

THE UTTAR PRADESH OWNERSHIP OF FLATS ACT, 1975

(U.P. Act No. 50 of 1975)

(AS Passed by the Uttar Pradesh Legislature)

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An Act to provide for matters connected with the ownership and use of individual flats in buildings consisting of four or more flats.

It is hereby enacted in the Twenty-sixth Year of the Republic of India as follows :-

1. Short title and extent.-

- (1) This Act may be called the Uttar Pradesh Ownership of Flats Act, 1975.
- (2) It extends to the whole of Uttar Pradesh.

2. Application of the Act.-

This Act applies only to property, the sole owner of all the owners of which submit the same to the provisions of this Act by duly executing and registering @a Declaration setting out the particulars referred to in Section (10) :

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

Provided further that the sole owner or all the owners of the land on which building is situated may submit such land to the provisions of this Act with a condition that he or they, shall grant a lease of such land to the owners of the flats, the terms and conditions of the lease being disclosed in the declaration either by annexing a copy of the instrument of lease to be executed in the declaration or otherwise

3. Definitions.-

In this Act, unless the context otherwise requires-

(a) 'flat' means part of a property having a direct exit to a road, street or highway or to a common area leading to such road, street or highway which together with its undivided interest in the common areas and facilities forms an independent residential unit;

'building' means a building or more than one buildings situated in the same locality containing, in all four or more flats;

'bye-laws' means bye-laws made under Act;

Common area and facilities' includes-- !

the land on which a building is located and all casements, rights and appurtenances belonging to the land and the building.,

the foundations, columns, girder, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-way, fire escapes and entrances-and exit of the building;

the basements cellars yards, gardens, parking areas and storage spaces..

the premises for the lodging of janitors or persons employed for the management of the property.,

installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and sewerage;

the elevators, tanks, pumps, motor, expressers, pipes and ducts and in general all apparatus and installations existing for common use;

such other common facilities as may be specially provided for in the declaration.,

all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use-,

'common expenses' means expenses of administration, maintenance, repair, or replacement of the common areas and facilities and all other sums assessed against the owners of flats by the Association of Owners of the flats;

'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;

'competent authority' means the Housing Commissioner appointed under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965;

'declaration' means the instrument by which a property is submitted to the provisions of this Act as hereinafter provided;

'limited common areas and facilities' means those common areas and facilities which may be designated in the declaration as reserved for use of certain flat or flats to the exclusion of the other flats

'prescribed' means prescribed by rules made under this Act;

'property' comprises any land, any building, built or proposed to be built thereon, and the common areas and facilities.

4. Flat to be transferable and heritable property.-

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

(2) Subject to the provisions of the second proviso to Section 2, a flat, together with its undivided interest in the common areas and facilities', shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force;

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

5. Common areas and facilities.-

(1) Each owner of a flat shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration.

The percentage of the undivided interest of each owner of a flat in the common areas and facilities as expressed in the declaration shall not be altered without the consent of all the owners of the flats expressed in an amended declaration duly executed and registered as required by this Act.

The percentage of the undivided interest in the common areas and facilities shall not be separated from the flat to which it appertains, and shall be deemed to be coney-eyed or encumbered with the flat even though such interest is not expressly mentioned in the conveyance or other instrument.

The common areas and facilities shall remain undivided, and no suit shall lie at the instance of any owner of the flat or other person partition or division of any part thereof, unless the property has been withdrawn from the provisions of this Act.

Each owner of a flat may use the common areas and facilities for, the purpose for- which they are intended without hindering or encroaching upon the lawful rights of the owners of other flats.

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

The Association of Owners of flats shall have irrevocable right to be exercised by the Manager or the Board of Manager on behalf of the Association with such assistance as the Manager or the Board of Managers as the case may be, considers necessary to have access to each flat from time to time during reasonable hours for the maintenance repair and replacement of any of the common areas facilities therein or accessible therefrom or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other flats.

6. Compliance with bye-laws, covenants, etc.-

Each owner of flat shall comply strictly with the bye-laws and with the covenants, conditions and restricts set forth in the declaration, and his failure to comply with any of the same shall be a ground for an action to recover damages or for other relief or reliefs at the instance of the Manager or the Board of Manager on behalf of the Association of Owners of flats or, in a proper case, by an aggrieved owner of a flat.

7. Certain work prohibited.-

No owner of a flat shall do any work which would be prejudicial to the soundness or safety of the property or hereditament or shall add any material structure or excavate any additional basement or cellar.

8. Encumbrances against flats .-

(1) During the period the property remains subject to this Act, no encumbrance of any nature shall be created against the property;

Provided that during such period an encumbrance may be created against each flat and the percentage of undivided interest in the common areas and facilities appurtenant to such flat. in the same manner as in relation to any other separate parcel of property subject to Individual ownership.

Labour performed and material furnished for the common areas and facilities, if duly authorised by the Association of Owner of flats, the Manager or Board of Managers in accordance with this Atf, the declaration or bye-laws, shall be deemed to be performed o.- furnished with the express consent of each owner of a flat and shall be the basis for a charge or encumbrance under the Transfer of Property Act, 1882. against each of the flats and shall be subject to the provisions of Sub- section (3).

(a) In the event of a charge or any encumbrance jointly against two or more flats becoming effective, the owners of the separate flats may remove their flats and the percentage of undivided interest In the common areas mid facilities appurtenant to such flats from the charge or encumbrance by, payment of the fractional or proportional amounts attributable to each of the flats affected in accordance with the percentages appearing in the declaration.

Subsequent to any such payment, discharge or other satisfaction. the flat and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the charge or encumbrance so paid. satisfied or discharged.

Such partial payment, satisfaction or discharge shall not prevent the person having a charge or any other encumbrance from proceeding to enforce h-is rights against any flat and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

9. Common profits and expenses.-

The common profits of the property shall be distributed among, and the common expenses shall be charged to, the owners of flats according to the respective percentages of their undivided interest in the common areas and facilities.

10. Contents of Declaration.-

The declaration referred to in Section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely-

- (a) description of the property namely the description of the land on which the building is or is to be located, whether the land is freehold or leasehold and whether any lease of the land is to be granted in accordance with the second proviso to Section 2. and description of the building or proposed building stating the number of storeys and basements and the number of flats;
- (b) nature of interest of the owner or owners in the property;
- (c) existing encumbrance, if any, affecting the Property.
- (d) description of each flat containing its location approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification.
- (e) description of the common areas and facilities;
- (f) description of the limited common areas and facilities, if any, stating to which flats their use is reserved;
- (g) value of the property and of such flat, and the percentage of undivided Interest in the common areas and facilities appertaining to each flat and its owner for all purposes, including voting.

11. Withdrawal from the provisions of the Act.-

- (1) All the owners of flats may withdraw a property from the provisions of this Act by an instrument executed to that effect.
- (2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the owners of flats and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.
- (3) Any encumbrance affecting any of the flats shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the owner of the flat in the property as provided herein.
- (4) The withdrawal provided for in Sub-section (1) shall in no way bar the subsequent resubmission of the property to the provisions of this Act,

12. Instruments of declaration, etc.-

compulsorily registerable -All instruments relating to the declaration or any amendment thereto referred to in Section 10 or the withdrawal of a property from the provisions of this Act referred to in Section 11 shall be deemed to be instrument compulsorily registerable within the meaning of Clause (b) of Sub-section (1) of Section 17 of the Registration Act, 1908.

13. Bye-Laws.-

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

The bye-laws shall provide for the following amongst other matters, namely-

(a) the manner in which the Association of Owners of flats is to be formed, the election of a Board of Managers from amongst the owners of flats, the number of persons constituting the Board, the number of members of such Board to retire annually, the powers and duties of the Board, the method of removal from office of members of the Board, the power of the Board to engage to Services of a Secretary or Manager, the delegation of powers and duties to such Secretary or Manager;

the method of calling meetings of the owners of flats and the number to constitute a quorum,

the election of a President who shall preside over the meetings of the Board and of the Association of Owners of flats.,

the maintenance repair and replacement of the common areas and facilities and payments therefor;

the manner of collecting the share of the common expenses from the owners of flats,

any other matter considered to be necessary for the administration of the property.

14. Separate Assessment.-

Notwithstanding anything to the contrary contained in any law for the time being in force each flat and its percentage of undivided interest in the common areas and facilities shall be deemed to be a separate property for the purpose of assessment of rates and taxes leviable by a local authority under any law for the time being in force

15. Charge of Property for common expenses.-

All sums assessed by the Association of Owners of flats for the share of the common expenses chargeable to any flat shall constitute a charge on such flat prior to all other charges except charge, if any, on the flat for payment of taxes due to the Central Government or the State Government or to any local authority under any law for the time being in force.

16. Insurance.-

(1) The Manager or Board of Manager if required by the declaration or the bye-laws or by a majority of the owners of flats or at the request of a mortgagee having a first mortgage covering a flat, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards, under such terms and for such amounts as shall be required or requested.

Such insurance coverage shall be written on the property in the name of such Manager or of the Board of Managers of the Association of the owners of flats as trustee for such owner of flats in the percentage established in the declaration.

Premium relating to such insurance shall be common expense.

The foregoing provisions for such insurance shall be without prejudice to the right to each owner of a flat to Insure his own flat for his benefit.

17. Disposition of property or destruction or damages.-

If within sixty days of the date of damage or destruction to all or part of the property, it is not determined by the Association of Owners of flats to repair, reconstruct or rebuild, then and in that event-

the property shall be deemed to be owned in common by the owners of flats;

the undivided interest, In the property owned In common which shall appertain to each owner of a flat shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities;

any encumbrances affecting any of the flats shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided Interest of the owner of the flat In -the property as provided herein,

the property shall be subject to an action for partition at the suit of any owner of a flat 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 along all the owners of the flats in percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out all -the respective shares of the owners of the flats to the. extent sufficient for the purpose and all charges on the undivided interest in the property owned by each owner of flat.

18. Legal Proceedings.-

(1) Without limiting the rights of any owner of a flat suits and other legal proceedings may be brought by the Manager or Board of Mangers, in either case at the discretion of the Board of Managers, on behalf of two or more of the owners of flats as their respective Interest may appear, with respect to any cause to action relating to the common areas and facilities or more than one flat.

Service of process on two or more owners of flats in any suit or other legal proceeding relating to the common areas and facilities or more than one flat may be made on the person designated In the declaration to receive service of process.

19. Act to be binding on owners of flat, tenants, etc.-

(1) All owners of flats. tenants of such owners. employees of owners and tenants or any other person who may in any manner use the property, or any part thereof submitted to the provisions of this Act shall be subject to this Act and to the declaration and the bye-laws.

All agreements. decisions and determinations lawfully made by the Association of Owners -of flats In accordance with the voting percentage established under this Act. the declaration or the bye-laws, shall be deemed to be binding on all owners or flats.

20. Joint and several Liability of vendor, etc. for unpaid common expenses.-

(1) Upon the sale or other grant of a flat the purchaser or grantee of the flat shall be Jointly and severally liable with the vendor or grantor for all unpaid assessments against the latter for his

share of the common expenses up of the time of such sale or grant without prejudice to the purchaser's or grantees right to recover from the vendor or grantor the amount paid by the purchaser or grantee therefor.

Any such purchaser or grantee shall be entitled to a statement from the Secretary or Board of Managers, setting forth the amount of-the unpaid assessment against the vendor or grantor and such purchaser or grantee shall not be liable for. nor shall the flat sold or granted by subject to a charge for any unpaid share of common expenses against such flat in excess of the amount therein set forth.

21. Removal of doubts. -

For the removal of doubt, it is hereby declared. that the provisions of the Transfer of Property Act, 1882 shall in so far, as they are not inconsistent with the provisions of this Act, apply to every flat together with its undivided interest In the common areas and facilities as those provisions apply In relation to any other immovable property.

22. Power to make rules -

(1) The State Government may by notification in the 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 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 the validity of anything previously done thereunder.