



सत्यमेव जयते

महाराष्ट्र शासन राजपत्र

असाधारण
प्राधिकृत प्रकाशन

गुरुवार, डिसेंबर १२, २००२/ अग्रहायण २१, शके १९२४

स्वतंत्र संकलन म्हणून फाईल करण्यासाठी या भागाला वेगळे पृष्ठ क्रमांक दिले आहेत.

भाग आठ

(अध्यादेश, विधेयके व अधिनियम यांचा इंग्रजी अनुवाद)

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Bill, 2002 (L. A. Bill No. XLVII of 2002), is hereby published under the authority of the Governor.

Act. 4 / 2002

By order and in the name of the
Governor of Maharashtra,

PRATIMA UMARJI,
Principal Secretary to Government,
Law and Judiciary Department.

L. A. BILL No. XLVII OF 2002.

A. BILL

furthur to amend the Maharashtra Ownership Flats (Regulation of
the promotion of construction, sale, management and transfer)
Act, 1963.

Mah.
XLV of
1963.

WHEREAS it is expedient further to amend the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963, for the purposes hereinafter appearing ; it is hereby enacted in the Fifty-third Year of the Republic of India as follows :—

1. This Act may be called the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Act, 2002. Short title.

Amendment
of section 2
of Mah. XLV
of 1963.

2. In section 2 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (hereinafter referred to as " the principal Act "),—

Mah.
XLV of
1963.

(a) clause (a) shall be renumbered as clause (a-1) thereof and before clause (a-1) as so renumbered, the following clause shall be inserted, namely :—

"(a) "Competent Authority" means a Competent Authority appointed under section 5A;"

(b) in clause (c) for the words " " promoter " means a person", the following words shall be substituted, namely :—

" " promoter " means a person and includes a partnership firm or a body or association of persons, whether registered or not".

Amendment
of section 5
of Mah. XLV
of 1963.

3. In section 5 of the principal Act, for the words "an officer appointed by general or special order by the State government for the purpose" the words "a Competent Authority" shall be substituted.

Insertion of
section 5A
in Mah. XLV
of 1963.

4. After section 5 of the principal Act, the following section shall be inserted, namely :—

Competent
Authority.

"5A. The State Government may, by notification in the *Official Gazette*, appoint an officer, not below the rank of the District Deputy registrar of the co-operative societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas, for the purposes of exercising the powers and performing the duties under sections 5, 10 and 11 of this Act."

Amendment
of section
10 of Mah.
XLV of 1963.

5. In section 10 of the principal Act, in sub-section (1), the following provisos shall be added at the end, namely :—

"Provided that, if the promoter fails within the prescribed period to submit an application to the registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society :

Mah.
XXIV
of
1961.

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants' request and giving the concerned promoter a reasonable opportunity of being heard."

6. Section 11 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1), as so renumbered, the following sub-sections shall be inserted, namely :—

Amendment
of section
11 of Mah.
XLV of 1963.

"(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the co-operative society formed under section 10 or, as the case may be, the company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such co-operative society or, as the case may be, the company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate), for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral, deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution of conveyance deed for conveyance of the right, title and interest of the promoter in the land and building in favour of the applicant as deemed conveyance.

XVI of
1908.

(5) On submission by such Society or as the case may be, the company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate Registration Officer shall, notwithstanding anything contained in the Registration Act, 1908 issue summons to the promoter to show cause why such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may, on being satisfied that it was fit case for unilateral conveyance, register that instrument as 'deemed conveyance'."

XVI of
1908.

XVI of
1908.

Amendment
of section
13 of Mah.
XLV of 1963.

7. In section 13 of the principal Act,—

(a) after sub-section (3), the following sub-section shall be added, namely :—

"(4) When any promoter is convicted of any offence under this Act, except offence under section 12A, such promoter shall be disqualified from undertaking construction of flats for a period of five years from the date of such conviction. However, such disqualification shall not affect the permission for construction of flats already granted before incurring such disqualification and shall also not debar the promoter from seeking or being granted any additional requisite permissions which may be required from the concerned local authorities for completion of constructions already undertaken by him.

(5) The Competent Authority shall, on such conviction of a promoter under this Act, subject to the orders of the appellate court, if any, or after the expiry of the appeal period, forward the name of the convicted promoter to the local authorities under his jurisdiction, with a direction that such promoter shall not be granted permission under the relevant law for undertaking any construction of flats during the period of such disqualification, specifically mentioning such period.

(6) On receiving such intimation from the Competent Authority, notwithstanding anything contained in any other law for the time being in force, the concerned local authority shall not grant such promoter any permission or licence under the relevant law for construction of flats for a period for which the promoter is so disqualified.";

(b) in the marginal note, after the word " promoter " the words "and consequences on conviction " shall be inserted.

Insertion of
sections
13B, 13C,
13D and
13E of Mah.
XLV of 1963.

8. After section 13A of the principal Act, the following sections shall be inserted, namely :—

Competent
Authority to
be public
servant.

"13B. The Competent Authority shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Proceedings
before
Competent
Authority to
be judicial
proceed-
ings.

13C. All proceedings before a Competent Authority shall be deemed to be the judicial proceedings for the purposes of sections 193 and 228 of the Indian Penal Code. XLV of 1860.

2 of
1974.

13D. Every Competent Authority shall be deemed to be a Civil Court for the purposes of section 345 and 347 of the Code of Criminal Procedure, 1973.

Competent Authority deemed to be Civil Court of certain purposes.

13E. No suit, prosecution or any other legal proceedings shall lie against any Competent Authority in respect of anything, in good faith, done or purported to be done by him under this Act."

Indemnity for acts done in good faith.

STATEMENT OF OBJECTS AND REASONS

The Maharashtra Ownership Flats (Regulation of the promotion, of construction, sale, management and transfer) Act, 1963 has been enacted by the Government of Maharashtra in the year 1963 to regulate for a certain period in the State, the promotion of the construction of, the sale and management, and the transfer of flats on ownership basis. The said Act has been enacted to effectively prevent the sundry abuses and malpractices which had been on increase, consequent upon the acute shortage of housing in the several areas of the State.

2. It has come to the notice of the Government that the objective behind enactment of the said law is not fully achieved and its implementation has not been effective enough to curb certain malpractices and sundry abuses by the promoters or developers of the properties. Therefore, to make provisions of the said Act more effective and to safeguard interests of the purchaser of the flats, the Government of Maharashtra considers it expedient to carry out certain amendments to the existing provisions of the said Act. The important amendments proposed to be carried out are as follows :—

(a) It is proposed to provide for appointment of one or more Competent Authorities for different local areas who would, on failure on the part of the promoter,—

(i) to form a co-operative society of the persons who have purchased the flats from the promoter, on application received from such purchasers, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, the Assistant Registrar of Co-operative Societies to register the co-operative society of such flat owners :

(ii) to execute a conveyance within the prescribed period as provided in section 11, on receiving an application from the flat owner members of a co-operative society, issue a certificate to such society certifying that the said society was entitled to have a conveyance registered and that it is a fit case for execution of a unilateral conveyance as a ' deemed conveyance ' in favour of the said society. by the Registration Officer under the Registration Act, 1908.

(b) To serve as a deterrent, a provision is also being made for disqualifying a promoter, convicted under the said Act (except under section 12A), for a period of five years so as to debar him from being granted any permission by the local authorities under the relevant laws for undertaking construction of flats.

(c) The proceedings before the Competent Authority are given the status of judicial proceedings for the purposes of sections 193 and 228 of the Indian Penal Code and every Competent Authority is to be deemed to be a Civil Court for the purpose of sections 345 and 347 of the Code of Criminal Procedure, 1973.

3. The Bill seeks to achieve the above objectives.

Mumbai :

Dated the 27th November 2002.

SYED AHMED,

Minister for Housing.