©

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

West Bengal Act XXI of 1992

THE WEST BENGAL APARTMENT OWNERSHIP (AMENDMENT) ACT, 1992.

[*Passed by the West Bengal Legislature.*]

[Assent of the President of India was first published in the *Calcutta Gazette, Extraordinary,* of the 2nd March, 1993.]

[2nd March, 1993.]

An Act to amend the West Bengal Apartment Ownership Act, 1972.

West Ben. Act XVI of 1972.

WHEREAS it is expedient to amend the West Bengal Apartment Ownership Act, 1972, for the purposes and in the manner hereinafter appearing;

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

Short title and commencement.

1. (1) This Act may be called the West Bengal Apartment Ownership (Amendment) Act, 1992.

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

Substitution of new section for section 2 of West Ben. Act XVI of 1972.

2. For section 2 of the West Bengal Apartment Ownership Act, 1972 (hereinafter referred to as the principal Act), the following section shall be substituted:—

"Application of the Act.

2. This Act shall apply to every building which is used, or is proposed to be used, mainly for residential purposes:

Provided that the sole owner or all the owners of every such building shall 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 further that the State Government may exempt by any general or special order any such owner from submitting such building to the provisions of this Act.".

Amendment of section 3.

3. In section 3 of the principal Act,—

(1) in clause (b), after the words "means the association", the words "competent to contract in its own name and" shall be inserted;

(Section 3.)

(2) for clause (c), the following clause shall be substituted:—

'(c) "building" means a building containing two or more apartments or more than one building, each being a complete unit or each containing two or more apartments comprised in the same property;';

(3) in sub-clause (3) of clause (d), after the words "schools, garges", the words "building or apartment vacant or occupied by a tenant or any other person, not being an owner, and transferred or proposed to be transferred to the Association of Apartment Owners" shall be inserted;

(4) for clause (g), the following clause shall be substituted:—

'(g) "Competent Authority" means any person, or any officer not below the rank of a Deputy Magistrate, authorised by the State Government by notification in the *Official Gazette* to perform the functions of the Competent Authority under this Act for such area as may be specified in the notification, and different persons or officers may be authorised for different functions or for different areas;';

(5) for clause (ia), the following clause shall be substituted:—

'(ia) "owner", in relation to a property or part thereof or an apartment, includes any person owning the same or deemed to be owning the same, promoter or, for the purposes of this Act, excepting the provisions of sub-section (1) of section 4 thereof, lessee of such property or part thereof or of such apartment, where the lease is for a period of thrity years or more:

Provided that where a person has executed and registered an agreement for purchase or for taking lease for a period of thirty years or more of a building or an apartment or has paid the consideration or part thereof, he is deemed to be owning such building or apartment even though the document for purchase or lease has not been executed and registered;';

(6) after clause (k), the following clause shall be inserted:—

'(l) "promoter" means a person who constructs or causes to be constructed a building on a plot of land for the purpose of transfer of such building by sale, gift or otherwise to any other person or to a company, co-operative society or association of persons, and includes—

(i) his assignee, if any,

(ii) the person who constructs, and the person who transfers by sale, gift or otherwise, the building, if the two are different persons,

(iii) the Government ,

(iv) an undertaking of the Government, or

(v) any board or corporation established by or under any law for the time being in force.'.

Amendment of section 4.

4. In clause (a) of sub-section (3) of section 4 of the principal Act, after the word "purchase", the words "or by inheritance" shall be inserted.

Amendment of section 5.

5. In section 5 of the principal Act,—

(1) in sub-section (6), the word "irrevocable" shall be omitted;

(2) after sub-section (6), the following sub-section shall be inserted:—

"(7) The Association of Apartment Owners shall, subject to any covenants, conditions or restrictions, if any agreement, have the right, to be exercised by the Manager or the Board of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary, to transfer ownership, by sale or by lease for thirty years or more, of any buildings of apartment owned or deemed to be owned as common areas and facilities by the Association and occupied by any tenant or any other person not being an owner:

Provided that no such transfer shall be made by the Association to any person, other than an existing tenant or an occupier, not being an owner, without the consent of all the apartment owners.".

Amendment of section 10A.

6. In section 10A of the principal Act,—

(1) in sub-section (2),—

(a) in clause (a), for the words "after holding such inquiry,", the words "after issuing notice to the parties concerned and after holding such inquiry," shall be substituted;

(b) after clause (c), the following clause shall be inserted:—

"(d) in case of rejection, forthwith communicate the order of rejection to the owner or owners.";

(Sections 7, 8.)

(2) for sub-section (3), the following sub-section shall be substituted:—

"(3) Any person aggrieved by an order of rejection under sub-section (2) may appeal to such appellate authority as the State Government may, by notification in the *Official Gazette*, appoint, provided that such appeal shall be made within thirty days from the date of such order or within such further period as the appellate authority may allow on sufficient grounds being shown in this behalf. The order of the appellate authority on any such appeal shall be final and shall not be called in question in any court of law.".

Insertion of new section 10B.

7. After section 10A of the principal Act, the following section shall be inserted:—

"Power to call for records etc.

10B. Notwithstanding anything in this Act, the State Government may, on its own, call for and examine the records of any proceeding before the Competent Authority or the appellate authority within thirty days from the date of any order made by such Competent Authority or appellate authority, as the case may be, in such proceeding, and make such order thereon as it may think fit.".

Amendment of section 11.

8. In sub-section (1) of section 11 of the principal Act, after the words "the apartment owners may", the words "with the prior permission of the State Government," shall be inserted.