by an action under sub-section (1), he may prefer an appeal to the Competent Authority within a period of 15 days from the date of the receipt of the copy of the resolution, and the Competent Authority shall after affording sufficient opportunity to the parties pass such orders most expeditiously as he deems fit.

**Joint and several liability of vendor etc., for unpaid common**

23. (1) Upon the sale, bequest or other transfer of an apartment, the purchaser of the apartment or the grantee or legatee or the transferee, as the case may be, shall be jointly and severally liable with the vendor or the transferor for all unpaid assessment against the vendor or transferor for his share of the common expenses up to

- expenses** the time of the sale, bequest or other transfer, without prejudice to the right of the purchaser, grantee, legatee or transferee to recover from the vendor or the transferor any amount paid by the purchaser, grantee or legatee or transferee thereof.
- (2) Any purchaser, grantee, legatee or transferee referred to in sub-section (1) shall be entitled to a statement from the Board or Manager setting forth the amount of the unpaid assessment against the vendor or transferor, as the case may be, and such purchaser, grantee, legatee or transferee 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 sale, bequest or other transfer in excess of the amount set forth in the statement.

## CHAPTER VIII

### MISCELLANEOUS

- Act to be binding on apartment owners, tenants, etc.** 24. (1) All apartment owners, tenants of owners, employees of owners and tenants, or any other person who may, in any manner, use the property or any part thereof to which this Act applies, shall be subject to the provision of this Act and the bye-laws and the rules made thereunder :

Provided that nothing contained in this sub-section shall effect the right, title or interest acquired by any allottee or other person in common areas and facilities from any promoter on or before the date of commencement of this Act.

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

- Offences** 25. (1) If any promoter,
- (a) transfers by way of sale or otherwise any land appurtenant to a building and such land was originally shown as common areas and facilities such as park, open space, path ways, circulation areas, etc. in the plan approved by the prescribed sanctioning authority, or
- (b) illegally makes construction in contravention of the plan approved by the prescribed sanctioning authority beyond compoundable limits;
- he shall, on conviction, be punished with imprisonment for a term not less than three years which may extend to six years or with fine not less than three lacs rupees, which may extend to five lacs rupees or with both.

*Explanation:* Above punishment shall not exonerate the promoter from his liability to restore the status of common areas and facilities as per the approved plan.

- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the First Class to pass on any person

convicted of an offence under this Act, a sentence of imprisonment or fine or both as provided in the relevant section of this Act, in exercise of powers under section 29 of the said Code.

- (3) If the owner of an apartment which is subject to the provisions of Chapter III contravenes-
- (a) the provisions of section -5, or 6 or
- (b) any bye-laws made under the provisions of this Act,

he shall, on conviction, be punishable with fine not less than ten thousand rupees which may extend to Fifty thousand rupees and in case of a continuing contravention, to an additional fine which may extend to one thousand rupees for every day during which such contravention continues after the conviction.

- (4) No court shall take cognizance of an offence under this section, except on the written complaint by the board after a majority decision thereof and after obtaining prior permission of the Competent Authority in such manner as may be prescribed.

**Offences by Companies**

26. (1) Where an offence under this Act has been committed by 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 the business of 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 any punishment, 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 clause (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect 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 any 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.

**Control by State Government**

27. (1) The Competent Authority Shall carryout such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.
- (2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Competent Authority under this Act any

dispute arises between the Competent Authority and the State Government, the decision of the State Government on such dispute shall be final.

- (3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Competent Authority for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

- (4) Every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any court.

- |                                      |  |
|--------------------------------------|--|
| <b>Exemptions</b>                    | <p>28. (1) Nothing in section 25 and 26 of this Act shall apply, if the promoter is-</p> <ul style="list-style-type: none"> <li>(a) a local authority or any other statutory body constituted for the development of land or housing; or</li> <li>(b) a company or a body wholly owned or controlled by the government created for development of land or housing or promotion of industry.</li> </ul> <p>(2) No suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government in respect of anything which is in good faith done or intended to be done by or under this Act.</p> |
| <b>Removal of doubts</b>             | <p>29. For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882 (Act No. 4 of 1882), shall, in so far as they are not inconsistent with the provisions of this Act, apply to the transfer of any apartment, together with its undivided interest in the common areas and facilities appurtenant thereto, made by the owner of such apartment, whether such transfer is made by sale, lease, mortgage, exchange, gift or otherwise, as they apply to the transfer of any immovable property.</p>  |
| <b>Power to make rules</b>           | <p>30. The Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.</p>  |
| <b>Overriding effect of this Act</b> | <p>31. (1) The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force;</p> <p>(2) Save as otherwise expressly provided in sub-section (1) the provisions of this Act, shall be in addition to, and not in derogation of any other law for the time being in force.</p>   |
| <b>Power to exempt</b>               | <p>32. If the Government is of the opinion that the operation of any provision of this Act causes any undue hardship, it may exempt, by a general or special order, any class of person or areas from the provisions of this Act.</p>  |

**Removal of difficulties**

33. (1) The Government may, for the purpose of removing any difficulty, by a notified order, direct that the provisions of this Act, shall, during such period, as may be specified in the order, have effect subject to such adaptation whether by way of modification, addition or omission, as it may deem necessary or expedient:

Provided that no order shall be made after a period of two years from the date of commencement of this Act,

(2) No order made under this section shall be called in question in any court on the ground that no such difficulty existed or was required to be removed.

**Repeal of U.P. Act no. 50 of 1975**

34. The Uttar Pradesh Ownership of Flats Act, 1975 is hereby repealed.

**STATEMENT OF OBJECTS AND REASONS**

Housing is a basic human necessity and the quality of the house as well as of its environment plays an important role in the growth of individuals, both physically and mentally. The widening gap between the rising urban population and the housing stock added every year has gradually reached such a critical stage that the problem of providing proper shelter and desirable standard of living seems very difficult to be solved. Moreover, majority of the citizen of urban areas of the State cannot think in terms of owning houses on individual basis because of the shortage of land in the urban areas. The efforts made by the Government as well as different agencies have not made much dent into the housing problem.

Uttar Pradesh is predominantly an agricultural State; it is not advisable to use fertile lands more and more for housing purposes which ultimately will affect the production of food grains. It is essential investment should be observed, for which Group Housing development will have to be promoted. With a view to promoting the Group Housing, it has been decided to make a law to provide for the ownership of an individual apartment in a building of an undivided interest in the common areas and facilities appurtenant of such apartment and to make such apartment and interest heritable and transferable.

The Uttar Pradesh Apartment (Promotion of Construction Ownership and Maintenance) Bill, 2010 is introduced accordingly.

By order,  
P. V. KUSHWAHA,  
Sachiv

**UTTAR PRADESH APARTMENT  
(PROMOTION OF CONSTRUCTION, OWNERSHIP &  
MAINTENANCE) RULES 2011**



**The Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011**

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**UTTAR PRADESH SHASHAN  
AWAS EVAM SAHARI NIYOJAN ANUBHAG-1**

In pursuance of the provisions of clause (3) of article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of Notification no. 3975/8-1-11-115D.A./02T.C.-I dated 16 November, 2011

**NOTIFICATION**

**No. 3975/8-1-11-115D.A./02T.C.-I**

**Lucknow : Dated 16 November, 2011**

In exercise of the powers conferred by section 30 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, the Governor of Uttar Pradesh hereby makes the following rules, namely, :-

**The Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011**

- |   |              |  |
|---|--------------|--|
| <b>Short Title and commencement</b>                                     | <b>1.</b>    | (1) These rules may be called The Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011.<br><br>(2) They shall come into force with effect from the date of their publication in the Gazette.   |
| <b>Definitions</b>  | <b>2.</b>    | (1) In these rules, unless the context otherwise requires,-<br><br>(a) "Act" means the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010.<br><br>(b) "Form" means a Form appended to these rules;<br><br>(c) "Competent Authority" means the Vice-Chairman of the Development Authority in whose development area the building is situated or the Collector of the district where no such Development Authority exists.<br><br>(d) "Section" means a section of the Act.<br><br>(2) Words and expressions used in these rules but not defined shall have the meanings respectively assigned to them in the Act. |
| <b>Form Declaration</b><br><small>(sub section-1 of section 12)</small> | <b>of 3.</b> | The declaration shall be submitted by a promoter under sub-section (1) of section 12 in Form 'A' which shall be submitted by the promoter within a period of 12 months from the date of approval of the plans. Where the building has been constructed or is under   |

construction prior to the commencement of these rules, the declaration shall be submitted within 90 days from the date of such commencement.

**Amendment of Declaration**  
(sub section-2 of section 12)

4. (1) The declaration submitted by a promoter under rule 3 may be amended at any time, by the promoter, If,-

- (a) the declaration suffers from any clerical or arithmetical mistake or error arising therein from any accidental slip or omission; or
- (b) the amendment is necessitated by reason of any revision in the sanctioned plan of the building; or
- (c) the proposed amendment is just and reasonable;

provided that the amendment made by the promoter shall not violate the building bye-laws, sanctioned building plan or the contractual obligation of the promoter.

(2) For making amendment in the declaration referred to in sub-rule (1) the promoter shall move a written application to the Competent Authority with such fees as may be determined by the Competent Authority, specifying therein the circumstances and reasons for amending it and such application shall be supported by an affidavit of the promoter or of a person authorized on his behalf along with the necessary documents.

(3) The Competent Authority, on receipt of the application under sub-rule (2) shall issue a written notice to the association of the apartment owners of the building and shall also cause the publication of a public notice in two daily newspapers circulating in that locality.

(4) On receipt of the objections, if any, received within 30 days from the date of publication of notice under sub-rules (3) the Competent Authority shall, after giving an opportunity of being heard to the objector, association of apartment owners and promoter, pass such order thereon as it deems fit as expeditiously as possible.

(5) A true copy of the order passed under sub-rule (4) shall be sent by the Competent Authority to the promoter, association of the apartment owners or to the objector as the case may be.

**Grant of permission for prosecution**  
(sub section-4 of section 25)

**5.** (1) After majority decision by the Board, the President or the person authorized on its behalf may apply the Competent Authority for grant of the permission to file its written complaint under the provisions of sub-section (4) of section 25;

Provided that every such application shall be accompanied by a true attested copy of the decision of the Board;

Provided further that such application shall clearly specify the nature and extent of the violation of the provisions of the Act or the Bye-laws, as the case may be;

Provided also that such application shall also specify the steps taken and efforts made by the Board to ensure that the violation is set right by the concerned owner of the apartment or the promoter, as the case may be, alongwith necessary documents of the efforts made by the Board.

(2) The Competent Authority, on receipt of the Application, shall give notice to the erring apartment owner or the promoter, as the case may be and shall pass such order as he may deem fit:

Provided that no such order shall be passed by the Competent Authority unless the Competent Authority records his satisfaction in writing as to the violation of the provisions of the Act or the bye-laws after affording adequate opportunity of being heard to all concerned.

**Undertaking to be filed by the person acquiring apartment.**  
(section 10)

**6.** Any person acquiring any apartment from any apartment owner by gift, exchange, purchase or otherwise, or taking lease of an apartment from an apartment owner under section 10 and shall execute an undertaking in Form 'B' to comply with the covenants, conditions and restrictions, subject to which such apartment is owned by the said apartment owner. Such undertaking shall be executed and registered within a period of 30 days from the date of acquiring the apartment.

(रवीन्द्र सिंह)  
प्रमुख सचिव।

**FORM A**

(See Rule 3)

**FORM OF DECLARATION**

Date:

Place:

Promoter Details:

1. Name:
2. Registered Address:
3. Local/ Postal Address:
4. Date of Incorporation (if applicable):
5. Name/designation of Authorised Signatory:

The Declarant hereby solemnly states the following:

**FIRST:** The Promoter owns /holds the land as lessee which is fully described and detailed in **Annexure 'A'** to this declaration.

**SECOND:** The Promoter has constructed on the parcel of land, described in Annexure 'A' to this declaration, an Apartment Building/Group Housing scheme, detailed below:

<b>Sl. No.</b>	<b>Description</b>	<b>Particulars</b>
(1)	(2)	(3)
1.	Name of the building /Group Housing Scheme	
2.	Sanctioning Authority of the plan	
3.	Date of sanction	
4.	Municipal No. of the property	
5.	Municipal Ward of the property	
6.	Postal address of the property	
7.	Name of Architect/ Structural Engineer	

8.	Height of the building	
9.	Scheme whether residential or commercial (other than multiplex or mall)	
10.	No. of Floors	

**THIRD:** That the said property consists of the apartments detailed in **Annexure 'B'** to this declaration. The various apartments of the scheme are capable of individual utilization on account of having their own exit to common areas and facilities of the building/property scheme and the apartment will be sold to one or more persons, each person obtaining a particular and exclusive property rights thereto and each apartment constituting a heritable and transferable immovable property within the meaning of any law for the time being in force in the State (hereinafter referred to as the 'Apartment') and also an undivided interest in the general and/or 'limited common areas and facilities' of the building/property scheme, as listed in this declaration deed, necessary for their adequate use and enjoyment, and referred to as:-

- (a) Common facilities for dwelling units of individual block
- (b) Limited common facilities for apartments, means those common areas and facilities which have been designated in writing by the promoter as reserved for the use of certain apartment or apartments to the exclusion of the other apartments."

**FOURTH:** That the aforesaid building has a total floor area of ... square meters on all floors, of which ..... square meters will constitute the apartments and remaining ..... square meters will constitute the 'common areas and facilities' and .... square meters constitute 'limited common areas and facilities', which have been detailed in **Annexure 'C'** hereto.

**FIFTH:** That this condominium shall be known as "....."(insert the name of the building / scheme as given above) and that the apartments and 'common areas and facilities' (as defined in S. 3(i) of the Act), the 'limited common areas and facilities' of the building / scheme (as defined in S. 3(s) of the Act), and the 'independent areas' (as defined in S. 3(p) of the Act), and shall be as follows –

Sl. No.	Item	Details
1.	"Common areas & facilities" [as defined in S. 3(i) of the Act]	As per Annexure 'D'
2.	"Limited common areas & facilities" [as defined in S. 3(s) of the Act]	As per Annexure 'E'
3.	"Independent areas" [as defined in S. 3(p) of the Act]	As per Annexure 'F'

**SIXTH:** (a) that the right, title and interest of each apartment owner and his proportionate share in the profits and common expenses for the common areas and facilities, as well as the proportionate representation for voting purpose in the meeting of the Association of Apartment Owners of the ..... Condominium is based on the proportionate value of each apartment to the total value of all apartments.

**SEVENTH:** That the Administration of .....Condominium consisting as aforesaid of the building and parcel of land described above shall be in accordance with the provisions of this Deed and with the provisions of the bye-laws of the association of the apartment owners. The promoter shall be responsible for full quality control of materials and workmanship at site. The specifications of construction detailed in '**Schedule-A**' hereto .

**EIGHTH:** That for the purpose of stamp duty and registration fees payable on the deed of apartments under S. 13 of the Act, the value of the

- (a) land of each apartment would be computed on the basis of the percentage of the undivided share so that the aggregate of the land component of all of the apartments of the building is equivalent to the total value of the land of the building;
- (b) the construction of each apartment would be also computed on the basis of the percentage of the undivided share as it bears to the total covered area.

**NINTH:** that the 'common areas and facilities' as well as the 'limited common areas and facilities' shall remain undivided and no apartment owner shall bring any action for their partition or division thereof.

**TENTH:** that the percentage of the undivided interest in the "common areas and facilities" as well as the "limited common areas and facilities" established herein shall not be changed except with the unanimous consent of all the apartment owners and approval of Competent Authority expressed in amendment to this deed.

**ELEVENTH:** that the undivided interest in the 'common areas and facilities' as well as the 'limited common areas and facilities' shall not be separated from the apartment to which they pertain and shall be deemed conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument;

**TWELTH:** that neither the dedication of the property to the plan of apartment ownership herein shall not be revoked, nor the property removed from plan of apartment ownership, or any of the provisions herein amended unless all the apartment owners and the mortgagees of all the mortgages covering the units unanimously agree to such revocation, or amendment or removal of the property from the plan by only registered instruments;

**THIRTEENTH:** that if the property, subject to the plan of Apartment Ownership is totally or substantially damaged or destroyed, the repair, reconstruction, or disposition of the property shall be as provided by the Act;

**FOURTEENTH:** that where an apartment is sold pursuant to the recovery of the mortgage money, then neither the mortgagee nor the purchaser who derives title to be apartment at such sale or his successors or assigns shall be liable for assessments by the association which became due prior to the acquisition of the title by such acquirer but the association of apartment owners would be entitled to recover the amount subsequent to the date of acquisition of title by such acquirer.

**FIFTEENTH:** that the 'independent areas', declared herein in the Annexure 'F' are not included as common areas for the joint use of the apartment and the promoter would be at liberty to sell them or to construct thereupon without interference of other apartment owners in view of the provisions of S. 3(p) of the Act.

**SIXTEENTH:** The promoter shall maintain the common areas and facilities till the association is formed and shall be entitled to collect the maintenance charges @\_\_\_\_\_per month from the owners of each apartment.

**IN WITNESS WHEREOF,** Shri ..... for on  
and behalf of M/s ..... (the promoter) hereto set  
his hand this .....day of ..... of year .....

**Signed and delivered by  
(Seal of the Promoter)**

In the presence of:-

1. \_\_\_\_\_

2. \_\_\_\_\_

**Annexure 'A'****Details of the land of the building to which the present declaration relates**

Sl. No.	Items		
1.	<b>Location of the land of the building</b>	Revenue village	Specify
		Tehsil	Specify
		District	Specify
2.	<b>Survey No. with area</b>	Specify no.	Specify area
3.	<b>Date of last document of title under which the promoter claims the land</b>	Specify date	
4.	<b>Details of Registration of the above title document</b>	Book No.	Specify
		Vol. No.	Specify
		Page Nos.	Specify
		Sl. No.	Specify
		Date of Regn.	Specify
5.	<b>Boundaries of the land</b>	North	Specify
		South	Specify
		East	Specify
		West	Specify
5.	<b>Land whether freehold or leasehold</b>		Specify
6.	<b>If land is leasehold, the unexpired period of the lease</b>		Specify

Place:

**Signature of declarant  
with designation and seal**

Date:

**Annexure-'B'**  
**(Details of Apartments)**

**Name of condominium:**

**Value of condominium :**

Sl. No.	Floor	Identifiable No. of the Apartment	No. of Rooms	Covered area (in sq. mtrs.)	Percentage of undivided share in land on the basis of covered area of the apartment	Proportionate representation for voting purpose in the meeting of the association of apartment owners	Approved use Residential/ Commercial	Value of the Apartment
(1)	(2)	(3)		(4)	(5)	(6)	(7)	
1.	Ground Floor	001		Specify	Specify	Specify	Specify	
		002		Specify	Specify	Specify	Specify	
		003		Specify	Specify	Specify	Specify	
		Onwards		Specify	Specify	Specify	Specify	
2.	First Floor	101		Specify	Specify	Specify	Specify	
		102		Specify	Specify	Specify	Specify	
		103		Specify	Specify	Specify	Specify	
		Onwards		Specify	Specify	Specify	Specify	
3.	Onward Floors	201		Specify	Specify	Specify	Specify	
		202		Specify	Specify	Specify	Specify	
		203		Specify	Specify	Specify	Specify	
		Onwards		Specify	Specify	Specify	Specify	

**Note:** The percentage of undivided share in the land is calculated on the basis of the covered area of the apartment in relation to the total covered area of the apartments, being the aggregate of Column No. 4.

Place:

**Signature of declarant with designation and seal**

Date:

**Annexure-'C'****Details of covered area of apartments and total covered area of common areas and facilities /limited common areas and facilities**

<b>Sl. No.</b>	<b>Particulars</b>				
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>
(a)	Total covered area of apartments at various floors	Specify	X	X	X
(b-1)	Total covered area of common areas & facilities (as defined in S. 3(i) of the Act)	X	Specify	X	X
(b-2)	Total covered area of limited common areas & facilities (as defined in S. 3(s) of the Act)	X	X	Specify	X
(c)	Total covered area of the building [Total of (a), (b-1) & (b-2)]	X	X	X	Specify
	<b>Sum up</b>	i.e. (a)	i.e. (b-1)	i.e. (b-2)	i.e. (c)

Place:

**Signature of declarant  
with designation and seal**

Date:

**Annexure 'D'****Details of the common area and facilities of the building to which the present declaration relates**

Sl. No.	Name of the common areas & facilities	Its description /area
(a)	<b>The parcel of land described in paragraph First of this Deed.</b>	
(b)	<b>Basement (if any) (as shown in Exhibit 'A' attached hereto)</b>	.... sq. mtr. & its floor
(c)	<b>Facilities in the basement</b>	Describe in detail the items located in the basement.
(d)	<b>Parking facilities (as shown in Exhibit 'A' attached hereto)</b>	..... sq. mtr.
(e)	<b>Facilities on the ground floor (as shown in Exhibit 'A' attached hereto)</b>	
	(i) Garden lawns	Specify area in sq. mtrs.
	(ii) Children playing area	Specify area in sq. mtrs.
	(iii) Swimming Pool	Specify area in sq. mtrs.
	(iv) Tennis Court	Specify area in sq. mtrs.
	(v) Badminton Court	Specify area in sq. mtrs.
	(vi) Commercial areas & facilities	Specify area in sq. mtrs.
	(vi) Lobby & facilities	Specify area in sq. mtrs.
	(viii) Any other facility	Specify area in sq. mtrs.
(f)	<b>Common areas &amp; Facilities located throughout the building (as shown in Exhibit 'A')</b>	

	(i)	Elevator	Specify the no.
	(ii)	Area of shaft(s)	Specify area in sq. mtrs.
	(iii)	Elevator shaft extends from ground floor upto	Specify the floor
	(iv)	No. of stairway 'A', which lead from the ground floor to the roof of the building	Specify their details, numbers & sq. mtr. Area
	(v)	No. of stairway 'B' (if any), which lead from the open court to the upper floors.	Specify their details, numbers & sq. mtr. area
	(vi)	A flue (if applicable), extending from the incinerator in the basement to the roof of the building, which has a hopper door in each one of the ....upper floors for the disposal of garbage and rubbish, and will be fed from the janitor's room of each of the ..upper floors.	
	(vii)	No. of Water tank(s)	
	(viii)	Elevator pent-house with corresponding elevator equipment located on the roof of the building.	
	(ix)	Plumbing network throughout the building	
	(x)	Electric wiring net-work throughout the building	
	(xi)	Necessary light(s)	
	(xii)	Telephone(s)	
	(xiii)	Public water connection(s)	

	(xiv)	Foundations and main walls, columns, girders, beams and roofs of the building	
	(xv)	Tank(s)	Specify no. & capacity
	(xvi)	Pump(s)	Specify no. & capacity
	(xvii)	Motor(s)	Specify no. & capacity
	(xviii)	Fans	Specify no. & capacity
	(ixx)	Fire fighting equipment(s)	Specify details
	(xX)	Compressor(s)	
	(xxi)	Duct(s)	
	(xxii)	Central Air Conditioning Equipment(s)	
	(xxiii)	Heating Equipment	
	(xxiv)	General all apparatus & installation existing for common use	

Place:

**Signature of declarant  
with designation and seal**

Date:

Note:—Section 3(i) of the Act has defined the term “**common areas and facilities**” and the above common areas and facilities are illustrative and not exhaustive.

**Annexure 'E'****Details of the limited common area and facilities of the building to which the present declaration relates**

<b>"Limited Common areas &amp; Facilities" (as defined in S. 3(c) of the Act and shown in Exhibit 'A')</b>		
(i)	Parking	Specify its area, location & no.
(ii)	Lobby, giving access to the elevator(s) to specified dwelling unit	Specify its area, location & no.
(iii)	Corridor extending from the lobby to the stairway	Specify its area, location & no.

Place:

**Signature of declarant  
with designation and seal**

Date:

Note:—Section 3(s) of the Act has defined the term "**limited common areas and facilities**" means "those common areas and facilities which are designated in writing by the promoter before the allotment, sale or transfer of any apartment as reserved for the use of certain apartment or apartments to the exclusion of the other apartments."

**Annexure 'F'****Details of the "independent areas" of the building to which the present declaration relates**

<b>"independent areas" (as defined in S. 3(P) of the Act)</b>		
(i)	Parking	Specify its area, location & no.
(ii)	Servant quarter	Specify its area, location & no.
(iii)	Club with independent access	Specify its area, location & no.
(iv)	Convenient shops	Specify its area, location & no.
(v)	Covered garage/store	Specify its area, location & no.
(vi)	Terrace attached to an apartment. (if applicable)	Specify its area, location & no.

Note:—Section 3(p) of the Act has defined the term "***independent area***" which means the areas which have been declared but not included as common areas for joint use of apartments and may be sold by the promoter without the interference of other apartment owners.

Place:

**Signature of declarant  
with designation and seal**

Date:

**Schedule-A**  
**[Specifications of Construction]**

- 1. Foundation:**
  
- 2. Flooring:**
  
- 3. Doors and Hardware:**
  
- 4. Windows:**
  
- 5. Internal Finish:**
  
- 6. External Finish:**
  
- 7. Sanitary ware and fittings:**
  
- 8. Electrical:**
  
- 9. Plumbing and water Line:**

Place:

**Signature of declarant**  
**with designation and seal**

Date:

**FORM "B"**

*(See Rule 6)*

**Undertaking by the person acquiring apartment (Under Section 10 (b) of the Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010.**

Office of the Competent Authority at.....

I \_\_\_\_\_ S/o \_\_\_\_\_ R/o \_\_\_\_\_  
acquired apartment no. \_\_\_\_\_ in the property \_\_\_\_\_ by way  
of gift, exchange, purchase or otherwise or taking lease of an apartment  
from Shri \_\_\_\_\_

I hereby undertake to comply with the covenants, conditions and restrictions  
subject to which said apartment was owned by the aforesaid Shri  
\_\_\_\_\_ before the date of transfer.

Further, I shall be subject to the provisions of The Uttar Pradesh Apartment  
(Promotion of Construction, Ownership & Maintenance) Act, 2010.

**Signature**

In presence of

1.

2.

# MODEL BYE LAWS

**UTTAR PRADESH SHASHAN  
AWAS EVAM SAHARI NIYOJAN ANUBHAG-1**

In pursuance of the provisions of clause (3) of article 348 of the Constitution, the Governor is pleased to order the publication of the following Notification no. 3977/8-1-11-115D.A./02T.C.-I dated 16 November, 2011

**NOTIFICATION**

**No. 3977/8-1-11-115D.A./02T.C.-I**

**Lucknow : Dated 16 November, 2011**

In exercise of the powers under sub-section (6) of section 14 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (U.P. Act no. 16 of 2010), the Governor hereby makes the following Model Bye-laws in accordance with which every Association of Apartment Owners shall make its Bye-laws at its first meeting for the administration of the affairs in relation to the apartments and the property appertaining thereto:-

**MODEL BYE-LAWS**

**CHAPTER I**

**PRELIMINARY**

**1. Short title, and application—**

- (1) These bye-laws may be called the Bye-laws of the..... (here insert the name of condominium) Condominium.
- (2) The provisions of these Bye-laws apply to the ..... Condominium.

**2. Definitions—**In these bye-laws, unless the context otherwise requires,—

- (a) 'Act' means the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act 2010.
- (b) 'Association' means the Association of all the apartment owners constituted by the such owners for the purpose of the ..... condominium;
- (c) 'Board' means the Board of management consisting of 4 to 10 Office Bearers who shall be the owners of apartments in the..... condominium;
- (d) 'Building' means the building located at ..... and known as the ..... Condominium and includes the land forming part thereof;

- (e) 'Majority' of owners means those owners holding 51 per cent of the votes.
- (f) 'Owners' or 'apartment owners' means the person owning an apartment in the ..... condominium;
- (g) 'Section' means a section of the Act;
- (h) 'Unit' means a Dwelling or Non-dwelling Unit in the ..... condominium;
- (i) 'Registrar' means the Registrar under the provisions of the Societies Registration Act.

**3. Objects of Association** (1) The objects of the Association shall be—

- (a) to be and to act as the Association of Apartment owners of the building called ..... (hereinafter called the said building).
- (b) to invest or deposit money;
- (c) to provide for maintenance, repair and replacement of common areas and facilities by contributions from the apartment owners and if necessary by raising loans for that purpose;
- (d) to retain and rent out on license suitable portions of the common areas to outsiders for commercial purposes if all the members agree and give written consent after obtaining the permission of the concerned authority and to accumulate the same for making a reserve fund; to be used for major repairs of the building.
- (e) to provide for and do all or any of the matters provided in sub-section (7) of section 14.
- (f) to advance with the consent of the apartment owners, any short-term loan to any apartment owner(s) in case of any emergent necessity and to provide for the repayment thereof in lumpsum or in instalments;
- (g) to establish and carry on, on its own accord or jointly with individuals or institutions, educational, physical, social and recreative activities for the benefit of the apartment owners;

- (h) to frame rules with the approval of the general meeting of the Association and after consulting the Competent Authority and to establish a provident fund and gratuity fund, if necessary for the benefit of the employees of the Association ;
- (i) to do all things necessary or otherwise provide for their welfare expedient for the attainment of the objects specified in these bye-laws.
- (2) The Association shall not act beyond the scope of its objects without duly amending the provisions of these bye-laws for the purpose.

**4. Members of Association—**

- (1) All persons who have purchased apartments in ..... condominium and executed a deed of apartment, shall automatically be the members of the Association and will pay the entrance fee of one thousand rupees. Each apartment owner shall receive a copy of the bye-laws.
- (2) Upon the sale, bequest or transfer of apartment, the purchaser of the apartment or the grantee or legatee or the transferee shall automatically become the member of the Association and shall be admitted as member on payment of the entrance fee of one thousand rupees.

**5. Joint Apartment Owners—**Where apartment has been purchased jointly by two or more persons, they shall be jointly entitled to the apartment and the share certificates shall be issued in their joint names, but the person whose name stands first in the share alone have the right to vote.

**6. Holding one share compulsory—**Every apartment owner must hold at least one share of the Association.

**7. Disqualification—** No apartment owner is entitled to vote on the election of members of the Board or President, Vice President, Secretary, Treasurer or any other office bearer or entitled to stand for election to such office, if he is in arrears, of any sum due from him in respect of his contributions for common expenses, for more than sixty days on the last day of the year preceding the year in which the election to Board would take place.

## **CHAPTER II**

### **VOTING, QUORUM AND PROXIES**

- 8. Voting**—Voting shall be on percentage basis, and the percentage of the vote to which the owner is entitled is the percentage assigned to the Dwelling unit or units in the Declaration.
- 9. Quorum**—Except as otherwise provided in these bye-laws, the presence in person of 30 percent of owners shall constitute a quorum.
- 10. Votes to be cast in person**—Votes will be cast in person. Except as otherwise provided resolution of the Association shall require approval by a majority of owners casting votes in person or proxy.

## **CHAPTER III**

### **ADMINISTRATION**

- 11. Powers and duties of Association**—The Association shall have the responsibility of administering the ..... condominium, approving the annual budget, establishing and collecting monthly assessments and arranging for the management of the condominium in an efficient manner.
- 12. Place of Meetings**—Meetings of the Association shall be held at a suitable place convenient to the owners as from time to time to be fixed by the Association.
- 13. Annual Meetings**—The first meeting of the Association shall be held on .....(date) ...Thereafter the annual meetings of the Association shall be held on such date as the Association may decide. At such meetings Board of Management shall be elected by ballot of the apartment owners in accordance with the requirements of bye-law 23. The owners may also transact such other business of the association as may properly come before them.
- 14. Special Meetings**—It shall be the duty of the President to call a special meeting of apartment owners as directed by a resolution of the Board or

upon a petition signed by a majority of the owners and having been presented to the Secretary or at the request of the Competent Authority or as the case may be, or any officer duly authorised by him in this behalf. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No other business shall be transacted at a special meeting except as stated in the notice without the consent of two-third owners present in person in the meeting.

- 15. Notice of Meetings**—It shall be the duty of the Secretary to mail or send notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held to each apartment owner at least two days but not more than seven days prior to such meetings. Notices of all such meetings shall be mailed or sent to the competent authority, or the registrar as the case may be.
- 16. Adjourned Meeting**—If any meeting of owners cannot be held for want of quorum the owners who are present, may adjourn the meeting to a time not less than forty-eight hours from the time to original meeting was called. If at such adjourned meeting also, no quorum is present, the owners present in person being not less than two shall form a quorum.
- 17. Order of Business**—The order of business at all meetings shall be as follows:-
  - (a) Roll Call.
  - (b) Proof of notice of meeting or waiver notice.
  - (c) Reading minutes of the preceding meeting.
  - (d) Reports of officers.
  - (e) Reports of Competent Authority or any officer authorised by them.
  - (f) Report of Committee.
  - (g) Election of Board.
  - (h) Unfinished business, if any.
  - (i) New Business.

## **CHAPTER IV**

### **BOARD OF MAGAGEMENT**

**18. Management of Association**—The affairs of the association shall be governed by a Board. The Board of Management shall comprise of neither less than 4, nor more than 10 persons to be constituted and elected by the members by simple majority in the General Body Meeting. The principal office bearer of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Board may appoint an Assistant Secretary and an Assistant Treasurer and such other Office bearer as the Board may consider necessary

**19. President**—The President shall be the Chief Executive Officer of the Association. He shall preside over all meetings of the Association and of the Board. He shall have all the general powers and duties which are usually vested in the office of the President of an Association, including the power to appoint committees from amongst the owners from time to time.

**20. Vice-President**—In the absence of the President the Vice-President shall perform the duties of the President and in case both the President and the Vice-President are absent, the Board shall appoint some other member of the Board to act as President on an interim basis. The Vice-President shall also perform such other duties as may from time to time assigned to him by the Board.

**21. Secretary**—The Secretary shall keep two separate minutes books, one for the Association of the Apartment Owners and the other for the Board, pages of each of which shall be consecutively numbered and authenticated by the President of the Association of Apartment Owners and shall record in the respective minutes books, the resolutions adopted by the Association of Apartment Owners or the Board, as the case may be. He shall have charge of such books and papers as the Board may direct and he shall perform all duties incidental to the office of the Secretary.

**22. Treasurer**—The Treasurer shall be responsible for Association funds and securities and shall also keep full and accurate accounts of all receipts and disbursements in the books.

**23. Manager**—The Board may employ for the Association a manager at a compensation determined by the Board to perform such duties as the Board may authorise.

**24. Powers and Duties of the Board** —The Board shall have powers and duties necessary for the administration of the affairs of the Association.

**25. Other Duties**—In addition to the duties imposed by these bye-laws or by resolution of the Association, the Board shall be responsible for the following :—

- (a) maintenance, repair and replacement of the common areas and facilities,
- (b) Collection from apartment owners share of common expenses.
- (c) resignation and removal of persons employed for the maintenance, repair and replacement of common areas and facilities.
- (d) to provide for the manner in which the audit and account of the Association shall be carried out.
- (e) to inspect the accounts kept by the Secretary/Treasurer and examine the registers and account books and to take steps for the recovery of all sums due to the Association,
- (f) to see that cash book is written up promptly and is signed daily by one of the members of the Board.
- (g) to specify the times at which and the manner in which the annual general meetings and special general meetings of the Association shall be held and conducted.

**26. Election and term of office—.**

- (i) The annual general meeting of the Association, to be held in the first quarter of each financial year, shall elect neither less than 4, nor more than 10 Members including the President, Vice President, Secretary, and Treasurer from Members of the Association. Provided that no member shall be eligible for election if he has been found guilty of misusing the post during his previous term.

The term of office of the office-bearers of the Board shall be one year from the date of assuming office and they will be eligible for re-election. Provided that a person can not hold the same post continuously for more than 2 years.

- (ii) An arrangement shall be made by the board to ensure that one third of members of the board retire annually.
- (iii) The office bearers shall hold office until their successors have been elected and hold their first meeting.

**27. Vacancies**—The vacancies in the Board caused by any reason other than the removal of a office bearer by a vote of the Association shall be filled by vote of the majority of the remaining office bearers, even though they may constitute less than a quorum and each person so elected shall be a office bearer until a successor is elected at the next annual meeting of the Association.

**28. Removal of office bearers**—At any regular or special meeting duly called, any one or more of the Office bearers may be removed with or without cause by a majority of apartment owners and a successor may then and there be elected to fill the vacancy thus created. Any Office bearer whose removal have been proposed by the owners shall be given an opportunity to be heard at the meeting.

**29. Organisation of meeting**—The first meeting of a newly elected Board shall be held within ten days of election at such place as may be fixed by the office bearers at the meeting at which such office bearers were elected and no notice shall be necessary to the newly elected office bearers in order legally to constitute such meeting, provided a majority of the members of the Board shall be present.

**30. Regular Meetings**—Regular meeting of the Board may be held at such time and such place as may be determined from time-to-time by a majority of office bearers but at least two such meetings shall be held during each year. Notice of regular meetings of the Board shall be given to each office bearer personally or by mail at least three days prior to the date of such meeting.

**31. Special Meetings**—Special meetings may be called by the President on three days' notice to each office bearer and notice of such meeting may be given personally to each office bearer. Special meetings of the Board shall be called by the President or the Secretary on a written request of at least three office bearers.

**32. Waiver of notice**—Before any meeting of the Board any office bearer, may in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice.

**33. Quorum**—In all the meetings of the Board 1/3rd of the total strength of the office bearers shall constitute a quorum. If at any meeting of the Board there be less than a quorum present the majority of those present may adjourn the meeting, the members present in person being not less than 3 shall form a quorum and the business which might have been transacted at the meeting originally called may be transacted without further notice.

**34. Fidelity Bonds**—The Board may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premium on such bonds shall be paid by the Associations.

## **CHAPTER V**

### **OBLIGATION OF THE APARTMENT OWNERS**

**35. Assessments**—All the owners are obliged to pay monthly assessments imposed by Association to meet all expenses related to the ..... condominium. The assessment shall be made on the value of the unit.

**36. Maintenance and Repairs—**

- (1) Every owner must perform all maintenance and repair work within his own unit.
- (2) All the repairs of internal installations of the unit such as water, light, gas, power, sewerage, telephone, air-conditioners, sanitary installations, doors, windows, lamps, and all other accessories, shall be at the expense of apartment owner concerned.
- (3) The Owner shall re-imburse the association for any "expenditure" incurred in repairing or replacing any common area and facilities damaged due to his fault.
- (4) The apartment owner shall obtain police verification report of the proposed tenant from the concern police station while letting out the apartment on rent to ensure that the proposed tenant is not a criminal or troublesome.

**37. Major repairs**

If a building requires major repairs for its structural safety or other sufficient reason, a detailed estimate thereof shall be got prepared by the association through an engineer to be appointed by the Board and thereupon, after the approval of the estimate by the Board, the members shall contribute their share for carrying out such repairs.

**38. Use of Dwelling Units : Internal Changes—**

- (1) All the Units shall be utilised for residential/approved purposes only.
- (2) An owner shall not make any structural modifications or alterations in his unit or installations located therein, without notifying the association in writing and obtaining the requisite permission of the prescribed sanctioning authority. The Association shall have the obligation to answer within thirty days and failure to do so shall mean that there is no objection to the proposed modification, alteration or installation.
- (3) No owner shall undertake any work that affects the external facade of the building from any angle i.e. covering of balconies and terraces, change of colour, etc..
- (4) No owner shall undertake any work that affects the structure of the building.
- (5) No owner shall undertake any work that,-
  - (i) result in encroachment of common areas,
  - (ii) result in damage or disturbance of common areas, adjacent upper or lower floors.

If any of the above changes are effected by any owner, he will make them good at his own cost, failing which the Association is entitled to effect recovery of the cost of rectification from him.

**39. Transfer of an Apartment**

The transfer of an apartment shall be made by a registered deed of an apartment. The transferor shall produce "no dues certificate" from the association of the apartment owners at the time of the transfer of the apartment;

Provided that if the certificate is not granted and its refusal is not communicated within 15 days after the receipt of the application for its grant, it shall be deemed that the No Dues Certificate has been granted by the Association

Provided further that the transferor of an apartment owner shall pay ½ percent of the transfer value to the association for transferring his apartment to his prospective buyer and such amount shall be kept in a fund by the association for being used in future for the major repairs of the building.

#### **40. Use of Apartments, Common Areas and Facilities and Limited Common Areas and Facilities—**

(1) An apartment owner of a residential unit shall use it for only residential purpose and similarly, an apartment owner of a non-residential unit use it for non-residential purposes alone.

(2) No apartment owner would exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the general and/or limited common areas and facilities, or by the abandonment of his dwelling unit.

(3) An owner shall not place or cause to be placed in the lobbies vestibules, stairways, elevators and other areas of facilities of a similar nature both common and restricted, any furniture, packages or objects of any kind. Such areas shall be used for no other purpose than for normal transit through them.

(4) If an apartment owner causes any obstruction in the use of the common area or facility by reason of creating an obstruction by putting his furniture and packages etc., and fails to remove it despite a written request of the Association, the Association may approach the competent authority for its removal who will take an appropriate action in accordance to the provisions of law.

(5) If lift and/or elevators are provided in the building, as part of the common areas and facilities, they shall be used by the owners of the apartment and/or their tenants and/or any one claiming under them for the transportation of the owners, the tenant and their guests as also the employees of the owners, their tenants and of the management and heavy article or any other articles, the transportation of

which in the lift or elevator along with the owners, tenants or their guests or the employees shall cause discomfort or inconvenience to other users of the lift or the elevators, shall be transported only with the lifts or elevator are not in use by other users; provided this restriction shall not apply, if an elevator or lift is provided for the exclusive transportation of articles, packages, merchandise and such other objects.

(6) In non-residential buildings, the association of apartment owners may manage the parking space by earmarking it for the apartment owners and also separately reserving parking space for the vehicles of the visitors. The association may also levy a parking fee from the visitors to meet the expenses for the management of the parking space of the visitors..

(7) The apartment owners shall use their apartments in a manner which does not spread any smell while cooking food etc. from their apartment to cause any irritation or annoyance to their neighbouring apartment owners.

(8) The convenient shops within the building shall be regulated in a manner that no inconvenience is caused to the apartment owners. Such convenient shops should be to cater the needs of the apartment owners and not the outsiders..

(9) The association of the apartment owners may frame its scheme and regulations for admitting the members of a club situated within the building and it may also frame regulations for permitting the guest of the members. Such scheme and the regulations would bind the apartment owners as well as the agency which may manage the club.

(10) If the terrace of a building / block is declared as 'common area and facility' by the promoter, the association shall maintain it and its maintenance expenses shall be part of the common expenses of the building. Provided that if the terrace or its part is declared by the promoter as 'limited common area' or an 'independent area', the beneficiary /holder of such terrace or its part shall be bound to keep such terrace in good condition and water proof, failing which the association shall maintain it at its own expense and recover it from the concerned defaulting beneficiary /holder of the terrace.

**41. Right of Entry—**

- (1) An owner shall grant the right of entry to the office bearer or to any other person authorised by the Board in case of emergency whether the owner is present at the time or not.
- (2) An owner shall permit other owners or their representatives when so required to enter his unit for the use of performing installation and alterations or repairs to the mechanical or electrical services provided, that requests for entry are made in advance and that such entry is at a time convenient to the owner, but, in case of emergency, such right of entry shall be immediate.

**42. Rules of Conduct—**

- (1) No resident shall post any advertisement or poster of any kind in or on the building, except as authorised by the Association.
- (2) The residents shall exercise extreme care about making noises or the use of musical instruments, radios, television and amplifiers etc. that may disturb others. Residents keeping pets shall abide by the municipal sanitary bye-laws or regulations.
- (3) It is prohibited to hang garments, rugs etc. from the windows, balconies or from any of the facades.
- (4) It is prohibited to throw garbage or trash outside the disposal places provided for such purpose in the service areas. If such place is not provided, all garbage or trash shall be collected in a vessel and thrown in the municipal dustbin.
- (5) No owner, resident or lessee shall install wiring for electrical or telephone installation, television antenna, machines or air-conditioning units etc., on the exterior of the building except as authorised by the Association.

**43. Damages:** Any damages due to the negligence, misuse or faults on the part of an apartment owner, family member (s), or guest (s) shall be the responsibility of the apartment owner. The Association shall charge the apartment owner for such repairs, an amount to cover the cost of time, labour, materials and/ or outside contractors. The charge must be paid by the apartment owner within 30 days of the demand of the charge.

**44. Unlawful activities:** The apartment owner, his family or guest (s) shall not engage in any act intended to facilitate criminal activity, including act of violence in the apartment, building or common areas.

**45. Visitors /Guests:** The visitors / guest (s) of the apartment owner are to be refrained from any conduct which disturbs the privacy and quiet enjoyment of the other apartment owners or occupants. The apartment owners shall be responsible for the actions of their guest (s) who would be expected to abide by all rules and regulations at all times without any exceptions.

## **CHAPTER VI**

### **FUNDS AND THEIR INVESTMENTS**

**46. Funds—** Funds maybe raised by the Association in all or any of the following ways:-

(a) by shares;

(b) by contributions and donations by the apartment owners;

(c) from common profits which shall form the nucleus of the reserve funds;

(d) by raising loans, if necessary, subject to such terms and conditions as the Association, with the approval of the Competent Authority, may determine in this behalf.

**47. Investment—** The association may invest or deposit its funds in one or more of the following:-

(a) in the Central Co-operative Bank or in State Co-operative Bank; or

(b) in any of the securities specified in section 20 of the Indian Trust Act, 1882; or

(c) in any Co-operative Bank other than referred to in clause (a) or in any Banking Company approved for this purpose by the Association.

**48. Affiliation** – The Association shall become a member of a federation of the Associations of Apartment Owners and shall pay the subscription to it from time to time and shall also follow the instructions and directions issued by such federation.

**49. Accounts—**

(1) The Association shall open a banking account and deposit the money received on behalf of the Association. The Secretary may retain in his personal custody an amount not exceeding Rs. 20000/- for petty expenses. All payments above Rs. 2500/- shall be made by cheque, signed by the Secretary and one member of the Board.

(2) Each apartment owner shall have a passbook in which the Secretary shall enter amounts paid to or received for his share in receipts of profits from common areas and contributions towards common expenses and his share of the assessment and other dues if any, in respect of his apartment.

(3) The Association shall on or before the 31st day of July in each year publish an audited financial statement in respect of the common areas and facilities containing,-

(a) the profit and loss accounts;

(b) the receipts and expenditure of the previous financial year; or

(c) a summary of the property and assets and liabilities of the common areas and facilities of the association giving such particulars as will disclose the general nature of these liabilities and assets and how the value of fixed assets have been arrived at.

(4) The audited financial statement shall be opened to the inspection of any member of the Association during office hours and a copy shall be submitted to the Competent Authority not later than the 15<sup>th</sup> day of August of every year.

(5) Every financial statement shall be accompanied by a list of the apartment owners and the similar list of loanees.

(6) The association shall send a summary of its audited financial statement to its every apartment owner within a period of 15 days from the date of the publication of its audited financial statement referred to in sub-clause (3) above.

**50. Publication of Accounts and Reports—**A copy of the last financial statement and of the report of the auditor, if any, shall be kept in a conspicuous place in the office of the Association.

**51. Appointment of Auditors**—The Association shall appoint at its general meeting an auditor who shall audit the accounts of the Association to be prepared by the Board.

**52. Power of Auditor**—The auditor shall be entitled to call for and examine any papers or documents belonging to the Association relating to the common areas and facilities and common expenses and shall make a special report to the Association upon any matter connected with the accounts which appears to him to require notice.

## **CHAPTER VII**

### **MORTGAGES**

**53. Notice to Association**—If an owner mortgages his unit, he shall notify the Association through the office bearer or President of the Board, the name and address of the mortgagee and the Association shall maintain such information in a book entitled "Mortgagees of Units".

**54. Notice of un-paid Assessments**—The Association shall, at the request of a mortgagee of a unit, report any un-paid assessment due from the owner of such unit.

## **CHAPTER VIII**

### **COMPLIANCE**

**55. Compliance**—These bye-laws are set forth to comply with the requirement of the Act. In case any of these bye-laws conflict with the provisions of the Act it is hereby agreed and accepted that the provisions of the Act shall prevail.

**56. Seal of the Association**—The Association shall have a common seal which shall be in the custody of the Secretary and shall be used under the authority of a resolution of the Board and every Deed of Instrument to which seal is affixed shall be attested for and on behalf of the Association by two members of the Board and the Secretary or any other person authorised-by the Association.

## **CHAPTER IX**

### **57. Power of competent authority to inspect the building**

The competent authority, *suo motu* or on an application, may make an inspection of the building to which the Act applies. A memo of inspection may also be prepared by the competent authority about the status of the building including the common areas and facilities and, thereupon, the competent authority may take such action in respect thereto as may be deemed necessary by him.

## **CHAPTER X**

### **AMENDMENTS TO PLAN OF APARTMENT OWNERSHIP**

**58. Amendment of Bye-Laws**—These Bye-laws may be amended by the Association in a duly constituted meeting for such purpose and no amendment shall take effect unless approved by owners representing at least two third of the total number of the units in the building with the prior approval of the competent authority.

(रवीन्द्र सिंह)  
प्रमुख सचिव।

**THE SOCIETIES REGISTRATION ACT, 1860**  
*As applicable in Uttar Pradesh*

**Prashant Kanha, Advocate, High Court Allahabad**

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## THE SOCIETIES REGISTRATION ACT, 1860

*As applicable in Uttar Pradesh*

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## THE SOCIETIES REGISTRATION ACT, 1860

*As applicable in Uttar Pradesh*

### Preamble

Whereas it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes; it is enacted as follows :

- 1. Societies formed by Memorandum of Association and Registration.** – Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with Registrar from themselves into a society under this Act.
- 2. Memorandum of Association.** – The Memorandum of Association shall contain the following things, that is to say,-

the name of the society;

the object of the society;

the names, addresses, and occupations of the Governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the Memorandum of Association.

- 3. Registration and fees.-** (1) Upon such memorandum and certified copy being filed along with particulars of the address of the society's office which shall be its registered

address, by the Secretary of the society on behalf of the persons subscribing to the memorandum, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of one thousand rupees or such smaller fee as the State Government may notify in respect of any class of societies :

Provided that the State Government may, by notification in the official Gazette, increase from time to time the fee payable under this sub-section :

Provided further that the Registrar may, in his discretion, issue public notice or issue notices to such persons as he thinks fit inviting objections, if any, against the proposed registration and consider all objections that may be received by him before registering the society.

(2) Notwithstanding anything in sub-section (1) the Registrar shall refuse to register a society, if after giving it an opportunity of showing cause against such refusal, he is satisfied that –

- (a) the name of the society is identical with that of any other society previously registered under this Act;
- (b) the name of the society sought to be registered uses any of the words, namely, ‘Union’, ‘State’, ‘Land Mortgage’, ‘Land Development’, ‘Co-operative’, ‘Gandhi’, ‘Reserve Bank’, or any words expressing or implying the sanction, approval or patronage of the Central or any State Government or any word which suggests or is calculated to suggest any connection with any local authority or any corporation or body constituted by or under any law for the time being in force, or is such as is otherwise likely to deceive the public or the members of any other society previously registered under this Act;
- (c) any one or more of the objects of the society sought to be registered is not an object mentioned in Sections 1 and 20; or

(d) its objects are contrary to any other law for the time being in force :

Provided that the State Government may in exceptional circumstances, for reasons to be recorded permit any society to use the word 'Union' or the word 'Gandhi' in its name and thereupon, the use of that word in the name of the society shall not be a ground for refusal to register or to renew the certificate of registration of such society.

**3-A. Renewal of certificate of registration.** - (1) Subject to the provisions of sub-section (2), a certificate of registration issued under Section 3 shall remain in force for a period of five years from the date of issue :

Provided that a certificate issued before the commencement of the Societies Registration (Uttar Pradesh Amendment) Act, 1984 (hereinafter in this section referred to as the said Act), shall remain in force for a period of five years from the date of such commencement, on payment of the difference of the fees specified under sub-section (3) and the fees already paid.

(2) A Society registered under Section 3, whether before or after the commencement of the said Act, shall on application made to the Registrar within one month of the expiration of the period referred to in sub-section (1) and on payment of the fee specified in sub-section (3), be entitled to have its certificate of registration renewed for five years at a time :

Provided that in the case of a society registered before the commencement of the said Act, the Registrar shall refuse to renew the certificate of registration if after giving it an opportunity of showing cause against such refusal he is satisfied that any of the grounds mentioned in sub-section (2) of Section 3 exist in respect thereof.

(3) There shall be paid to the Registrar with every application for renewal of the certificate of registration –

- (a) a fee equal to the registration fee payable under Section 3 or rupees two hundred, whichever is less, if such application is filed within the period specified in sub-section (2) :

Provided that the State Government may, by notification in the Official Gazette, increase from time to time the fee payable under this clause subject to the condition that the fee so increased shall not exceed the registration fee payable under Section 3;

- (b) an additional fee of forty rupees or such higher fee not exceeding one-fifth of the fee payable under clause (a) as may be notified by the State Government, if such application is filed within one month of the date of expiration of the period specified in sub-section (2); and
- (c) an additional fee at the rate of twenty rupees per month or part thereof, or such higher additional fee per month not exceeding half of the additional fee payable under clause (b), as may be notified by the State Government, if such application is filed beyond one month of the expiration of the period specified in sub-section (2).

(4) Every application for renewal of the certificate shall be accompanied by a list of members of the managing body elected after the registration of the society or after the renewal of certificate of registration and also the certificate sought to be renewed unless dispensed with by the Registrar on the ground of its loss or destruction or any other sufficient cause.

(5) A society which fails to get its certificate of registration renewed in accordance with this section within one year from the expiration of the period for which the certificate was operative shall become an unregistered society :

Provided that the Registrar may, for sufficient cause, allow an application for renewal more than one year after the expiration of the period for which the certificate was operative on payment of fee of four hundred rupees or such higher

fee not exceeding ten times of the additional fee payable under clause (b) of sub-section (3) as may be notified by the State Government from time to time.

(6) Where a certificate of registration is renewed in accordance with sub-section (2) or sub-section (5) such renewal shall operate from the date of expiration of the period for which the certificate was operative.

**3-B. Reference to the State Government.-** If any question arises whether any society is entitled to get itself registered in accordance with Section 3 or to get its certificate of registration renewed in accordance with Section 3-A, the matter shall be referred to the State Government, and the decision of the State Government thereof shall be final.

**4. Annual list of managing body to be filed.-** (1) Once in every year, on or before the fourteenth day succeeding the day on which, accordance to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Provided that if the managing body is elected after the last submission of the list, the counter signatures of the old members, shall, as far as possible, be obtained on the list. If the old office bearers do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he things fit inviting objections within a specified period and shall decide all objections received within the said period.

(2) Together with list mentioned in sub-section (1), there shall be sent to the Registrar a copy of the memorandum of association including any alteration, extension or abridgment of purposes made under Section 12, and of the rules of the Society corrected

up to date and certified by not less than three of the members of the said governing body to be a correct copy and also a copy of the balance-sheet for the preceding year of account.

**4-A. Changes, etc. in rules to be intimated to Registrar.-** A copy of every changes made in rules of the Society and intimation of every change of address of the Society, certified by not less than three of the members of the governing body shall be sent to the Registrar within thirty days of the change.

**4-B.** (1) At the time of registration / renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office bearers and two executive members of the society.

**5. Property of Society how vested.-** The property, movable or immovable, belonging to a Society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such Society, and in all proceedings, civil and criminal, may be described as the property of the governing body of the Society by their proper title.

**6. Suits by and against Societies.-** Every Society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the Society, and, in default of such

determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the Society, to sue the president or chairman, or principal secretary, or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

- 7. Suits not to abate.-** No suit or proceeding in any Civil Court shall abate or discontinue by reasons of the person, by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued, or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.
- 8. Enforcement of judgment against Society.-** If a judgment shall be recovered against the person or officer named on behalf of the Society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the Society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the Society only, and shall require to have the judgment enforced against the property of the Society.

- 9. Recovery of penalty accruing under bye-law.-** Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

**10. Members liable to be sued as strangers.-** Any member who may be in arrear of a subscription which, according to the rules of the society he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury, or such destruction of property, in the manner hereinbefore provided.

*Recovery by successful defendant of costs adjudged.-* But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

**11. Members guilty of offences punishable as strangers.-** Any member of the society who shall steal, purloin or embezzle any money or other property, or willfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.

**12. Societies enabled to alter, extend, or abridge their purposes.-** Whenever it shall appear to be the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society, but no such provision shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days' previous to the special meeting convened by the governing body

for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

**12-A. Change of name.** - Any society registered under this Act may, with the consent of not less than two-thirds of the total number of its members, and with the previous approval of the Registrar in writing change its name by resolution passed at a general meeting convened for the purpose.

**12-B. Notice of change of name or objects.** - (1) Notice in writing of every change of objects made under Section 12 or of name made under Section 12-A signed by the secretary and any three other members of the society shall be sent to the Registrar.

(2) Where the Registrar is satisfied that the provisions of this Act in respect of objects or name of society and in respect of change of objects or of name, as the case may be, have been complied with, he may subject to the provisions of Section 12-C register the change of name which shall have effect from the date of such registration.

**12-C. Effect of change of name or objects.**- The change in the objects or name of a society shall not affect any rights or obligations of the society, nor render defective any legal proceedings by or against the society, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

**12-D. Registrar's power to cancel registration in certain circumstances.** - (1)  
Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds :

- (a) that the registration of the society or of its name or change of name is contrary to the provisions of this Act or of any other law for the time being in force;
- (b) that its activities or proposed activities have been or are or will be subversive of the objects of the society or opposed to public policy;

(c) that the registration or the certificate of renewal has been obtained by misrepresentation or fraud :

Provided that no order of cancellation of registration of any society shall be passed until the society has been given a reasonable opportunity of altering its name or object or of showing cause against the action proposed to be taken in regard to it.

(2) An appeal against an order made under sub-section (1) may be preferred to the Commissioner of the Division in whose jurisdiction the Headquarter of the Society lies, within one month from the date of communication of such order.

(3) The decision of the Commissioner under sub-section (2) shall be final and shall not be called in question in any court.

**13. Provision for dissolution of societies and adjustment of their affairs.-** Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the registered office of the society is situate, and the Court shall make such order in the manner as it shall deem requisite :

***Assent required.*** - Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose :

***Government consent.*** - Provided that whenever any Government is a member of, or a contributor to, or otherwise interested in, any society registered

under this Act, such society shall not be dissolved, without the consent of the Government of the State registration.

**13-A. Power of Registrar to apply for dissolution.-** (1) Where in the opinion of Registrar, there are reasonable ground to believe in respect of a society registered under this Act that any of the grounds mentioned in Clauses (a) to (e) of sub-section (1) of Section 13-B exists, he shall send to the society, a notice calling upon it to show cause within such time as may be specified in the notice why the society be not dissolved.

(2) If on or before the date specified in the notice or within such extended period as the Registrar may allow, the society fails to show any cause or if the cause shown is considered by the Registrar to be unsatisfactory, the Registrar may move the Court referred to in Section 13 for making an order for the dissolution of the society.

**13-B. Dissolution by court.-** (1) On the application of the Registrar under Section 13-A or under Section 24 or on an application made by not less than one-tenth of the members of a society registered under this Act, the Court referred to in Section 13 may make an order for the dissolution of the society on any of the following grounds, namely-

- (a) that the society has contravened any provision of this Act or of any other law for the time being in force and it is just and equitable that the society should be dissolved;
- (b) that the number of the members of the society is reduced below seven;
- (c) that the society has ceased to function for more than three years preceding the date of such application;
- (d) that the society is unable to pay its debts or meet its liabilities, or

(e) that the registration of the society has been cancelled under Section 12-D on the ground that its activities or proposed activities have been or will be opposed to public policy.

(2) Without prejudice to the provisions of sub-section (1) or of Section 12-D, the Court may, on an application of the District Magistrate in this behalf, make an order for the dissolution of a society on the ground that the activities of the society constitute a public nuisance or are otherwise opposed to public policy.

When an order for dissolution of a society is made under sub-section (1) or sub-section (2), all necessary steps for the disposal and the settlement of the property of the society, its claims and liabilities and any other adjustment of its affairs shall take place in manner as the court may direct.

**14. Upon a dissolution no member to receive profit.-** If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of dissolution, or in default thereof, but such Court as aforesaid :

*Clause not to apply to Joint-Stock Companies.* - Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint-Stock Company.

**14-A. Disposal of property of a dissolved society.-** Notwithstanding anything contained in Section 14, it shall be lawful for the members of any society dissolved under Section 13 to determine, by a majority of the votes of the members present personally or by proxy at the time of the dissolution of such society, that any property whatsoever remaining after the satisfaction of all the debts and liabilities shall be given to the Government to be utilized for any of the purposes referred to in Section 1.

**15. Member defined.-** (1) For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, and shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations.

(2) Every society shall maintain a register of members giving such particulars as may be prescribed.

*Disqualified Members.* - But in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

**16. Governing body defined.** - The governing body of the society shall be the governor, council, directors, committee, trustees, or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

**16-A. Disqualifications for holding office in society.-** A person who is an undischarged insolvent or who has been convicted of any offence in connection with the formation, promotion, management or conduct of the affairs of a society, or of a body corporate, or of an offence involving moral turpitude shall be disqualified for being chosen as, and for being a member of the governing body or the President, Secretary or any other office bearer of a society.

**17. Registration of societies formed before Act- Assent required.-** Any company or society established for a literary, scientific or charitable purpose, and registered under Act 43 of 1850, or any such society established and constituted previously to the passing of this Act but not registered under the said Act 43 of 1850, may at any time hereafter be registered as a society under this Act; subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body.

In the case of company or society registered under Act 43 of 1850, the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

- 18. Such societies to file memorandum etc., with Registrar of Joint-Stock Companies.** – In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar a memorandum showing the name of the society, the objects of the society, and the names, addresses and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in Section 2 and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.
- 19. Inspection of documents.-** Any person may inspect all documents filed with the Registrar under this Act on payment of such fee as the State Government may, by notification in the official *Gazette*, fix; and any person may require a copy of extract of any document or any part of any document, to be certified by the Registrar, on payment of such fee as the State Government may, by notification in the official *Gazette*, fix.
- Certified copies.* - And such certified copy shall be *prima facie*, evidence of the matters therein contained in all legal proceedings whatsoever.
- 20. To what societies the Act applies.** - The following societies may be registered under this Act.

Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of Khadi and Village Industry, Panchayat Industry, Rural Development, science literature, or the fine arts for instruction, the diffusion of useful knowledge (the diffusion of political

education), the foundation or maintenance of library or reading-rooms for a general use among the members or open to the public or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.

**21.** In this Act, the word “registrar” means a person appointed as such by the State Government and includes an Additional Registrar, a Joint Registrar, Deputy Registrar, or Assistant Registrar, on whom all or any of the powers of the Registrar under this Act are conferred by general or special order of the State Government.

**22. Powers of Registrar to call for information.** – (1) The Registrar may, by written order, require any society to furnish in writing such information or document within such time, being ordinarily not less than two weeks from the date of receipt of the order by the society, as he may specify in order in connection with the affairs of the society or any documents filed by the society under this Act.

(2) On receipt by the society of an order under sub-section (1), it shall be the duty of the President, Secretary or any other person authorized in this behalf to furnish such information or documents.

**23. Audit.-** (1) Without prejudice to the provisions of sub-section (2) of Section 4 or of Section 22, where the Registrar is of opinion that it is necessary or expedient so to do, he may, by written order, require any society to furnish its accounts or copy of a statement of receipts and expenditure for any particular year duly audited by a Chartered Accountant :

Provided that the Registrar may, at the request of society permit it to have such accounts and statement audited by any other person approved by him.

(2) If the society fails to furnish the documents referred to in sub-section (1) within the period specified in the order or within such extended period as the Registrar may from time to time allow, the Registrar may cause the accounts of such society audited for the said year and may recover the cost of such audit from the society.

(3) If the society neglects or refuses to make its accounts or other documents available for audit under sub-section (2) or, in the opinion of the Registrar, otherwise fails to provide requisite facilities to have the audit made with due expedition, the Registrar may proceed to take action under Section 24.

**24. Investigation of affairs of a society.-** (1) Where on information received under Section 22 or otherwise, or in circumstances referred to in sub-section (3) of Section 23, the Registrar is of opinion that there is apprehension that the affairs of a society registered under this Act are being so conducted as to defeat the objects of the society or that the society or its governing body by whatever name called or any officer thereof in actual effective control of the society is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations, the Registrar may, either himself or by any person appointed by him in that behalf, inspect or investigate into the affairs of the society or inspect any institution managed by the society.

(2) It shall be the duty of every officer of the society when so required by the Registrar or other person appointed under sub-section (1) to produce any books of account and other records of or relating to the society which are in his custody and to give him all assistance in connection with such inspection or investigation.

(3) The Registrar or other person appointed under sub-section (1) may call upon and examine on oath any officer, member or employee of the society in relation to the affairs of the society and it shall be the duty of every officer, member or employee, when called upon, to appear before him for such examination.

(3-A) The Registrar or other person appointed under sub-section (1) may, if in his opinion it is necessary for the purpose of inspection or investigation, seize any or all the records including account books of the society :

Provided that any person from whose custody such records are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of the person having the custody of such records.

(4) On the conclusion of the inspection or investigation, as the case may be, the person, if any, appointed by the Registrar to inspect or investigate shall make a report to the Registrar on the result of his inspection or investigation.

(5) The Registrar may, after such inspection or investigation, give such directions to the society or to its governing body or any officer thereof as he may think fit, for the removal of any defects or irregularities with such time as may be specified and in the event of default in taking action according to such directions, the Registrar may proceed to take action under Section 12-D or Section 13-B, as the case may be.

**25. Disputes regarding election of office-bearers.-** (1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit :

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied-

- (a) that any corrupt practice has been committed by such office-bearer;  
or
- (b) that the nomination of any candidate has been improperly rejected;  
or
- (c) that the result of the election in so far it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any

vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

*Explanation I.* – A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person-

- (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election;
- (ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;
- (iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in Clauses (i) and (ii);
- (iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;
- (v) canvasses on grounds of cast, community, sect or religion;
- (vi) commits such other practice as the State Government may prescribe to be a corrupt practice.

*Explanation II.*- A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself, or of any one in whom he is interested.

*Explanation III.*- The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections

and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.

(2) Where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorized by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under sub-section (2), no other meeting shall be called for the purposes of election by any other authority or by any person claiming to be an office-bearer of the society.

*Explanation-* For the purposes of this section, the expression “prescribed authority” means an officer or court authorized in this behalf by the State Government by notification published in the official Gazette.

**26. Terms of gift to be observed-** Where a society accepts a gift or donation of money or property of any other kind from any person for a specific purpose, it shall not use the money or other property gifted or donated or any part thereof for any other purpose without the written consent of the Registrar who shall refuse such consent except when he is satisfied that the purpose for which the gift was made is incapable of execution by the society.

**27. Penalties. -** Any person who-

- (a) fails to furnish the list of managing body or other information required to be furnished under Section 4 or 4-A or willfully makes or causes to be made a false entry in, or any omission from, the list or any statement or copy of rules or of alteration in rules or other information sent to the Registrar under the said Section 4 or Section 4-A;
- (b) willfully fails to furnish any account or statement referred to in sub-section (1) of Section 23 or furnishes in compliance with the said sub-section particulars which are false and which he either knows or believes to be false or does not believe to be true.
- (c) neglects or refuses to make its accounts or other documents available for audit as required by sub-section (2) of Section 23.
- (d) willfully fails to produce any books of accounts or other records as required by sub-section (2) of Section 24.
- (e) willfully fails to appear before the Registrar or other person appointed by him or otherwise contravenes the provisions of sub-section (3) of Section 24;

Shall be punishable with fine which may extend to two thousand rupees.

- 28. Procedure.-** No Court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Act nor shall cognizance of the any such offence be taken except on a complaint made by the Registrar or any other person authorized in writing by him by general or special order in that behalf.
- 29. Compounding of offences.-** (1) The Registrar may accept from any person against whom a reasonable suspicion exists that he has committed any offence punishable under Section 27 or against whom a prosecution under

section has been instituted, a sum of money by way of composition fee for the offence which such person is suspected or accused to have committed.

(2) On the payment of such composition fee the suspected person if in custody, shall be discharged and no further proceeding shall be taken against him, and if prosecution of such person had been instituted, the composition shall have the effect of his acquittal.

**30. Manner of payment of fees.** - Fees payable under the provisions of this Act shall be paid in such manner as may be prescribed by rules.

**31. Indemnity.** - No suit, prosecution or other legal proceeding shall lie in any Court against the State Government, the Registrar or against any person appointed for inspection or investigation under Section 24, for anything in good faith done or intended to be done under this Act or the rules made thereunder.

**32. Mode of service of notice, etc. by Registrar.**- (1) Any notice, order or requisition meant for a society or for the governing body thereof to be issued by the Registrar may be served on the Secretary of the society, and service on the Secretary be as effectual as if the same had been served on every member of the society or, as the case may be, on every member of the governing body thereof, unless the Registrar otherwise directs.

(2) The sending of such notice, order of requisition to the Secretary of the society by registered post at its registered office shall amount to sufficient service thereof on the society.

**33. Power to make rules.** - (1) The State Government may by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) All rules made under this Act shall, as soon as may be, after they are made, be laid before each House of the State Legislature while it is in session, for a total period of thirty days extending in its one session, or more

than one successive sessions and shall unless some later date is appointed, take effect from the date of their publication in the official Gazette, subject to such modifications or annulments as the two Houses of the Legislature may, during the said period agree to make, so, however, that any such modification or annulment shall be without prejudice to validity of anything previously done thereunder.

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## How to form the Association of Apartment Owners.

It is common that builders do not want that the apartment owners of an apartment complex form their own association and start managing their own affairs. The law i.e. the Uttar Pradesh Apartment (promotion of construction ownership and Maintenance) Act 2010 also mandates that it shall be the joint responsibility of the builder/ promoter and the apartment owners to form the association, however, in practice the builders are most reluctant to form association of apartment owners as same will take away the right to manage the common areas and facilities and money collected for that. Under such circumstances when the builder is not forming the association of apartment owners in Uttar Pradesh specially in Noida, Greater Noida, Lucknow, Agra, Ghaziabad, Meerut, Allahabad etc. then the buyers should take following steps to form the association on their own:

1. Serve a notice of 30 days to the Builder asking him to form the AOA or else residents will conduct a GBM on first Sunday post 30 days from the date receipt of the said notice by the builder.
2. Post 30 days of the service of the notice on builder conduct a general body meeting. General body means all the residents of the apartment building.
3. In the GBM pass 3 resolutions:
  1. That all the apartment owners agree to form AOA.
  2. That all the apartment owners adopt the model byelaws dated 16.11.2011
  3. Chose a Board of Management of 9 members comprising of President, VP, Secretary & Treasurer and Executive members.
4. The elected Board of Management will do followings:
  1. Write and follow up with the GNIDA to get NOC for the formation of the AOA on the basis of the resolutions of the GBM.
  2. Register the AOA at the office of the Deputy Registrar Meerut by visiting the website: <http://uprfsc.gov.in/>

## सोसाइटी पंजीकरण अधिनियम 1860 के अधीन समिति के पंजीकरण की औपचारिकताएं

- 1- संस्था के सचिव की ओर से संस्था के पंजीकरण हेतु एक औपचारिक आवेदन पत्र के साथ सादे मोटे टिकाऊ कागज के केवल एक ही ओर टंकित कराकर संस्था के स्मृति-पत्र, नियमावली, शुल्क ₹ 2000-00 (दो हजार रुपये) नकद या बैंक ड्राफ्ट तथा संस्था के पूर्व में पंजीकृत न होने सम्बन्धी नोटरी शपथ-पत्र के साथ संबंधित मण्डलीय कार्यालय में प्रस्तुत किया जाना चाहिए। (धारा-3)
- 2- बैंक ड्राफ्ट राष्ट्रीयकृत बैंक का होना चाहिए जो रजिस्ट्रार फर्म, सोसाइटीज एवं चिट्स उ0प्र0 लखनऊ अथवा संबंधित डिप्टी रजिस्ट्रार/सहायक रजिस्ट्रार के पक्ष में देय हो।
- 3- निबन्धन कार्यालय में मात्र उक्त पत्रों के प्रस्तुत करने अथवा भेजे जाने से ही संस्था पंजीकृत नहीं मानी जायेगी बल्कि पंजीकरण प्रमाण-पत्र जारी कर दिये जाने पर ही संस्था पंजीकृत मानी जायेगी। (धारा-3)
- 4- स्मृति पत्र में अग्रलिखित सूचनायें क्रमवार दी जायेगी। (धारा (2) तथा नियम 3)।

### स्मृति पत्र

- (1) संस्था का नाम
- (2) संस्था का पूरा पता
- (3) संस्था का कार्यक्षेत्र
- (4) संस्था का उद्देश्य
- (5) संस्था के प्रबंधकारिणी समिति के पदाधिकारियों एवं सदस्यों के नाम पते, पद तथा व्यवसाय जिनको संस्था के इस स्मृति पत्र तथा नियमों के अनुसार संस्था का कार्यभार सौंपा गया -

क्रमसं०	नाम तथा पिता/पति का नाम	पता	पद	व्यवसाय
1	2	3	4	5

- 8-नियमावली में अग्रलिखित सूचनायें क्रमवार दी जायेगी (धारा 2 तथा नियम 4)।

### नियमावली

- (1) संस्था का नाम (स्मृति पत्र के अनुसार)
- (2) संस्था का पूरा पता
- (3) संस्था का कार्यक्षेत्र
- (4) संस्था का उद्देश्य
- (5) संस्था की सदस्यता तथा सदस्यों के वर्ग (आजीवन, सामान्य संरक्षक आदि)
- (6) सदस्यता समाप्ति मृत्यु, पागलपन, दंडित होना, दिवालिया होना, शुल्क न देना आदि। (7) संस्था के अंग (अ) साधारण सभा (ब) प्रबंधकारिणी समिति। साधारण सभा (अ) गठन, (ब) बैठक-सामान्य व विशेष, (स) सूचना आदि, (द) गणपूर्ति, (य) विशेष/वार्षिक।
- (8) अधिवेशन की तिथि आदि (र) साधारण सभा के कर्तव्य/अधिकार।
- (9) प्रबंधकारिणी समिति - (अ) गठन, (ब) बैठकें-सामान्य व विशेष, (स) सूचना-अवधि, (द) गणपूर्ति (घ) रिक्त स्थानों की पूर्ति आदि (र) प्रबंधकारिणी समिति के कर्तव्य/अधिकार तथा (ल) कार्यकाल।

- (10) प्रबंधकारिणी समिति के पदाधिकारियों के अधिकार व कर्तव्य।
- (11) संस्था के नियमों व विनियमों में संशोधन प्रक्रिया।
- (12) संस्था का कोष (लेखा व्यवस्था)।
- (13) संस्था के आय-व्यय का लेखा परीक्षण (आडिट)।
- (15) संस्था के अभिलेख (सदस्यता रजिस्टर, कार्यवाही रजिस्टर, स्टॉक रजिस्टर, कैशबुक आदि)।
- (16) संस्था के विघटन और विघटित सम्पत्ति के निस्तारण की कार्यवाही (धारा 13 व 14)।
- (17) अन्य ऐसी सभी विवरण प्राविधान जो संस्था के उद्देश्य की गणपूर्ति एवं संस्था के संचालन में सहयोगी, उपयोगी एवं आवश्यक हो (धारा 2 तथा नियम 4)।

#### पंजीकरण के आवश्यक निर्देश

1-नियमावली के प्रत्येक पृष्ठ पर प्रबंधकारिणी समिति के कम से कम 3 सदस्यों के हस्ताक्षर होने चाहिये (धारा 2)।

2-प्रत्येक संशोधन एक पदाधिकारी के हस्ताक्षर द्वारा प्रमाणित किया जाना चाहिये (नियम 5(2))

3-संस्था का नाम पूर्व में किसी पंजीकृत संस्था के नाम जैसा या उससे मिलते जुलते नाम जैसा नहीं होना चाहिये। संस्था के नाम के साथ 'यूनियन', 'स्टेट', 'लैण्ड मार्गेज', 'लैण्ड डेवलपमेंट', 'गाँधी', 'कोऑपरेटिव', 'संघ', 'रिजर्व बैंक', अथवा ऐसे कोई भी शब्द जिससे संस्था के प्रति केन्द्र या राज्य सरकार या अन्य स्थानीय प्राधिकरण आदि की स्वीकृति अथवा संरक्षण का बोध हो, का प्रयोग नहीं होना चाहिये (धारा (3)(2))।

4-स्मृति पत्र, नियमावली व पंजीकरण शुल्क के साथ संस्था की साधारण सभा की सूची, संस्था के गठन की कार्यवाही व एक नोटरी शपथ पत्र अध्यक्ष / महामंत्री द्वारा प्रस्तुत किया जायेगा, जिसमें निम्न बिन्दु वर्णित किये जायेंगे-

- 1) आवेदित संस्था के नाम से मेरी जानकारी में पूर्व में कोई संस्था पंजीकृत नहीं है, यदि पंजीकृत पायी जाती है तो संस्था का नाम परिवर्तन करने में कोई आपत्ति नहीं होगी।
- 2) संस्था द्वारा लाभ के उद्देश्य से कार्य नहीं किया जायेगा।
- 3) संस्था द्वारा स्मृति पत्र में वर्णित उद्देश्यों के अनुसार साहित्यिक वैज्ञानिक या धर्मार्थ (जो भी लागू हो) कार्य किये जायेंगे।
- 4) संस्था के समस्त पदाधिकारी/सदस्यों द्वारा हस्ताक्षर मेरे समक्ष किये गये है।

**Uttar Pradesh Apartment (Promotion of Construction,  
Ownership & Maintenance) (Amendment) Act 2016**

**The  
Uttar Pradesh  
APARTMENT (Promotion of  
Construction Ownership and  
Maintenance) (AMENDMENT) ACT,  
2016**

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No.1400(2)/LXXIX-V-1-6-1(ka)-24-2016

Dated Lucknow, September 19, 2016

In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Apartment (Nirman, Swamitwa Aur Anurakshan Ka Samvardhan) (Sanshodhan) Adhiniyam, 2016 (Uttar Pradesh Adhiniyam Sankhua 30 of 2016) as passed by the Uttar Pradesh Legislature and assented to by the Governor on September 16, 2016.

**The  
Uttar Pradesh  
APARTMENT (Promotion of  
Construction Ownership and  
Maintenance) (AMENDMENT) ACT,  
2016<sup>1</sup>  
(U.P. Act No. 30 of 2016)**

As passed by the Uttar Pradesh Legislature to amend the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010.

**1. Short title and commencement.-** (1) This Act may be called the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) (Amendment) Act, 2016.

(2) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

**2. Amendment of Section 2 of U.P. Act no. 16 of 2010.-** For Section 2 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, hereinafter referred to as the principal Act, the following section shall be substituted, namely :-

"2-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, multiplexes and commercial complexes which are maintained as single unit by the promoter or the maintenance agency."

1. Published in U.P. Gazette, Part-1 Clause (a) dated 19.09.2016.

**S.4] U.P. Apartment (Promotion...Maintenance) (Amendment) Act, 2016 2**

**3. Amendment of Section 3.- In Section-3 of the Principal Act,-**

(a) for clause (b) the following clause shall be substituted, namely :-

"(b) 'Apartment' means a part of any property, intended for any type of independent use, including enclosed spaces located on one or more floors or any part of parts thereof, in a building to be used for residential or official purposes or for the purpose of practicing any profession, or for carrying on any occupation, trade or business (excluding shopping malls, multiplexes and commercial complexes which are maintained as single unit by the promoter or the maintenance agency) or for such other use as may be prescribed, and with a direct exit to a public street, road or to a common area leading to such street, road and includes any parking space or room (whether or not adjacent to the building in which such apartment is located) provided by the promoter for use by the owner of such apartment for parking or, as the case may be, for the residence of any domestic aide employed in such apartment."

(b) In clause (i).

(i) for sub-clause (ii) the following sub-clause shall be substituted, namely :-

"(ii) the foundations columns, girders, beams, supports, main walls, roofs/terraces and halls of common use, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;"

(ii) for sub-clause (iii) the following sub-clause shall be substituted, namely :-

"(iii) the basements (areas of common use only), cellars, yards, parks, gardens, community centers and common parking areas; "

(iii) for sub-clause (vii) the following sub-clause shall be substituted, namely :-

"(vii) such other common areas and community facilities as may be specified in the bye-laws; and"

(c) after clause (t) the following clause shall be inserted, namely :-

"(tt) 'Multiplex' means a movie theater complex with multiple screens, shopping area, food court and ancillary services within a single building constructed on a land area admeasuring 4000 sqm. or more."

(d) after clause (x) the following clause shall be inserted, namely :-

"(y) 'Shopping Mall' means a large enclosed shopping area or complex constructed on a land area admeasuring 4000 sqm. or more having independent retail stores, food court and ancillary services."

**4. Amendment of Section 4.- In Section 4 of the principal Act,**

**S.5] U.P. Apartment (Promotion....Maintenance) (Amendment) Act, 2016 3**

(a) in sub-section (1) after clause (d) the following clause shall be inserted, namely:-  
 "(dd) build-up area and common area of an apartment."

(b) for sub-section (4) the following sub-section shall be substituted, namely:-

"(4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the purchaser to whom allotment letter in respect of an apartment is issued, the promoter may make such additions or alterations except any change in the location and character of parks and green areas earmarked in the originally approved plan as may be necessary due to architectural and structural reasons duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the said purchaser :

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without obtaining the permission of the prescribed sanctioning authority :

Provided further that after completion fully or partially of a project or of a particular phase of a project, the promoter shall not make any alterations in any building or common areas and facilities in respect of which completion certificate has been issued."

(c) in sub-section (5) for the words "within the period of two years from the date of sale agreement" the words "within the period specified for completion of the project in the development permit or the building permit as the case may be" shall be substituted.

(d) in sub-section (6) for the existing proviso the following proviso shall be substituted, namely :-

"Provided that handing over of physical possession of the common areas and facilities under this sub-section shall be completed within a period of one year from the date of issue of completion certificate or the date by which sixty percent of the apartments have been handed over to the owners, whichever is earlier, subject to the condition that the promoter shall be responsible for the sale and transfer of the balance apartment."

**5. Amendment of Section 7.-** In Section-7 of the principal Act, for the proviso the following proviso shall be substituted, namely :-

"Provided that where the allotment, sale or other transfer of any apartment has been made by any group housing co-operative society or association in favour of any member thereof, the transferability of such apartment and all other matters shall be regulated by the law, which may provide a transfer fee at a maximum rate of one percent in any case of the sale value, applicable to such group housing co-operative society or association whosoever maintains the common areas and facilities. The transfer fee shall not be leviable in case of heritability."

**6. Amendment of Section 12.-** In Section 12 of the principal Act, in

S.8] U.P. Apartment (Promotion....Maintenance) (Amendment) Act, 2016 4  
 sub-section (1) the following provisos shall be inserted after clause (h), namely:-

"Provided that such declaration shall not be required for the buildings completed prior to commencement of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) (Amendment) Act, 2016.

Provided further that the amended declaration shall not be required to be filed every time whenever a plan is amended or revised after obtaining the permission of the prescribed sanctioning authority but, the final declaration shall be filed at the time of applying for completion fully or partially of the project as the case may be."

7- Amendment of Section 13.- For Section 13 of the principal Act the following Section shall be substituted, namely :-

"13- No promoter or apartment owner shall transfer or hand over the possession of any apartment constructed after the commencement of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 without executing an appropriate transfer deed and also getting it registered under the provisions of the Registration Act, 1908."

8. Amendment of Section 14.- In Section 14 of the principal Act,

(a) for sub-section (2) the following sub-section shall be substituted, namely:-

"(2) It shall be the joint responsibility of the promoter and the apartment owners to form an Association. the promoter shall get the Association registered when such numbers of apartments have been handed over to the owners which are necessary to form an association or sixty percent of apartments, whichever is more, by way of sale, transfer or possession provided the building has been completed along with all infrastructure services and completion certificate obtained from the concerned local authority :

Provided that in case of an independent area or an independent commercial area the promoter may form a separate Association for its management, if required."

(b) In sub-section (5) after the existing proviso the following proviso shall be inserted, namely :-

"Provided further that the amount collected by the promoter towards interest-free maintenance security shall also be transferred to the Association at the time of handing over of the common areas and facilities."

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U.P. Apartment (Promotion....Maintenance) (Amendment) Act, 2016 5

## STATEMENT OF OBJECTS AND REASONS

With a view to removing difficulties being faced by the promoters and the apartment owners, it has been decided to amend the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 mainly to provide for :-

- (a) defining the expressions "multiplex" and "shopping mall" ;
- (b) clarifying the distinction among "common areas and facilities", "limited common areas and facilities" and "independent areas" especially with reference to garage, parking space, basements, roofs/terraces and halls ;
- (c) removing ambiguity in the connotation of "intending purchaser", "allotee" and the "apartment owner" ;
- (d) removing the difficulties arising on account of rights and obligations of the promoter to revise or amend the plans ;
- (e) prescribing minimum numbers of apart owners to form the association ;
- (f) prescribing timelines for handing over of possession of common areas and facilities to the association by the promoter ;
- (g) resolving the ambiguity in filing of declaration for the buildings completed prior to commencement of this Act and enabling filing of declaration at the time of part or full completion of the project ;
- (h) regulating the transfer fee of an apartment in case of transferability of such apartment ;
- (i) making it compulsory to transfer the amount collected by the promoter towards interest free maintenance security to the Association at the time of handing over of the common areas and facilities.

The Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) (Amendment) Bill, 2016 is introduced accordingly.

By order,  
Rang Nath Pandey,  
Pramukh Sachiv.

# RELEVANT JUDGEMENTS



**AFR**

**Judgment reserved on 05.07.2013**  
**Judgment delivered on 14.11.2013**

**Civil Misc. Writ Petition No.33826 of 2012**  
M/s Designarch Infrastructure Pvt. Ltd. & Anr.

v.

Vice Chairman, Ghaziabad Development Authority & Ors.  
and

**Civil Misc. Writ Petition No.46099 of 2012**  
Abhinav Jain

v.

State of U.P. & Ors.

and

**Civil Misc. Writ Petition No.15782 of 2010**  
Sun Tower Residents Welfare Association

v.

Ghaziabad Development Authority & Ors.

and

**Civil Misc. Writ Petition No.12110 of 2013**  
Olive County Apartment Owners' Association

v.

State of U.P. & Ors.

**Hon. Sunil Ambwani, J.**

**Hon. Bharat Bhushan, J.**

1. We have heard Shri P.K. Jain assisted by Shri Himanshu Tiwari and Shri Navin Sinha assisted by Shri Kunal Ravi Singh for the petitioners. Shri A.K. Mishra and Shri Rajesh Kumar Singh appear for the Ghaziabad Development Authority.

2. The U.P. Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010 (in short the U.P. Apartment Act, 2010) was enacted by the State Legislature to provide for the ownership of an individual apartment in a building, of an undivided interest in the common areas and facilities appurtenant to such apartment; to make such apartment and interest heritable and transferable, and for matters connected therewith or incidental thereto. The Act received the assent of the Governor on 18.3.2010 and was published in the U.P. Gazette dated 19.3.2010. The U.P.

*argued that promoter continues to have contractual, legal and fundamental right to dispose of the stilt/open parking space in the manner in which he proposes and his consumers accept.*

*65. We think this argument does not bear detailed examination. Suffice it to say that if the argument of learned senior counsel and counsel for promoter is accepted, the mischief with which MOFA is obviously intended to deal with would remain unabated and flat purchasers would continue to be exploited indirectly by the promoters. In our opinion, MOFA does restrict the rights of the promoter in the block or building constructed for flats or to be constructed for flats to which that Act applies. The promoter has no right to sell any portion of such building which is not 'flat' within the meaning of Section 2(a-1) and the entire land and building has to be conveyed to the organisation; the only right remains with the promoter is to sell unsold flats. It is, thus, clear that the promoter has no right to sell 'stilt parking spaces' as these are neither 'flat' nor appurtenant or attachment to a 'flat'.*

*66. In view of the above, it is not at all necessary to deal with the factual submissions advanced by Mr. Tanmaya Mehta. Having regard to the answer to question no. (iv), the finding of the High Court that undertakings are neither binding on the flat purchasers nor the society also warrants no interference."*

65. To sum up the conclusions drawn by us are as follows:-

(1) The U.P. Apartment Act, 2010 and the U.P. Apartment Rules, 2011 provides for a complete code for regulating the rights, duties and liabilities and for resolving the issues and disputes between the promoters and the apartment owners. The Act has overriding effect under Section 31 (1) over all other laws on the subject notwithstanding anything inconsistent therewith contained in any other law for the time being enforced.

(2) The provisions of the Transfer of Property Act, 1882, in view of Section 29 of the U.P. Apartment

Ownership Act, 2010, shall in so far as they are not inconsistent with the provisions of the Act apply to the transfer of any apartment together with its undivided interest in the common areas and facilities appurtenant thereto made by the owner of such apartment, where such transfer is made by sale, lease, mortgage, exchange, gift or otherwise as they are applied to the transfer of any immovable property.

(3) The apartment owner under Section 3 (d) will not only the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments with an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more; it includes the spouse and children of the apartment owner and a lawful tenant of the allottee/ owner of the allotment, which will also include officer or employee of the company/ firm or association, which owns an apartment under a valid allotment letter and its tenant. It will also include a person holding valid power of attorney of the allottee/ owner of the apartment, where it is owned individually, jointly or in the case of a company/ firm/ society and occupied without any right of occupation either as family member, tenant, employee or person holding power of attorney will not be included in the definition of apartment owner.

(4) The U.P. Apartment Act, 2010, which has come into force w.e.f. 19.3.2010 is applicable to all the buildings, which have three or more than three

apartments intended for any type of independent use including enclosed spaces located on one or more floors to be used for residential or official purposes or for the purpose of practising any profession or for carrying on any occupation, trade or business, excluding shopping malls and multiplexes. The word 'apartment' includes any garage or room whether or not adjacent to the building in which such apartment is located, if it has independent access to public street, road or to a common area leading to such street, road, used for parking cars or for residence of any domestic aid. The garage or such rooms, however, do not have any independent status as apartment, to carry with it any rights of common areas and facilities.

(5) Each of the chapters namely Chapter-II Duties and Liabilities of Promoters; Chapter III Right and Obligations of Apartment Owners; Chapter IV Ownership, Heritability and Transferability of Apartment; Chapter V Declaration of Building and Deed of Apartment; Chapter VI Association of Apartment Owners and Bye-laws for the Registration of the Affairs of such Association; Chapter VII Common Profits, Common Expenses and Other Matters, are independent and that the rights and liabilities under these chapters can be enforced independently unless these are essentially depending upon rights and liabilities in other chapters subject to Chapter VIII 'Miscellaneous' with the ultimate control of the State Government of which directions have to be carried out by the competent authority as defined in Rule 2 (c) of the Rules, 2011.

(6) Chapter V Declaration of Building and Deed of Apartment, carries within it the content, which fulfills

the primary objective of the Act. The declaration under Section 12 falling in the said chapter, with which the complete information as provided in Form-A under Rule 3 of the Rules of 2011 with Annexure-A to F and Schedule A, must be enclosed as mandated by Section 13 with the deed of transfer, is mandatory for handing over possession of any apartment constructed after the commencement of the Act and also to get such transfer deed registered under the provisions of the Registration Act, 1908.

(7) Under Section 5 (1) of the U.P. Apartment Act, 2010 every person to whom any apartment is sold or transferred by the promoter shall subject to other provisions of the Act be entitled to exclusive ownership and possession of the apartment so sold or otherwise transferred. He is under sub-section (2) entitled to the exclusive ownership and possession of apartment and shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the deed of apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building. Such percentage of undivided interest under sub-section (3) (a) in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority, and which shall not be separated from the apartment to which it pertains. It shall be deemed to be conveyed or encumbered with apartment, even though such interest is not expressly mentioned in the conveyance or other instrument. The common areas and facilities under sub-section (4) can not be

transferred and will remain undivided with the apartment. These can not be partitioned or subject to any division and will be enjoyed by the apartment owner under sub-section (5), without hindrance or encroaching upon the lawful rights of the other apartment owners.

(8) The 'limited common areas and facilities', which are specified in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments as defined in Section 3 (s) and the 'independent areas', which have been declared but not included as common areas for joint use of apartments, and which may be sold by the promoter without the interference of other apartment owners under Section 3 (p), must be clearly defined and delineated in the declaration under Section 12, failing which the promoter will not be entitled to claim these common areas and facilities to be limited or independent. Any dispute with regard to common areas and facilities, limited common areas and facilities and independent areas, and for its provisions in the declaration is subject to decision by the competent authority as defined under Rule 2 (c) of the Rules of 2011. The failure to submit the declaration and its enclosure with the deed of transfer and its non-registration will disentitle the promoter from claiming common areas and facilities in the property in which the apartments are built to be limited common areas and facilities or independent areas.

(9) The association of apartment owners is to be registered by the Registrar, Deputy Registrar or Sub-Registrar under the Societies Registration Act as

amended in the State of U.P. If bye-laws are in conformity with the model byelaws as notified on 16.11.2011, the Registrar/ Deputy Registrar/ Sub-Registrar cannot refuse to register association on the ground that it contains less than minimum number of members of the society under the Societies Registration Act or that it does not comply with any of the provisions of the Societies Registration Act as amended in the State of U.P. The registration of the association is in compliance with the provisions of the U.P. Apartment Act, 2010, U.P. Apartment Rules, 2011 and model byelaws. It shall be the joint responsibility of the promoter and apartment owners to obtain the registration. The Registrar/ Deputy Registrar/ Sub Registrar shall not refuse to register the association, if the promoter does not join even after one month's notice given by the apartment owners or 33% of the apartment owners, whichever is more. It is clarified that the completion of all infrastructure services and completion certificate from local authority will not be a ground to deny the registration, as the issuance of completion certificate depends on the steps to be taken by the promoter. The delay caused by him in obtaining such certificate will defeat the object of formation of the society and the enforcement of the rights and liabilities of the promoter and the apartment owners. In such case the society will be registered provisionally under the certificate to be given by the competent authority as defined in Rule 2 (c) of the Act, who will give a time period to the promoter to provide all infrastructure services and to obtain completion certificate, failing which the promoter will invite the punishment for the offence as prescribed under Section

25 of the Act including the punishment of imprisonment under Section 25 (1) of the Act.

(10) The 'competent authority' within the meaning of Rule 2 (c) as defined will include Vice Chairman of the Development Authority in whose notified development area the building is situate or the Collector of the district, where no such development authority exists. In case of the Industrial Development Authority the competent authority shall be the Chief Executive Officer of the Industrial Development Authority. For the purposes of discharging functions and duties and resolving the disputes the competent authority will be entitled to delegate its powers to an officer not below the rank of Joint Secretary including Legal Advisor of the authority and any Sub Divisional Magistrate of the district in case of a district. The competent authority shall set up mediation and conciliation centres in each authority, or the district, which will resolve to mediate the disputes at the first instance between the disputing parties.

(11) Any dispute raised before the competent authority shall be decided by the competent authority or delegatee as provided above or his delgatee as provided above, to be decided by the officer notified by the State Government under Section 27 (2) and (3) of the Act, before it is brought before the Court of law.

(12) The competent authority will also be entitled to verify the contents of the declaration under Section 12 of the U.P. Apartment Act, 2010 and to decide any question, which may arise out of such declaration.

(13) The model byelaws as notified on 16.11.2011 under sub-section (6) of Section 14 of the U.P. Apartment Act, 2010, if not approved and appended to

the application for registration, made prior to the enforcement of the Act shall be adopted in the first meeting of the association of apartment owners and will be registered by the Registrar. Any amendment in the model bye-laws will be made in accordance with the Bye Law 58 of the Model Byelaws to be approved by the owners representing atleast 2/3<sup>rd</sup> of the total number of units in the building with the prior approval of the competent authority and will thereafter be registered by the Registrar of Societies without insisting upon complying with the provisions of any other Act including Societies Registration Act as amended in the State of U.P. No alteration in the declaration given by the promoter under Section 12 shall be permitted except in accordance with the Act and for which the approval of the development authority or regulating authority in which such property is situate will be necessary and thereafter with the approval of the association of apartment owners by resolution passed by the apartment owners in which vote of promoter shall not be counted. The development authority or regulating authority may in such case demand a NOC from the apartment owners before allowing any alteration in the building plans as a condition for granting approval.

(14) The FAR or any additional FAR is a property, appended to rights in the property on which the building is constructed, and is thus a property in which the apartment owners have interest by virtue of the provisions of the UP Apartment Act, 2010. The purchase of additional FAR is not permissible to be appropriate by the promoter without any common benefits to the apartment owners. The consent of the

apartment owners obtained by resolution in the meeting of the apartment owners by majority will be necessary for purchasing additional FAR. Its utilization will also be subject to the consent of the apartment owners.

66. With the aforesaid interpretation and clarification of the provisions of the U.P. Apartment Act, 2010, the U.P. Apartment Rules, 2011 and the Model Bye Laws, 2011, ironing out the creases for facilitating the resolutions of the issues, which have been raised in these writ petitions, we **dispose of** all the writ petitions with directions that the parties to the writ petition with the aforesaid clarifications will get their association of apartment owners registered without any further delay, and thereafter raise the questions or disputes, if any, at the first instance in the meeting of the association of the apartment owners, before such disputes are taken to the competent authority or the authority to which powers may be delegated by the Competent Authority in accordance with the directions issued in the judgment. Considering the number of writ petitions pending and the issues, which are likely to arise, we direct that in view of the provisions of Rule 3 of the U.P. Apartment Rules, 2011 the declaration will be submitted by the promoter under sub-section (1) of Section 12 in Form-A appended to the Rule with its Annexures 'A' to 'F' and Schedule 'A', by all the promoters in the State of U.P., who have completed or partly completed constructions of the buildings with more than three allotted or occupied apartments, with the Competent Authority within one month from the date of approval of the plans and where the building has been constructed or is under construction prior to the commencement of the Act and Rules, within 90 days, and that in respect of all the buildings where 33% of the apartments have been occupied after its sale transfer or delivery of

possession. The apartment owners, if they have not formed the association so far and the promoters shall form an association and get it registered after adopting the model bye-laws as notified by the State Government on 16.11.2011, within a period of 90 days. In case a meeting is not called within reasonable time, say a month, after the notice is given for convening such meeting and/ or the dispute is not resolved in the meeting, the apartment owners or the promoter may make a complaint to the competent authority, who will first make an attempt to decide the matter with the help of mediation or conciliation process and thereafter pass reasoned orders after hearing the parties. Any party aggrieved with the decision may, thereafter, approach the Courts for redressal of their grievance.

67. There shall be no order as to costs.

**Dt.14.11.2013**

SP/

# SAMPLE LETTERS



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**ADVOCATE**

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