THE PUNJAB APARTMENT OWNERSHIP ACT, 1995
(Punjab Act No. 13 of 1995)

AN ACT

to provide for the ownership of an individual apartment in a building together with and undivided interest in the common areas and facilities apartment to such apartment to make such apartment and interest heritable and transferable, to enforce obligations on promoters and apartment owners, and to provide for mattes connected therewith or incidental thereto.

Be it enacted by the Legislature of the State of Punjab in the Forty Sixth Year of the Republic of India as follows:-

CHAPTER – I
PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Punjab Apartment Ownership Act, 1995.

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

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

Application

2. The provisions of this Act shall apply to every apartment in any building constructed or converted into apartments by a promoter before or after the commencement of this Act on free hold land or on land held on lease.

Definitions

3. In this Act, unless the context otherwise requires;-

(a) "allottee", in relation to an apartment, means the person to whom such apartment has been allotted, sold or otherwise transferred by the promoter;

(b) "apartment", which may be called block, chamber, dwelling unit, flat, lot, premises, suite, tenement, unit or by whatever any other name, means a separate an self-contained part of any property, including one or more rooms or enclosed spaces, located on one or more floors, or any part or parts thereof, in a building, or in a plot of land, used or intended to be used for residence, office, shop, showroom, or godown, or, for carrying on any business, industry, occupation, profession or trade, or for any other type of independent use ancillary to the purposes specified above, and with a direct exit to a public street, road or highway or, to a common area leading to such street, road or highway, and includes any garage or room, whether or not adjacent to the building in which such apartment is located provided by the promoter for the use by the owner of such apartment for parking any vehicle, or as the case may be, for the residence of any domestic servant employed in such apartment.

Explanation – (1) If a basement, cellar, garage, room, shop or storage space is sold separately from any apartment, it shall be treated as an independent, apartment and not as part of any other apartment or of the common areas and facilities :

Explanation – (2) Notwithstanding that provisions is made for sanitary, washing, bathing or other conveniences as common to two or more apartments, the apartment shall be deemed to be separate and self-contained;

(c) "apartment number", means the number, letter or combination thereof, designating an apartment;

(d) "apartment owner", means the person owning and apartment and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the conveyance deed of apartment;

Explanation – A member of a co-operative housing society of the tenant co-partnership type, or an allottee under a hire-purchase agreement, will be deemed to be an owner entitled to membership of the association;

(e) "association", means an association consisting of all the apartment owners in a building acting as a group in accordance with the bye-laws;

(f) "Board", means the Board of management of an association elected by its members from among the apartment owners under bye-laws;

(g) "building", means a building constructed on any land containing eleven or more apartments, or two or more buildings with a total of eleven or more apartments, or any existing building converted into eleven or more apartments;

(h) "building regulations", means the rules or regulations or bye-laws made under any law for the time being in force for the erection or re-erection of buildings or parts thereof and for the purposes of this Act includes Zoning Regulations framed under any law for the time being in force;

(i) "bye-laws" means the bye-laws of an association made under this Act;

(j) "common areas and facilities", in relation to a building, means all parts of the building or the land on which it is located and all easements, rights an appurtenances belonging to the land or the building, which are neither in the exclusive possession of an apartment owner in terms of this conveyance deed of apartment, nor are handed over or intended to be handed over to the local authority or other public service agency and shall include the limited common areas and facilities;

(k) "common expenses", means,-

  (i) all sums lawfully assessed against the apartment owners, by the association for meeting the expenses of administration, maintenance, repair or replacement of the common areas and facilities;

  (ii) expenses, declared by the provisions of this Act or by the bye-laws or agreed upon by the association, as common expenses;

  (iii) the Government and municipal taxes, including ground rent and property tax, which is not assessed separately, for each apartment;

(l) "common profits", means the balance of all income, rent, profit and revenue from the common area and facilities, remaining after the deduction of the common expenses ;

(m) "competent authority", means any person or authority appointed by the State Government, by notification in the Official Gazette, to exercise and perform all or any of the powers and functions of the competent authority under this Act and the rules made thereunder ;

(n) "Government" or "State Government" means the Government of the State of Punjab ;

(o) "joint family" in the case of Hindus means a Hindu undivided family and, in the case of other persons, a group the members of which are by custom joint in possession or residence ;

(p) "land" means a portion of the surface of the earth, comprising the ground or soil and everything under it or over it, and things which are attached to the earth (such as buildings, structures and trees), things which are permanently fastened to the earth, or, to things attached to the earth, easements, rights and appurtenances belonging to them and benefits arising out of them and includes the sites of villages, towns and cities ;

(q) "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 apartments to the exclusion of the other apartments ;

(r) "local authority" means a corporation constituted under section 4 of the Punjab Municipal Corporation Act, 1976 (Punjab Act No. 42 of 1976), a committee constituted under section 12 of the Punjab Municipal Act, 1911 (Punjab Act No. 3 of 1911) or any other authority notified by the State Government for the purposes of this Act ;

(s) "majority" or "majority of apartment owners" means the apartment owners with fifty one per cent or more the votes in accordance with the percentage assigned in the conveyance deeds of apartments for voting purposes ;

(t) "person", includes company, firm, co-operative society, joint family and an incorporated body of persons ;

(u) "prescribed" means prescribed by rules made under this Act ;

(v) "promoter" means the person who constructs or causes to be constructed a building consisting of apartments or who converts an existing building or a part thereof into apartments for the purpose of selling all or some of the apartments to other persons and includes his assigns and where the person who constructs or converts a building and the person who sells are different persons, the term includes both of them ;

Explanation. – (1) Any development authority or any other public body so notified by the State Government are deemed to be promoters in respect to the allottees of apartments constructed by them on the land owned by them or placed at their disposal by the State Government ;

Explanation. – (2) A person who acts as described in clause (v) shall be deemed to be a promoter, even if,-

(i) he styles himself a builder, coloniser, contractor, developer, estate promoter or styles himself by any other name ; or

(ii) he claims to be acting as the holder of a power of attorney of the owner of the land on which the building is constructed ;

(w) “property” means the land, the building, all improvements and structures therein, and all easements, rights and appurtenances belonging thereto, and includes every type of right and interest in land which a person can have to the exclusion of other persons, such a possession, use and enjoyment free from interference, right of disposition, franchises and hereditaments ; and

(x) “section” means a section of this Act.

CHAPTER – II

OWNERSHIP, HERITABILITY AND TRANFERABILITY OF APARTMENTS

Ownership of apartments.

4. (1) Every person, to whom an apartment is allotted, sold or otherwise transferred by the promoter, either before or after the commencement of this Act, shall be entitled, save as otherwise provided in section 7 and subject to the other provisions of this Act, on and from such commencement, or on such allotment, sale or transfer, as the case may be, to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him.

(2) Every person who becomes entitled to the exclusive ownership and possession of an apartment under sub-section (1) shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the conveyance deed of apartment and such percentage shall be the ratio of the built-up area of the apartment to the total built-up area of all the apartments of the building and in respect of the limited common areas and facilities reserved for the use of certain apartments to the exclusion of other apartments, such percentage shall be the ratio of the built-up area of the apartment to the total built-up area of those apartments for which the use is reserved.

Explanation. – The actual built-up area should be taken into account for the calculation of the percentage and any different area which may be stated in the agreement of sale between the promoter and the person taking the apartment, shall be ignored:

Provided that if all or any of the apartments are put to any non-residential use, the percentage shall be as may be prescribed.

(3) The apartment owners shall own in common the common areas and facilities and neither the promoter nor the association shall have any ownership right in the common areas and facilities and the association shall be vested only with the management and maintenance of the common areas and facilities.

(4) The percentage of undivided interest of an 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.

(5) The percentage of undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment, even though such interest is not expressly mentioned in the convenant deed or other instrument creating the encumbrance.

(6) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any party thereof, and any convenant to the contrary shall be void.

5.(1) 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.

Common areas and facilities.

(2) The necessary work relating to the maintenance, repairs or replacement 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.

(3) The association shall have the irrevocable right to be exercised by the Board to have access to each apartment from time to time during reasonable hours for the maintenance repairs or replacement of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to any other apartment or apartments.

Apartment to be heritable and transferable.

6. Subject to the provisions of section 7 an apartment together with the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, shall constitute for all purposes a heritable and transferable immovable property within the meaning of any law for the time being in force and an apartment owner may transfer his apartment together with 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 or remedies, and to penalty forfeiture or punishment, as any other immovable property, or he may make a request of the same under the law applicable to the transfer and succession of immovable property and the promoter shall neither impose any condition on such transfer in the agreement of sale nor collect any amount for acquiescing to such transfer :

Provided that, where the apartment is in possession of a person on the basis of a hire purchase agreement, the transfer of possession of the apartment shall be regulated by the hire purchase agreement and the transferor shall be jointly and severally liable with the transferee for the instalments yet to be paid :

Provided further that, where the apartment is in possession of a member of a housing cooperative society of the tenant co-partnership type, the transfer of possession of the apartment shall be regulated by the laws, rules and bye-laws applicable to such society :

Provided further that where the building is on leasehold land the transfer shall be subject to the terms and conditions of the lease.

Ownership of apartment subject to conditions.

7.(1) Where an allotment, sale or other transfer of an 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 shall not become

entitled to the ownership of that apartment or to the percentage of undivided interest in the common areas and facilities appurtenant to such apartment until full payment has been made of the consideration alongwith any amounts in respect of common expenses and payment of Government and municipal taxes incurred by the promoter before the formation of association together with interest if any due thereof and if there is a dispute about the amount payable by the allottee to the promoter the dispute about the amount payable by the allottee to the promoter, the dispute shall be decided by the competent authority but the allottee shall be entitled to possession without waiting for the dispute to be decided.

(2) If after final payment as provided under sub-section (1) has been made, any expenses are incurred by the promoter for providing, any requirement imposed by the State Government or the local authority, such as fire-fighting equipment, it shall be recoverable from the apartment owners and where any such allottee has been inducted into the possession of such apartment of any part thereof on certain terms and conditions in pursuance of such allotment, sale or other transfer, he shall continue to remain in possession thereof on the same terms and conditions and if a person has entered into a hire-purchase agreement with the promoter and has been inducted into the possession of an apartment on certain terms and conditions, he shall continue to remain in possession thereof on the same terms and conditions.

Compliance with convenants and bye-laws.

8. An apartment owner shall comply strictly with the provisions of this Act, the rules made thereunder and the bye-laws and with the covenants, conditions and restrictions set forth in the conveyance 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 Board on behalf of the association or, in a proper case, by an aggrieved apartment owner, before the competent authority.

Purchasers of lessees to execute undertaking.

9. Notwithstanding anything contained in any law for the time being in force, a person acquiring an apartment from an 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 within three months and register an instrument, in such form and in such manner, 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, and file certified copy thereof in the office of the competent authority.

10. If an apartment is acquired by a person, whether by allotment, sale or otherwise, with the consideration thereof paid or provided by another person, the acquirer shall notwithstanding anything contained in any law for the time being in force, be deemed to be real owner of such apartment, and no court shall entertain any claim of the person paying or providing such consideration, for the title to such apartment, on the

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ground that the acquisition of the apartment was made on behalf of such person or on behalf of some one through whom such person claims.

Certain works prohibited.

11. 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 hereditament or shall add any material structure or excavate any additional basement or cellar, without first obtaining the consent of all other apartment owners.

Explanation.- Where there is more than one building in the association, reference to the other apartment owners in this section, is only to the other apartment owners in the concerned building.

Sub-lease and its Breach.

12. (1) Where any land is given to lease by a person (hereinafter in this section referred to as the lessor) to another person (hereinafter 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 lease-hold 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 a separate conveyance deed of sub-lease in respect of such land in favour of each apartment owner within three months from the date of which possession of any apartment is given to him and execute a document transferring the management of the common areas and facilities to the association within three months of its being formed, and file certified copies of the instruments in the office of the competent authority and in the case of a building constructed before the commencement of this Act, such conveyance deeds of sub-lease and such documents of transfer shall be executed within three months of the commencement of the Act and thereafter the powers and functions of the lessee shall be exercised by the association in respect of apartment owners who are the sub-leases;

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 :

Provided further that the lessee shall not withhold consent to, or collect any amount for acquiescing to the apartment owner executing a transfer of the sub-lease and endorsement on the deed of apartment in favour of a transferee but where the lessor is the Government, it may levy such transfer fee as may be prescribed.

(2) Where the lessee has any reason to suspect that there has been any breach by the apartment owner (hereinafter referred to as the defaulting apartment owner) of the terms and conditions of sub-lease, in respect of the land appurtenant to the apartment, he may himself inspect such land and make a report as to whether there has 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 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 (2) he shall record, in writing, his findings on such inspection and a true copy thereof shall be furnished to the defaulting apartment owner and, where such findings indicate that there has 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 such breach, or to pay in lieu thereof such composition fee as may be specified in the notice in accordance with such scales of composition fee 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 competent authority, either challenging the findings of the lessee or any person authorised by him, or disputing the amount of composition fee as specified in the notice and the competent authority may, after giving the parties a reasonable opportunity of being heard, confirm, alter or reverse those findings, or may confirm or reduce the amount of composition fee, or set aside the notice.

(5) Where there is default in the payment of any composition fee, it shall be lawful for the lessee to recover the amount of composition fee from the defaulting apartment owner.

(6) Where any composition fee is paid, whether in pursuance of the notice served under sub-section (3) or in accordance with the decision of the competent authority, no further action shall be taken by the lessee for the breach in relation to which payment of such composition fee has been made.

(7) Where any lessee omits or fails to take any action under sub-section (2) or sub-section (3), the lessor may, by a notice, in writing, require the lessee to take action against the defaulting apartment owner under sub-sections (2) or (3) 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 under sub-section (2) or (3) and the provisions of sub-sections (4), (5) and (6) shall, as far as may be, apply to any action taken by him, as if such action had been taken by the lessee.

(8) For the removal of doubts, it is hereby declared that no work in any apartment by the owner thereof, unless the work is prohibited by section 11 shall be deemed to be a breach of the terms and conditions of the sub-lease in respect of the land on which the building containing such apartment has been constructed.

(9) Where the building is not constructed on leasehold land, the promoter will not be required to grant a sub-lease to any apartment owner or execute a document transferring the management and maintenance of the common areas and facilities to the association but, on the execution of conveyance deed of apartment, the title of the apartment and the percentage of undivided interest in the common areas and

facilities appurtenant to such apartment shall be deemed to be transferred to the concerned apartment owner and the right of management of the common areas and facilities to the association and the provisions of the other sub-section of this section shall apply, as if the words “sub-lease”, “lessee” and “sub-lessee” refer to the “deed of apartment”, “association” and “appartment owner” respectively.

Encombrance against apartments.

13.(1) An apartment owner may create any encumbrance only against the apartment owned by him and the percentage of 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 or property subject to undivided ownership :

Provided that where any such encumbrance has arisen or has been crated against the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto, such apartment and undivided interest shall not be partitioned or sub-divided.

(2) No labour performed or material furnished with the consent or at the request of an apartment owner or his agent or his contractor or sub contractor, shall be the basis of a charge or encumbrance under the provisions of the Transfer of Property Act, 1882 (Central Act No. IV of 1882), against the apartment or any other property of any other apartment owner not expressly consenting to, or requesting the same, except that such express consent shall be deemed to be given by an apartment owner in the case of emergency repairs to his apartment.

(3) The labour performed and material furnished for the common areas and facilities, if duly authorised by the association or the Board in accordance with the provisions of this Act or the bye-laws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for a charge or encumbrance against each of the apartments and shall be subject to the provisions of sub-section (4).

(4) In the event of a charge or encumbrance against two or more apartments becoming effective, an apartment owner may remove his apartment from the charge or encumbrance by making payment of the proportional amount attributable to his apartment.

(5) On the payment, discharge or other satisfaction referred to in sub-section (4), the apartment 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, discharged or satisfied :

Provided that such part payment shall not prevent the person having a charge or encumbrance from proceeding to enforce the right, in relation to the amount still outstanding against any other apartments not so free of the charge or encumbrance.

CHAPTER III

CONVEYANCE DEED OF APARTMENT AND ITS REGISTRATION

Conveyance deed of apartment.

14.(1) Whenever any allotment, sale or other transfer or an apartment is made by the promoter to the allottee, the promoter and the allottee shall, as the party in the first part and party in the second part respectively, within three months from the date of such allotment, sale or other transfer, execute a conveyance deed of apartment, containing the following particulars, namely,-

(a) the name, address and other particulars of the allottee;

(b) the description of the land on which the building and the common areas and facilities are located, and whether the land is free-hold or lease-hold, and if lease-hold the period of such lease, and the postal address of the property;

(c) a floor plan of the building showing the layout and location of the apartment, and bearing the verified statement of an architect certifying that it is an accurate copy of the portions of the plans of the building as filed with and approved by the local authority within the jurisdiction of which the building is located;

(d) the description of the building, stating the number of storeys and basement, the number of apartments in that building and the main material of which it is constructed;

(e) the apartment number or statement of the location of the apartment, its approximate area, number and dimensions of the rooms, immediate common area to which it has access, and any other data necessary for its proper identification :

Provided that the number and areas of the apartments should be in conformity with the building regulations;

(f) the description of the common areas and facilities appurtenant to such apartment;

(g) the description of the limited common areas and facilities, if any, stating to which apartments their use is reserved ;

(h) the value of the property and of the apartment, and the percentage of undivided interest respectively in the common areas and facilities and the limited common areas and facilities, if any, appurtenant to such apartment, and a statement that the apartment and such undivided interest are not encumbered in any manner whatsoever on the date of execution of the conveyance deed of apartment ;

(i) the statement of the purpose for which the building and each of the apartments are intended and restricted as to use ;

(j) the name of the person to receive service of process, together with the residence or place of business of such person; and

(k) any other details which the parties to the conveyance deed of apartment may deem desirable to set forth :

Provided that if the competent authority is satisfied that the promoter was prevented by sufficient cause from executing the conveyance deed of apartment in relation to any apartment within the period of three months, it may permit the

promoter to execute such conveyance deed of apartment within such further period, not exceeding six months, as it may specify :

Provided further that the State Government may grant further extension if is satisfied that it is necessary to do so :

Provided further that in the case of an allotment, sale or other transfer made before the commencement of this Act, the promoter shall execute the conveyance deed of apartment within six months of such commencement or within the period of extension granted by the competent authority or the State Government:

Provided further that the non-execution of a lease between the lessor and the lessee, or the alleged breach of any condition of the original agreement regarding allotment between the promoter and the allottee, shall not be considered sufficient cause for the promoter for not executing the conveyance deed of apartment in favour of the allottee.

(2) If the apartment is allotted under hire-purchase, the promoter and the hire-purchase shall execute, instead of a conveyance deed of apartment, a hire purchase agreement.

(3) The promoter shall file in the office of the competent authority, and deliver to the oncerned allottee a true copy of the conveyance deed of apartment or the hire-purchase agreement as registered under section 16.

(4) Whenever any transfer of an apartment is made by the owner thereof, whether by sale, lease, mortgage, exchange, gift or otherwise, the transferor shall deliver to the transferee the certified copy of the conveyance deed of apartment delivered to him under sub-section (3), after making an endorsement thereon as to the name, address and other particulars of the transferee, to enable the transferee to get such endorsement registered in accordance with the provisions of section 16.

(5) The execution of the conveyance deed of apartment under this section vests the apartment owner with the exclusive ownership and possession of the apartment together with the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, as an heritable and transferable property in terms of sections 4 and 6.

(6) For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of the provisions of any other law for the time being in force, relating to the transfer of immovable property.

(7) In the absence of any agreement to the contrary, the stamp duty and the registration fee for a conveyance deed of apartment or an endorsement thereon or a sub-lease, shall be borne by the allottee, transferee or the sub-lessee, as the case may be.

Enforcement of transfer.

15. (1) If the promoter, or the apartment owner, as the case may be, fails to execute a conveyance deed of apartment or an endorsement thereon under sub-section (1) or sub-section (4) of section 14 within three months, or does not comply with the provisions of sub-sections (3) and (4) of section 14 within three months of the

execution of the conveyance deed of apartment or the endorsement thereon, or with the provisions of sub-section (1) of section 12 within three months of the date on which possession of the apartment is given, or, where the competent authority or the State Government has granted extension of time under the first proviso to sub-section (1) of section 14 within such extended period, the competent authority may, either on a complaint or *suo moto*, impose a penalty upto a maximum of five thousand rupee or five per cent of the price of the apartment, whichever is greater, for each apartment for which there is a default together with a further minimum penalty for each apartment of one hundred rupees for every day for which the default continues, and the penalty may be recovered as an arrear of land revenue :

Provided that it will be incumbent on the promoter to execute the sub-lease only after the lease is executed in his favour, but the conveyance deed of apartment will have to be executed without waiting for the execution of the lease, as envisaged by the fourth proviso to sub-section (1) of section 14.

(2) The penalty imposed in sub-section (1) shall be in addition to any action taken under the Indian Stamp Act, 1899 (Central Act No. 2 of 1899) or the Registration Act, 1908 (Central Act No. 16 of 1908), and if a penalty is imposed under the provisions of any of the aforesaid Acts, the promoter shall not be liable to penalty for same reason under this Act or under any other law governing the apartment ownership.

(3) On the failure of the promoter to execute the conveyance deed of apartment within the time stated in sub-section (1), the transferee may make an application to the competent authority in accordance with the provisions of sub-section (6).

(4) On failure of the apartment owner to make an endorsement of the transfer of an apartment on the conveyance deed of apartment within the time stated in sub-section (1), transferee may make an application to the competent authority in accordance with the provisions of sub-section (6).

(5) On the failure of the lessee to execute a sub-lease within the time stated in sub-section (1), the apartment owner may make an application to the competent authority in accordance with the provisions of sub-section (6).

(6) The applications under sub-sections (3), (4) or (5), as the case may be, shall be in the prescribed form for a certificate to be produced before the concerned registering officer for enforcing registration of the transfer.

(7) After making such enquiry as may be necessary and satisfying itself that the occupation certificate has been obtained from the authority required to do so under any law and that the applicant has done what he is required to do under the agreement, the competent authority shall issue a certificate to the registering officer that it is a fit case for enforcing registration and direct the applicant to present the conveyance deed of apartment, the endorsement on the conveyance deed of apartment or the sub-lease, as the case may be, though not executed by the other party, for unilateral execution of registration.

(8) After the instrument along with the certificate issued by the competent authority under sub-section (7) is presented for registration, the registering officer shall cause a summons to be issued to the other party and if the other party fails to appear in compliance with the summons, the execution of the instrument shall be deemed to be admitted by that party and the registering officer shall proceed to register the instrument but if the party appears but denies the execution of the instrument and the registering officer, after giving the party a reasonable opportunity of being heard is satisfied that the party has failed to execute the instrument without sufficient cause, shall proceed to register the instrument.

Registration of conveyance deed of apartment.

16. (1) Every instrument under section 9, every sub-lease and every document transferring management of common areas and facilities to an association under section 12, every conveyance deed of apartment and every endorsement thereon and every hire-purchase agreement relating to an apartment and a set of floor plans for every building of apartments under section 14, shall be deemed to be documents which are compulsory registerable under the Registration Act, 1908 (Central Act No. 16 of 1908) and shall be registered with the registering officer accordingly, and the words and expressions used in this section but not defined in this Act, shall have the meanings respectively assigned to them in that Act.

(2) The promoter shall file in the appropriate registration office with the first conveyance deed of apartment in respect of every building, set of all floor plans of the building, showing the layout, location, numbers and dimensions of apartments, and bearing the verified statement of an Architect certifying that it is an accurate copy of the plans of the building as filed with the approved by the local authority within the jurisdiction of which the building is located.

(3) In all registration offices, a book called “Register of conveyance deeds of apartments under the Punjab Apartment Ownership Act, 1995’ and an index relating thereto shall be kept in such form and shall contain such particulars as may be prescribed.

(4) Whenever any endorsement on a conveyance deed of apartment is registered, the concerned registering officer shall forward a certified copy thereof to the competent authority to enable that authority to make necessary entries in the certified copy of the concerned conveyance deed of apartment filed with it under sub-section (3) of section 14.

(5) A person acquiring an apartment shall be deemed to have notice of the contents of the conveyance deed of apartment and the endorsement if any, thereon as from the date of its registration under this section.

CHAPATER IV

ASSOCIATION AND REGULATION OF ITS AFFAIRS

Formation of association.

17. (1) There shall be an association, with the apartment owners as its members, for the administration of the affairs in relation to the apartments and the property and for management, maintenance and upkeep of the property, the common areas and facilities and common services :

Provided that in respect of an apartment meant for sale but not yet sold, the promoter shall be an associate member of the association and, when such apartment is later on allotted, sold or otherwise transferred, the allottee shall become a member of the association and the promoter shall cease to be associate member of the association in respect of such apartment :

Provided further that the formation of the association shall be without prejudice to the liability of the promoter for breach of any building regulations and the obtaining of completion and occupation certificates.

(2) After obtaining occupation certificate for the building and within three months of one third of the apartments being allotted, sold or otherwise transferred, the promoter shall make an application to the competent authority for the registration of association, with the persons who have taken apartments as members and if the promoter fails to make such application, the allottee shall make such application.

(3) On receipt of the application under sub-section (2), the competent authority, after making such enquiry as it may deem fit, register the association and grant a registration certificate in such form as may be prescribed.

(4) The association will be responsible for the administration and management of the property and maintenance and upkeep of the common areas and facilities and common services and the right and duties of a promoter shall devolve on the association as soon as the possession of the apartments is handed over to the apartment owners.

Co-operative society as association.

18. (1) When a tenant co-partnership co-operative housing society (hereinafter referred to as the society) has granted each member the right of exclusive occupation of a particular apartment in a building belonging to it, and no member is without an apartment for occupation, the society, by a resolution passed at its general body meeting, may decided to transfer the ownership rights of each apartment to the member already having the right of the exclusive occupation and to convert itself into a service co-operative housing society for the management of the common areas and facilities and for this purpose the society shall execute separate conveyance deeds of apartments in favour of each member and thereafter the society shall be deemed to be the association and its management committee shall be deemed to be the Board for the purposed of this Act.

(2) When a tenant ownership co-operative housing society has granted each member separate parcels of land in the layout plan for exclusive occupation and construction of residential house, and no member is without a parcel of land for occupation, the society by a resolution passed at its general body meeting may decided to transfer the ownership right of each parcel of land to the member already having the right of occupation, and to convert itself into a service co-operative housing society for the management of the common areas and facilities and for this purpose the society shall execute in favour of each member a conveyance deed of parcel of land already in his exclusive occupation and thereafter the society shall be deemed to be the association and its management committee shall be deemed to be the Board for the purposes of the Act.

(3) When a service co-operative housing society has been formed by the apartment owners for the management, maintenance and upkeep of the common areas and facilities, such society shall be deemed to be the association and its managing committee shall be deemed to be the Board for the purposes of this Act.

Powers and functions of an association.

19. An association shall have the following powers and functions, namely :-

(a) the right of access to apartments under section 5;

(b) the responsibility for the administration and management of the property and maintenance and upkeep of the common areas and facilities and common services under section 17;

(c) the power to repair, re-construction or rebuilding of the property which is damaged or destroyed under section 21;

(d) the power to take action relating to the common areas and facilities or on behalf of two or more apartment owners under section 22;

(e) the responsibility for assessment of the share in the common expenses chargeable to each apartment under section 24;

(f) the liability for any breach of law in respect of the common areas and facilities under section 28;

(g) the power to recover amounts from apartment owners or other persons, and right to apply to the collector for recovery of unpaid amounts as an arrear of land revenue under section 29;

(h) the duty to collect Government and municipal taxes from the apartment owners for remittance to Government or local authority under section 30;

(i) the duty to arrange for insurance under section 31; and

(j) such other powers and functions as may be prescribed.

Bye-laws

20.(1) The administration of the affairs of the association and the management of the property and the common areas and facilities and services shall be governed by the bye-laws of the association.

(2) The association, at its first meeting, shall make its bye-laws in accordance with the model bye-laws made under this Act by the State Government and no departure

from, variation of, addition to or omission from the model bye-laws shall be made except with the prior approval of the competent authority and no such approval shall be given if, in the opinion of the competent authority, such departure, variation, addition or omission shall have the effect of altering the basic structure of bye-laws.

(3) No bye-laws or amendment of the bye-laws shall be valid unless approved by the competent authority and registered with it.

(4) The model bye-laws made under this section shall provide for the following among other matters, namely,-

(a) the manner in which the association is to be formed;

(b) the composition of a Board ;

(c) the election of the members of the Board, with provision 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 method of calling meetings of the association and of the Board and the number of members of the association or the Board who shall constitute a quorum for such meetings;

(h) the election of President of the association, who shall preside over the meetings of the association and of the Board;

(i) the election of a Secretary of the association, who shall keep two separate minutes books, one for the association and the other for the Board, and shall record in the respective minutes books the resolutions adopted by the association or the Board, as the case may be;

(j) the election of a treasure, who shall keep the financial records and books of accounts of the association;

(k) the maintenance, repair and replacement of the common areas and facilities and payment therefore;

(l) the manner of collecting from the apartment owners or any other occupants of apartment, their share of the common expenses;

(m) the engagement and removal of persons employed for the administration management, maintenance, repair and replacement of the property and the common areas and facilities;

(n) the regulations with regard to the use and maintenance of the apartments and the common areas and facilities, with such restrictions thereon as may be necessary to prevent unreasonable interference in the use thereof by other apartment owners;

(o) the regulation of transfer or partition of an apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, subject to the provisions of this Act and such terms and conditions as may be specified in the bye-laws;

(p) the name of the person to receive service of process in any action against the association or the Board or more than one apartment owners, togetherwith the residence or place of business of such person;

(q) the manner in which the bye-laws may be amended;

(r) any matter which may be required by the State Government to be provided for in the model bye-laws for the proper or better administration of the property; and

(s) any other matter as may be required to be, or may be, provided for in the model bye-laws.

(5) The bye-laws framed under sub-section (2) may also contain provisions, not inconsistent with the provisions of the Act,-

(a) enabling the Board subject to the building regulations to retain certain areas 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 and the 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 and of the administration of the property;

(c) specifying the time at which and the manner in which annual general meetings and special meetings of the association 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 shall be submitted;

(e) specifying the manner in which the income derived and expenditure incurred by the association shall be dealt with, or, as the case may be, accounted for.

Disposition of property on destruction or damage.

21. 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 does not determine to repair, reconstruct or rebuild such property, then,-

(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 in the common areas and facilities previously owned by such owner;

(c) an encumbrance affecting an apartment shall be deemed to be transferred in accordance with the existing priority to the percentage of undivided interest of the concerned apartment owner in the property;

(d) the property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale togetherwith the net proceeds of the insurance on the property, if any, after first paying out all charges on the property, shall be considered as one fund, and the respective

share therein of an apartment owner will be equal to his percentage of undivided interest in the property.

Action.

22.(1) Without prejudice to the rights of any apartment owner, action may be brought by the Board in its discretion on behalf of two or more of the apartment owners as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities of 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.

Control and supersession.

23.(1) If an association is not performing its functions, the competent authority may give it suitable directions for discharging its functions under this Act.

(2) If the competent authority is of the opinion that the functioning of the Board is detrimental to the interests of the association or of the apartment owners or against public interest, the competent authority may give the Board a notice to show cause why it should not be superseded.

(3) If the reply of the Board furnished in terms of the provisions of sub-section (2) is not considered satisfactory, the competent authority may supersede the Board and appoint an administrator to perform the functions of the Board and the association for a period not exceeding six months and if the affairs of the association need further time for improvement, the period of the administrator so appointed may be extended from time to time but not more than three years in all.

CHAPTER V

COMMON PROFITS, COMMON EXPENSES AND OTHER MATTERS

Common profits, Common expenses and other matters.

24.(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 their undivided interest in the common areas and facilities.

(2) Where an apartment owner is not in the occupation of his apartment, the common expenses payable by such apartment owner may be recovered from the persons in the occupation of the apartment, whether or not such-persons holds a tenancy, licence or agreement from the apartment owner or is a purchaser, grantee, legatee or other transferee.

(3) The apartment owner, or the person in occupation, as the case may be, is liable to pay the common expenses, irrespective of whether or not the conveyance deed of apartment or the endorsement thereon has been executed under sub-section (1) or sub-section (4) of section 14 and registered under section 16, or the certified copy of the conveyance deed of apartment has been delivered to the apartment owner, or, as the case may be, to the transferee.

(4) In respect of apartments not yet allotted, sold or otherwise transferred, the promoter, who shall be an associate member of the association, shall be liable to pay the common expenses, as if he is a person in occupation of such apartments:

Provided that the promoter shall not be liable to the association or to the State Government or the local authority, for any dues accrued in respect of an apartment after the possession is handed over.

(5) The promoter may collect amounts from the apartment owners before the formation of the association, towards the common expenses or towards the sinking fund for replacement of fixed assets or for payment of Government or municipal taxes or stamp duty or registration fee for the conveyance deed of apartment or other conveyance and the promoter shall be liable to account for such amounts and shall, within three months of the formulation of the association, transfer the surplus amounts in his hands to the association or to the apartment owners, as the case may be.

No waiver of liability.

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

Common expenses a charge.

26. All sums assessed by the association 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,-

(a) the charge if any, on the apartment for payment of Government and municipal taxes;

(b) all sums unpaid on a first mortgage of the apartment;

(c) any instalment due but remained unpaid under the hire-purchase agreement; and

(d) arrears of ground rent and other charges payable to the lessor.

Liability on transfer, etc.

27.(1) Upon the sale, bequest or other transfer of an apartment, by a vendor or transferor to the purchaser or the grantee or legatee or other transferee, as the case may be, the latter shall be jointly and severally liable with the former for all unpaid assessments against the former for his share of the common expenses upon the time of the sale, bequest or other transfer, without prejudice to the right of the latter to recover from the former any amount therefore paid by the latter.

(2) Any purchaser, grantee, legatee or transferee referred to in sub-section (1) shall be entitled to a statement from the Board setting forth amount of unpaid assessment against the vendor or transferor, as the case may be, and such purchaser, grantee, legatee or transferee shall not be liable 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 such statement and the apartment shall not be sold subject to a charge in excess of the amount set forth in such statement.

Liabilities under other laws.

28.(1) The promoter shall be liable to the State Government and to the local authorities for breach of any laws, in respect of the property and the common areas and facilities, till such time in association is formed, and in respect of each apartment, till the date on which possession is given to the apartment owner and thereafter each apartment owner will be liable in respect of the apartment owned by him and the association will be liable in respect of the common areas and facilities:

Provided that the association will not be liable for breaches committed by an apartment owner.

(2) The liabilities of the promoter under sub-section (4) and (5) of section 24, sub-section (3) of section 30 and sub-section (1) of this section, which occurred before the date of possession of an apartment to an apartment owner or before an association was formed, will continue against him, even after possession of an apartment is given or the association is formed.

Recovery.

29.(1) It shall be lawful for the association to recover any amount chargeable or recoverable under sections 12, 24, 26, 27 or 30 from an apartment owner or any purchaser, grantee, legatee or other transferee from him or from any person in occupation of the apartment and if the sum assessed by the association is not paid on demand, the association may apply to the Collector for its recovery as an arrear of land revenue.

(2) The Collector, if satisfied that the association has made reasonable efforts to recover such sum but failed, may recover it from the apartment owner or any purchaser,

grantee, legatee or other transferee from him or from any person in occupation of the apartment, as an arrear of land revenue.

Recovery of taxes.

30. For the purposes of assessment and levy of taxes on land and buildings under any law for the time being in force neither the buildings nor the property nor the common arrears and facilities shall be deemed to be the separate property of the association for the purposes of assessment and levy of such taxes :

Provided that the association shall collect Government and municipal taxes, including the ground rent, from the apartment owners and remit the same to the Government or the local authority, as the case may be.

Insurance.

31. (1) The Board,-

(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 shall be so requested or required.

(2) The insurance coverage in terms of the provisions of sub-section (1) shall be written on the property in the name of the Board as trustee for each of the apartment owners in the percentage specified in their conveyance deeds of apartment.

(3) The premium 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 apartment owner to insure his own apartment for his benefit.

CHAPTER VI
AUTHORITIES UNDER THE ACT

Powers and duties of the competent authority.

32. (1) The competent authority shall have the following powers and duties, namely,-

(a) to decide, under section 7, dispute about the amount payable by an allottee to a promoter;

(b) to decide, under section 8, the action for recovery of sums as damages or injunctive relief or both;

(c) to decide, under sub-section (4) of section 12, appeals against notice given by the lessee to apartment owner regarding a breach of the terms and conditions of the sub-lease or regarding the amount of the composition fee demanded in lieu thereof;

(d) to permit, under the first proviso to sub-section (1) of section 14, further time to the promoter to execute conveyance deed of apartment;

(e) to receive under section 9, sub-section (1) of section 12, sub-section (3) of section 14 and sub-section (4) of section 16, the certified copies of instruments of undertaking, deeds of sub-lease, documents of transfer of management, conveyance deeds of apartments and endorsements thereon, and hire-purchase agreements;

(f) to impose penalty for delay in or failure to execute instruments as specified in sub-section (1) of section 15;

(g) to issue certificate to registering Officer under sub-section (6) of section 15;

(h) to register, under sub-section (3) of section 17, the association of apartment owners;

(i) to approve and register the bye-laws of an association and deviation from the model bye-laws and amendments to the bye-laws, under sub-section (3) of section 20;

(j) to allow, under section 21, further time beyond sixty days to an association to repair, reconstruct or rebuild a property which is damaged or destroyed;

(k) to give direction to an association, to supersede the Board and to appoint an administrator under section 23;

(l) to resolve disputes between an association and a member thereof;

(m) to ensure the annual audit of the accounts of an association;

(n) to receive audit reports on the accounts and the annual reports on the working of an association;

(o) to ensure compliance by promoters, associations and apartment owners of the obligations under this Act, rules or bye-laws made thereunder, by issuing suitable directions ;

(p) to issue directions to associations and apartment owners, consistent with the provisions of this Act, rules and bye-laws made thereunder; and

(q) any other function which the State Government may, by notification, entrust to the competent authority.

(2) In discharging its functions under this Act, the competent authority will have the powers of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation;

(b) receiving evidence on affidavits;

(c) requiring the discovery and production of documents;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (Central Act 1 of 1872), requisitioning any public record or document or copies of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matters which may be prescribed.

Appellate authority and appeals.

33.(1) The State Government, by notification in the Official Gazette, may appoint an officer or an authority as appellate authority, with the power to decide appeals (hereinafter referred to as appellate authority), against the orders of the competent authority :

Provided that the State Government may appoint as appellate authority more than one officer or authority and distribute the work among them in the manner it may deem fit.

(2) Any person aggrieved by any order of the competent authority under this Act, may, within a period of thirty days of the communication of the order to him, prefer an appeal to an appellate authority in such form and manner as may be prescribed.

(3) The appellate authority, after giving an opportunity to be heard to the parties and to the competent authority, may pass such order as it may deem fit, either confirming, modifying or setting aside the order of the competent authority, and record its reasons, in writing, and the order of the appellate authority shall be final, unless revised by the State Government under section 34.

(4) In discharging its functions, the appellate authority shall have all the powers under the Code Civil Procedure, 1908 (Central Act, 5 of 1908) of a civil court while deciding an appeal.

Revision.

34. The State Government may, either *suo moto*¸ or, on an application from any party aggrieved by any order within sixty days of the date of the communication to him of such order, call for the record of any case disposed of by the competent authority, or the appellate authority, for the purpose of satisfying itself as to the correctness, legality or propriety of any proceedings or of any order made therein, and pass such order in relation thereto as it may deem fit:

Provided that no order adverse to any person shall be passed without giving him an opportunity to show cause against such proposed order:

Provided further that no revision application shall be entertained when an appeal has been or could have been filed against the order.

Bar of jurisdiction.

35. No civil court shall have any jurisdiction to entertain or decide any question relating to matters arising under this Act or the rules made thereunder.

CHAPTER VII
MISCELLANEOUS

Act binding on apartment owners etc.

36.(1) The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any contract, undertaking or other instrument, and all apartment owners, tenants, or their employees, 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 provisions of this Act and the rules and bye-laws made thereunder:

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

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

Penalty for breach.

37. If a promoter or an association or an apartment owner contravenes any provision of this Act or the rules, or commits a breach of any bye-law of an association or of the terms and conditions of the conveyance deed of apartment, or does anything detrimental to the health or safety of the public, the competent authority may issue, either *suo moto* or an application from the association or any person affected, a notice to show cause why penalty should not be levied, and if not sufficient cause is shown, levy for each breach or contravention and penalty for each apartment upto a maximum of one percent of the price of the apartment or, one thousand rupees, whichever is greater, and a further minimum penalty for each apartment of one hundred rupees for each day during which the breach or contravention continues and if the penalty so levied is not paid, it may be recovered as an arrear of land revenue.

38.(1) The State Government may, subject to the condition of previous publication by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

Power to make rules.

(a) the manner in which the percentage of undivided interest of each apartment in a building, parts of which are put to non-residential use, should be determined, under the proviso to sub-section (2) of section 4;

(b) the form and manner in which an instrument referred to in clause (b) of section 9 shall be executed and registered;

(c) the scales of composition fee which may be paid under sub-section (3) of section 12 for the breach of the terms and conditions of any lease or sub-lease;

(d) the form in which the register of deeds of apartments and the index relating thereto shall be kept and the particulars which such register shall contain as required by sub-section (3) of section 16;

(e) the model bye-laws of the association of apartment owners under sub-section (1) of section 20;

(f) powers of a civil court which may be conferred on the competent authority under sub-section (2) of section 32;

(g) the form and manner in which an appeal against an order of the competent authority has to be preferred to an appellate authority under sub-section (2) of section 33; and

(h) any other matter which is required to be or may be prescribed.

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

BAKHSHISH KAUR,
Secretary to Government of Punjab,
Department of Legal and Legislative Affairs.