

Ahmednagar Zilha Maratha Vidya Prasarak Samaj's

New Law College,Ahmednagar.

Notes on Land laws I

[For Class B.A.LL.B. -V (Sem. IX) and LL.B.III (Sem. V)

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- Subject Introduction •

Land law is the type of law which deals with the rights to use, alienate, or exclude others from land. It may also be referred to as law on real estate or real property. This law consists of different legal rights and liabilities of property holders. This property is in the form of flats, Apartments, Plots, premises let on rent.

This law touches transfer of land rights, agreement for sale and also development of urban land.

Land rights are an integral part of Land Laws. These rights enforceable in concurrence with the land laws of a nation. Land Law addresses the legal mandates set forth by a country in regards to land ownership.

Under this head following Acts are to be studied-

- I. The Maharashtra Ownership Flats Act 1963.
- II. The Maharashtra Apartment Ownership Act 1970.
- III. Real Estate (Regulation and Development) Act 2016
- IV. The Maharashtra Regional and Town Planning Act 1966.
- V. The Maharashtra Rent control Act 1999.

Module 01

The Maharashtra Ownership Flats Act 1963.

Introduction

This concept of ownership flat is very old for buildings in cities like Bombay. It is the co-operative housing society model which has become the most popular. Since 1961 in the State Maharashtra, Government noticed sundry abuses, malpractices and difficulties relating to the promotion of the construction of flats and the sale, management and transfer of flats taken on ownership basis. The reason for this was acute shortage of housing in certain areas of Maharashtra particularly in metropolitan towns.

In Metropolitan areas rural people migrates in search of jobs This leads to need for housing for residence. As there was no old housing construction system, there were no common housing for these people (lower income group).

Government noticed that such abuses, malpractices and difficulties were increasing. Consequently it appointed committee known as Paymaster Committee with a view to advise it and to inquire and report on these matters so that these abuses may be remedied.

In Jun 1960 Committee provided recommendation and suggestions for making provisions relating to regulation of promotion of construction, sale and management and transfer of flats taken on ownership basis.

Accordingly the Maharashtra Ownership Flats Act was enacted for the regulation of promotion, sale, management and transfer of flats taken on ownership basis during such shortage of housing.

Act expects integrity on the part of promoter and cooperation on the part of flat purchaser in order to solve enormous problems of housing.

• Objects of Act.

Maharashtra Ownership Flats Act was enacted with a view to regulate promotion, sale and management, and transfer of flats taken on ownership basis during shortage of housing. And also to ameliorate abuses relating to promotion of construction of flats and sale and management and transfer of flats taken on ownership basis.

• Application of Act •

Maharashtra Ownership Flats Act applies to State of Maharashtra. Act takes in to account recommendations and suggestions given by Paymaster Committee relating to promotion of

construction of flats, and sale and management and transfer of flats taken on ownership basis. And it regulates aforesaid matters in State of Maharashtra.

Thus Act shall regulate the construction undertaken by private developers, development Companies and foreign investment companies in selected urban areas.

- Definitions •

(Section 2)

Act lays down following important definitions:

(a) Flat : means a separate and self-contained set of premises used or intended to be used

for residence or office show-room or

shop or godown or

for carrying on any industry or business (and includes a garage), the premises forming part of a building and includes an apartment.

Pursuant to definition flat is separate and self-contained set of premises. But premises to be flat must be used for residence or office, show-room or shop or godown or for carrying on any industry or business.

Garage, premises forming part of premises and apartment are included in definition of flat.

In *Ramesh H Shah v Harsukh J Joshi* 1975 (2) S.C.C. it was held that flat is right to occupy and is transferable.

Following factors are to be taken in to account while determining question of flat :

I .Whether there is separate and self-contained premises.

II. Whether it is used for purposes as enumerated in definition clause.

III. Whether there is apartment.

In *Dr.K.R.Agrawal v Balkrishna* 1972 Mh.L.J 474. Apartment was held flat.

In present case Four apartments were constructed on each plot and we're divided by common party wall which made premises separate unit. It was held that apartment is flat.

Explanation.- clarifies that provisions is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained..

This is an important definition because if any premise is not regarded as a flat the provisions of the Maharashtra Ownership of Flat Act do not apply.

(c) "promoter" means a person and includes

a partnership firm or

body or association of persons

who constructs or causes to be constructed block or building of flats or apartments for the purpose of selling some or all of them

to other persons, or

to a company co-operative society, or other association of persons, and

includes his assignees; and where the person who builds and the persons who sells are different persons, the term includes both.

Act lays down wide definition of promoter. It is split in four parts-

I. Person

II. Partnership firm or

body or association of persons

III. Assignees

All aforesaid person or body/association construct or causes to be constructed block or building of flats or apartments.

Purpose is selling all or some of them to other persons, company, cooperative society or association of persons.

and

IV. person who builds and person who sells both.

In *Gangavishandas v Advent Corporation* AIR. 1967 Bom. 54 court held that person merely intending to construct building of flats is promoter.

(e) to construct a block or building of flats or apartments includes convert a building or part thereof into flats or apartments.

This definition lays down that converting building or its part into flats or apartments is included within it.

Flat is defined in present Act and Apartment is defined in Maharashtra Apartment Ownership Act 1970. Therefore if building is converted into separate and self-contained premises or converted into property intended for any independent use in the form of rooms, enclosed spaces or floors in building this would mean to construct block or building of flats or apartments.

In *Tangerine Electronic system v Indian chemicals* 2004 (2)Mh.L.J.

Full Bench discussed about the term property. It said that the term "property" is nowhere defined. It is not only thing which is subject matter of ownership but also includes right of ownership. It indicates every possible interest which party can have and includes benefits which party is entitled to take out of property of another.

Therefore creating right of ownership or interest /benefits in building or apartments will mean to construct block or building of flats or apartments.

- Liabilities of promoter •

Introduction

Maharashtra Ownership Flats Act is law on the subject of promotion of construction of flats, sale and management, and transfer of flats taken on ownership basis during shortage of housing.

It regulates this subject matter. Act was enacted during the period when sundry abuses relating to promotion of construction of flats was existing.

Therefore Act made provisions for controlling these abuses and imposed general statutory responsibilities/duties on promoter who constructs or causes to be constructed flats.

Section 3.

Act lays down general liabilities of promoter under section 3. Following are liabilities :

1. Promoter is liable to give or produce the information and documents relating to transaction whereby flats are taken ownership basis to person taking such flats.

2 . Promoter shall disclose nature of his title to land on which flats are constructed. And such title to be certified by Attorney at law or Advocate of not less than three years practice.

And land to be entered in property card or extract of village or revenue record.

3. He shall disclose all encumbrances on such land, and right, title, interest and claim of any party over it.

4. He shall give inspection of plans and specifications of building to be built or built.

5. He shall disclose nature of fixtures, fittings and amenities, provision for lifts provided.

6.He shall disclose particulars in respect of design and material to be used in contravention of building . Agreements entered into by him with architects and contractors reading design, material and construction of building.

7.He shall specify date by which possession of flat to be handedover.

8.He shall state nature of organization of persons to be constituted to which title is to be passed

9.He shall prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties,

and the price charged or agreed to be charged for it

and the terms and conditions if any on which the flats are taken or agreed to be taken.

10.He shall not allow persons to enter into possession until a completion certificate required to be given under any law, is duly given by the local authority.

11. He shall make disclosure of all outgoings (including ground rent ,municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances.

12. He shall make disclosure of such other information and documents as may be prescribed; and give on demand true copies of such of the documents.

13. He shall display or keep all the documents, plans or specifications (or copies thereof) and inspection to persons intending to take or taking one or more flats.

14.When the flats are advertised for sale he shall disclose in the advertisement the following particulars :-

(i) the extent of the carpet area of the flat including the area of the balconies .

(ii) the price of the flat including the proportionate price of the common areas and facilities to be paid by the purchaser of flat and the intervals at which the instalments may be paid.

(iii) the nature, extent and description of the common areas and facilities and

(iv) the nature, extent and description of limited common areas and facilities

15. He shall sell flats on the basis of the carpet area .

16. Promoter who intends to construct or constructs a block or building of flats which are to be taken or are taken on ownership basis shall before he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent of the sale price.

17. He shall enter into a written agreement for sale with each of such persons who are to take or have taken such flats and the agreement shall be registered under the Registration Act.

In *Jeetmal Mangalchand v M/S Neekanth Building* 2004 (3) All.M.R.288 court held that if responsibility to show title documents is not maintained purchaser of flat can retain payment.

Following provisions explain liabilities :

Section 5

Section 5 lays down that promoter shall maintain separate account of sums taken, by him, from persons intending to take or who have taken flats.

He shall also maintain account of any sums taken towards the share capital for the formation of co-operative society or a company,

or towards the sums taken as advance outgoings (including ground rent, municipal or other local taxes,

or deposit taxes on income, water charges, electricity charges, revenue assessment, and interest on any mortgage or other encumbrances,

and he shall hold the said moneys for the purposes for which they were given and shall disburse and the moneys for those purposes

and shall make full and true disclosure of all transactions in respect of that given account on demand by Government.

•Section 6

According to section 6 promoter shall pay all outgoings (including ground of outgoings rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other transferred encumbrances,) until he transfers property to the persons or organisation of persons taking over flat.

•Section 8

According section 8 If

(a) the promoter fails to give possession in accordance with terms of his agreement of a flat duly completed by the date specified or

(b) the promoter for reasons beyond his control and of his agents,

is unable to give possession of the flat by the date specified, or the further time or

further agreed date and a period of three months thereafter,

the promoter shall be liable on demand to refund the amounts already received by him in respect of the flat (with simple interest at nine per cent. per annum from the date he received the sums till the date the amounts and interest thereon is refunded)

- Section 9

According to section 9 promoter shall not, after he executes an agreement to sell any flat without ,consent of the persons who take or agree to take the flats, mortgage or create without such previous consent after the agreement is registered.

- Section 10

According to section 10 as soon as a minimum number of persons required to form Co-operative society or a company have taken flats,

the promoter shall submit an application to the Registrar for registration of the organisation of persons who take the flats as Co-operative society or as a company.

- Section 11

According to section 11 promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company

or to association of flat takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents in accordance with the agreement executed under section 4.

He shall also execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

In Vrindavan Boriwali cooperative society v Karmarkar Bros. court held that section 11 casts mandatory obligation.

- Liabilities under Transfer of Property Act•

Promoter is seller within the meaning of Transfer of Property Act . Accordingly he is subjected to liabilities as laid down in this Act--

- 1.Promoter is bound to disclose material defect in property (flat) which purchaser(flat taker) is not aware but which defect known to him.
- 2.Promoter is to produce title deeds for inspection by flat taker if demanded by him.
- 3.Promoter is to execute conveyance that is to effect transfer of ownership (of flat)
- 4.Promoter has duty to give possession of property (flat) to flat purchaser.

5. Promoter has to deliver title deeds to flat purchaser as he becomes owner of property after sale is completed.

•Liabilities Under Consumer Protection Law •

Housing transaction is covered in list of services provided under consumer protection law . Accordingly promoter may be held liable for deficiency in service.

Alterations, Additions and defects to structure and buildings (section 7)

Maharashtra Ownership Flats Act lays down provisions relating to general liabilities of promoter . Accordingly promoter must discharge these liabilities. Section 7 is type of statutory obligation for promoter.

Object of this provision is to prevent the promoter from making changes in specifications of flat or building subsequently.

According to section 7 after the plans and specifications of the building as approved by the local authority are disclosed or furnished to the persons who agree to take one or more flats, the promoter shall not make-

- (i) any alteration in the structures described in it without the previous consent of that person.
- (ii) any other alterations or additions in the structure of the building without previous consent of all persons who have agreed to take flats in such building.

The building shall be constructed and completed in accordance with the plans and specifications.

And if any defect in the building or material used

or if any unauthorized change in the construction

is brought to the notice of the promoter within a period of three years from the date of handing over the possession

it shall be rectified by the promoter without further charge to the persons who have agreed to take the flats.

And in other cases such person shall be entitled to receive reasonable compensation for such defect or change.

Where there is a dispute as regards any defect in the building or material used

or any unauthorised change in the construction,

or as to whether it is reasonably possible for the promoter to rectify any such defect or change,

or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be, or is not rectified by the promoter,

the matter shall be referred for decision,-

(i) in an urban agglomeration as defined in clause (n) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976

to such competent authority authorised by the State Government

and in any other area,

to such Deputy Chief Engineer, or to such other Officer of the rank equivalent to that of Superintending Engineer in the Maharashtra Service of Engineers, of a Board established under section 18 of the Maharashtra Housing and Area Development Act, 1976.

Kalpita Enclave cooperative Housing Society v M/S Kiran Builders (1985)88 Bom L.R.1000 is on the point that any decision of authority under section 7 (2) though not enforceable himself. But it gives flat owner cause of action to file suit in civil court.

•Consumer protection law•

Under Consumer Protection law defect in structure will amount to deficiency in service. If defect is not removed flat purchaser has remedy under this Act.

Flat Purchase Agreements and its Registration(section 4)

Flat purchase agreement means agreement entered in to between promoter intending to sell flat and person who agrees to take flat.

According to section 4 a promoter who intends to construct or constructs a block or building of flats to be taken or are taken on ownership basis, shall enter into a written agreement for sale with each person taking flat and the agreement shall be registered under the Registration Act, 1908.

Such agreement to be entered in to before he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price.

The agreement shall contain following the particulars--

(i) if the building is to be constructed,

the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force

(ii) the date by which the possession of the flat is to be handed over to the purchaser

- (iii) the extent of the carpet area of the flat including the area of the balconies.
- (iv) the price of the flat including the proportionate price of the common areas and facilities to be paid by the purchaser of flat and the intervals at which instalments may be paid
- (u) the precise nature of organisation to be constituted of the persons who have taken or are to take the flats
- (vi) the nature, extent and description of limited common areas and facilities
- (vii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold
- (viii) statement of the use of which the flat is intended and restriction of its use
- (ix) percentage of undivided interests in the limited common areas and facilities appertaining to the flat agreed to be sold

According to clause (b) copies of documents, to be attached with agreement are -

- i) certificate by attorney at law or Advocate under section 3 (2)(a)
- (ii) Property Card or extract of village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed
- (iii) the plans and specifications of the flat as approved by the concerned local authority

•Registration of Flat Purchase Agreement•(Section 4 (2))

Any agreement for sale entered into shall be presented by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration. It shall be presented within the time allowed under sections 23 to 26 of the said Act.

•Effect of Non registration of agreement•

Section 4A of the Act states that even if any agreement is not registered under section 4 Act it will be admissible as evidence in a suit for specific performance or as evidence for part performance under section 53A of the Transfer of Property Act.

This section was inserted to overrule the Bombay High Court's decision in

Association of Commerce House Block Owners v. Vishnidas Samaldas (1981)

that non-registered agreements are wholly invalid and void ab initio and create no rights between the parties.

Object of this provision is to afford opportunity to promoter and person claiming right under agreement to register agreement.

Promoter guilty of contravention section 4 (registration of agreement), shall be punished with a term up to 3 years and/or a fine.

General liabilities of Flat-Taker (Section 12)

Flat taker is person who agrees to take flat pursuant to agreement entered into with promoter. Flat taker may also be organisation of persons or society or company as is formed under this Act.

According to section 12 every person who has executed an agreement to take a flat (flat taker) shall -

1. pay price of flat.
2. give his proportionate share of the municipal taxes, water and electricity charges, ground rent and other public charges in accordance with his agreement with the promoter .

And where a co-operative society or a company of persons taking the flats is to be constituted,

3. co-operate in the formation of such society or company.

Similarly

4. Flat-Taker shall pay money as advance payment when there is agreement between promoter and him (section 4)

Transaction between promoter intending to sell flat and person who agrees to take flat pursuant to agreement entered in to between promoter and him is also subject to law governing immovable property that is Transfer of Property Act.

Interest of flat taker in flat is immovable property . Accordingly promoter is seller and flat taker is buyer . Consequently they are subjected to rights and liabilities of seller and buyer as laid down in properly law.

Therefore flat taker is subject to following liabilities when property (interest in flat) is transferred to him from promoter--

- 1 . After ownership is transferred to flat purchaser, he becomes owner of property (interest in flat) sold to him . Consequently if there is loss to property he shall bear loss as owner of property.
- 2 . Flat taker after sale is completed becomes owner of property . Therefore he shall pay out goings (public charges) that is Government dues, revenue, taxes.

•Rights of Flat taker•

According to jurisprudential doctrine of one's legal duty is another's right. Such duty is called correlative duty, as said by Austin.

Pursuant to this principle following are rights:

1. Flat taker is entitled to be informed flat transaction and to be produced documents as mentioned in section 3.
2. Right to full disclosure, by promoter, of nature of title to the land on which flats are to be constructed.
3. He is entitled to be disclosed by promoter nature of fixtures, fittings and amenities provided.
4. When flats are advertised for sale, he is entitled to know -
 - i) extent of carpet area and Area of balcony.
 - ii) Price of flat and proportionate price of common areas and facilities. (Section 3)
5. When promoter is in possession of flat and collects payment for outgoings from flat taker, he is entitled outgoings to be paid by promoter. (Section 6)
6. Promoter shall not make any alteration or addition in structure without consent of flat taker. (Section 7)
7. Right to refund in case promoter fails to give possession of flat within time specified. (Section 8)
8. Promoter shall not mortgage flat after agreement is executed. (Section 9).

In *Jeetmal Mangalchand v M/S Neekanth Building* 2004 (3) All.M.R.288 court held that if responsibility to show title documents is not maintained purchaser of flat (flat taker) can retain payment.

Transaction between promoter and flat taker is subject to Transfer of Property Act. Accordingly flat taker as buyer of property (interest in flat) has following rights--

1. Flat taker has charge/lien on property for sum of money which he paid as advance if sale can not be completed due to default of promoter or flat taker refuses to execute conveyance.

Flat taker has right to recover all sums paid together with interest.

2. After completion of transaction (sale) he becomes owner of property. Consequently he is entitled to receive all benefits arising out of property (flat)

• Rights Under Consumer Protection Law.

Flat taker is "consumer" within the meaning of Consumer Protection Act 1986 in force in India. Accordingly he can enjoy rights as laid down in this Act as consumer. Act was amended in 1993 and housing service was added in the list of services laid down in this Act.

Apex Court of India and Appellate Authority (National Commission) in series of cases held that housing and building activity is covered in consumer protection law whether such activity is carried out by private parties, Government bodies or statutory authorities.

In *Jayanta Dasgupta v Binata Debnath*, II 2009 C.P.J. builder was held liable for deficiency in service.

In this case non citizen of India booked flat through Indian relative. But construction was not started despite of many assurances. So he cancelled booking.

National Commission ordered refund of money together with interest at 18% per annum.

•Essential supply and services• (Section 12 A)

Present section was inserted to provide protection to person who has taken flat or who is in occupation and who enjoyed essential supply or service in respect of flat taken or agreed to be taken. Protection is afforded against unscrupulous promoter or even flat owner who may harass and force to quit or sell his flat.

Section 12 lays down that person who is a promoter or who is in-charge of management

or connected with the management of a block or building of flats, as member of a managing committee, director, secretary or curator otherwise, responsible for the maintenance shall not either by himself or through any person, cut off, withhold, or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken or agreed to be taken by him.

(2) The person who has taken or agreed to take the flat or the occupier may make an application to the Court for a direction to restore such supply or service.

If the Court finds that-

the applicant or the person through or under whom he is in occupation, has been in enjoyment of the essential supply or service

and that it was cut off or withheld or curtailed or reduced by the manager without just and sufficient cause

the Court shall make an order directing the manager to restore such supply or service before a date to be specified in the order. [Clause 2]

According to clause (4) the manager shall be liable if fails to restore the supply or service before the date so specified. He shall be subjected to fine which may extend to one hundred rupees.

Application under clause 2 may be made-

(a) to in Greater Bombay, the Court of Small Causes Bombay,

(b) to Small Causes Court, in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887

(c) to the Court of the Civil Judge (Senior Division) elsewhere.

It has jurisdiction to decide any application made under sub-section (2), and no other Court shall have jurisdiction to entertain such application.

No appeal shall lie from any order made on such application.

Except in Greater Bombay a bench of two judges of the Court of Small Causes, Bombay, which shall not include the Judge who made such order.

And elsewhere the District Court may call for call for the case for satisfying itself that order was made according to the law.

And shall pass such order as it or he thinks fit.

In *Satyavarta v Mohamedbhai* AIR 1982 Bom 50.

Court held that the word "withheld" includes indirect withdrawal or deprivation like not paying electricity bills.

Module 02

Maharashtra Apartment Ownership Act 1970.

•Introduction•

Maharashtra Apartment Ownership Act, 1970 is a revolutionary Act. It empowers apartment owners to fully own the apartment, and the proportionat share in the undivided common areas and facilities.

It also makes the apartment transferable and heritable, enabling apartment owners to secure a mortgage on the apartment. This is beneficial to both the apartment owner and the builder, who may use the freed up capital to start new constructions.

Under the Maharashtra Apartment Ownership Act 1970, person is deemed to be the owner of a particular apartment in the building along with a proportional share in the undivided common areas and facilities.

As an owner of the apartment, he has the right to transfer the apartment to anyone else, as long as the transfer is being accomplished as per the law.

As this Act grants complete ownership of the apartment to owner it gives the power to come together with other apartment owners and form an association which may frame byelaws for the upkeep of the whole apartment complex.

In case of conflicts within the association every apartment owner is protected legally by Civil Court.

Under the Maharashtra Apartment Ownership Act 1970, person is deemed to be the owner of a particular apartment in the building along with a proportional share in the undivided common areas and facilities.

The Apartment becomes heritable and transferable which means, among many things, person can raise capital on your apartment.

As an owner of the apartment, he has the right to transfer the apartment to anyone else, as long as the transfer is being accomplished as per the law.

As this Act grants complete ownership of the apartment to owner it gives the power to come together with other apartment owners and form an association which may frame byelaws for the upkeep of the whole apartment complex.

In case of conflicts within the association every apartment owner is protected legally by Civil Court.

•Object of Act•

Maharashtra Apartment Ownership Act 1970 has enacted by Legislature of Maharashtra State. Due to shortage of house in urban areas majority citizens can not own houses on individual basis. In spite of construction of multi storeyed flat, apartments on ownership basis person purchasing it has no marketable title. And he could not mortgage it for obtaining loan

Similarly person who constructed it can not sell as person purchasing can not obtain loan This resulted in locking up capital of persons who constructed flats, apartments on ownership basis.

In this state Act was enacted. It lays down objects in its Preamble. Pursuant to it following are objects-

Act provides for the ownership of an individual apartment in a building

and

makes such apartment heritable and transferable property.

•Application of Act•

Act extends to the whole of the State of Maharashtra. It applies only to property which is submitted to provisions of this Act by it's the sole owner or all owners. By duly executing and registering declaration (instrument by which property is submitted) as provided in Act itself.

However property to be submitted to the provisions of this Act, is to be used or proposed to be used for residence, office, practice of any profession

or

for carrying on any occupation, trade or business

or

for any other type of independent use.

Act defines "property". It is land, building and structure on it.

•Definitions•

(Section 3)

Act lays down important definitions-

(a) " apartment " means-

a part of the property intended for any type of independent use, including one or more rooms

or enclosed spaces located on one or more floors or part or parts thereof in a building, intended to be used -

for residence, office, practice of any profession,

or

for carrying on any occupation, trade or business

or for any other type of independent use and with a direct exit to a public street, road or highway

or to a common area leading to such street, road or highway.

Definition has following ingredients :

I.It is part of property intended for any type of independent use.

II.It includes room, enclosed spaces located on one or more floors in building and intended for residence or office,practice of profession or

IV. Intended for carrying on any occupation, trade or business or for any other type of independent use

VI.And with a direct exit to

a public street, road or highway

or

to a common area leading to such street, road or highway.

(b) “apartment owner ” means the person or persons owning an apartment

and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration.

(e) “building ” means--

a building containing five or more apartments,

or two or more buildings, each containing two or more apartments, with a total of five or more apartments for all such buildings,

and comprising a part of the property.

(f) “common areas and facilities means—

(1) the land on which the building is located

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exists of the building

(3) the basements, cellars, yards, gardens, parking areas and storage spaces

(4) the premises for the lodging of janitors or persons employed for the management of the property

(5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating

(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use

(7) such community and commercial facilities as may be provided for in the Declaration ; and

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

(g) “common expenses ” means,—

- (1) all sums lawfully assessed against the apartment owners by the Association of Apartment Owners
- (2) expenses of administration, maintenance, repair or replacement of the common areas and facilities
- 3) expenses agreed upon as common expenses by the Association of Apartment Owners
- (4) expenses declared as common expenses by the provisions of this Act, or by the Declaration or the bye-laws

(j) " Declaration " means the instrument by which the property is submitted to the provisions of this Act,as provided by section , and such Declaration as from time to time may be lawfully amended

(n) " limited common areas and facilities " means those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments

(r) " property " means-

the land, the building, all improvements and structures thereon,

and all easements, rights and appurtenances belonging thereto

and all articles of personal property intended for use in connection therewith, which have been, or are intended to be, submitted to the provisions of this Act.

•Apartment as transferable property (Section 4)•

Section 4 of Act lays down the status of apartment. So status of each apartment and its undivided interest in the common areas and facilities, appurtenant to such apartment, shall constitute heritable and transferable immoveable property within the meaning of any law for the time being in force in the State

And accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner

.And together with rights, privileges, obligations, liabilities, investigations, legal proceedings, remedies.

And also with penalty, forfeiture and punishment as any other immoveable property.

or

Owner can make a bequest of the same under the laws applicable to the transfer and succession of immovable property.

•Ownership of Apartment• (Section 5)

According to section 5 each apartment owner shall be entitled to the exclusive ownership and possession of his apartment in accordance with the Declaration executed and registered as required by section 2 of this Act.

(2) Each apartment owner shall execute a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose.

Separate Assessment (section18)

According to section 18 of Act each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be deemed to be separate property for the purpose of assessment to tax on lands and buildings leviable under such law.

Accordingly it shall be assessed and taxed. For this purpose, a local authority shall make all suitable rules to carry out the provisions of this section.

However the building, the property and the common areas and facilities shall be shall not deemed to be separate property for the purposes of the levy of such tax.

Section 20 creates joint and several liability of purchaser of apartment with vendor for unpaid common expenses up to the time of sale in case of apartment is sold. However this section also confers right to recover amount so paid from vendor.

•Declaration and Its contents section 11.

Section 3 (j) defines Declaration. " Declaration " means the instrument by which the property is submitted to the provisions of this Act,as provided by Act. Such Declaration may be lawfully amended from time to time.

Section 11 lays down following Contents of Declaration-

(a) Description of the land on which the building and improvements are or are to be located.

And 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 of this Act.

(b)Description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed.

(c)The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification.

(d)Description of the common areas and facilities.

(e)Description of the limited common areas and facilities, if any, stating to which apartments their use is reserved.

(f)Value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner.

Voting and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner on the date of the Declaration.

(g)Statement of the purposes for which the building and each of the apartments are intended and restricted as to use.

(h)The name of a person to receive service of process , the residence or place of business of such person within the city, town or village in which the building is located.

(i)Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property .

(j)Any other details in connection with the property which the person executing the Declaration may seem desirable to set forth consistent with this Act.

(k)The method by which the Declaration may be amended consistent with the provisions of this Act.

A true copy of Declaration and bye-laws and all amendments to the Declaration or the bye-laws shall be filed in the office of the competent authority.[clause 2]

Registration and Amendment of Declaration . (Section 13) According to section 13 the Declaration and all amendments to it shall all be registered under the Registration Act, 1908.

According to clause (2) with registration of the Declaration simultaneously plan shall be filed and to be registered.

Along with it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the building or that it has no name,

and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located.

- Amendment to declaration

If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built,

amendment shall be recorded prior to the first conveyance of any apartment. And to it shall be attached a verified statement of an architect certifying that the plans are filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the apartment as built.

In all registration offices a book "Register of Declaration and Deeds of Apartments" shall be kept under the Maharashtra Apartment Ownership Act, 1970.

Similarly Index relating thereto shall also be kept. [clause 3]

Manager or Board of Managers to send a certified copy of the Declaration and Deed of Apartment to sub Registrar.

And in case no sub Registrar to Registrar of Districts [clause 4]

According to clause (5) the Sub-Registrar, or the Registrar shall register Declaration alongwith floor plans of the building and the Deed of Apartment. And shall also enter particulars in the Index kept under sub- section (3).

Any person acquiring any apartment of any apartment owner shall be deemed to have notice of the Declaration and of the Deed of Apartment as from the date of its registration under this section.[clause 5]

Common areas and facilities

(Section 6)

Each apartment owner is entitled to an undivided interest in common areas and facilities in the percentage expressed in the Declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property and such percentage shall reflect the limited common areas and facilities.

(2)The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character.

And it shall not be altered without the consent of all of the apartment owners expressed in an amended Declaration.

The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains.

It shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.[clause 2]

Clause (3) lays down that the common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division unless the property has been removed from the provisions of this Act, as provided in sections 14 and 22.

Any covenant to the contrary shall be null and void.

Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners. [Clause 4]

According to clause (5) the necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements shall be carried out only as provided in the bye-laws.

The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Manager or Board of Managers, to have access to each apartment as may be necessary for the maintenance, repairs and replacement of any of the common areas and facilities in it or accessible from it

or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

Encumbrances Against Apartment.(Section 9)

After declaring is recorded and while the property remains subject to this Act, encumbrance of any nature shall not arise or shall be effective against the property.

During such period encumbrances may arise or may be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment in the same manner and under the same conditions as encumbrances may arise or encumbrances may be created upon or against any other separate parcel of property subject to individual ownership.

However if during the period any encumbrance has arisen or been created against such apartment and the percentage of undivided interest in the common areas and facilities, appurtenant to such apartment, no apartment and such percentage of undivided interest shall be partitioned or sub-divided in interest.

Similarly no labour performed or materials furnished with the consent of at the request of an apartment owner or his agent or his contractor or sub-contractor shall be the basis for a charge or any encumbrance under the provisions of the Transfer of Property Act, 1882, against the apartment of 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 the owner of any apartment in the case of emergency repairs.

Labour performed and material furnished for the common areas and facilities if duly authorised by the Association of Apartment Owners the Manager or Board of Managers in accordance with this Act, the declaration or 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 under the Act against each of the apartments and shall be subject to provisions of sub-section (2) of this section.

In case charge or any encumbrance against two or more apartments becoming effective,

the apartment owners of the separate apartments may remove their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance by payment of the fractional or proportional amounts.

Such individual payment shall be computed by reference to the percentages appearing in the Declaration.

After such payment, discharge or other satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free and clear of the charge or encumbrance.

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

Contribution to common expenses (section 17)

According to section 17 apartment owner is not permitted for waiver of use of common areas and facilities and his contribution to it or for abandonment of his apartment.

Section lays down that 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 use of common areas and facilities or by abandonment of his apartment.

Charge for property of common expenses. (Section 19)

According to section 19 of Act sum unpaid for share of common expenses chargeable to any apartment shall constitute charge on such apartment before all other charges. Except following the cancellation of charges--

I) charge for government or municipal taxes.

II) Sums unpaid on first mortgage.

Rights and Liabilities of Apartment Owners.

Maharashtra Apartment Ownership Act makes apartment and its undivided interest in common areas and facilities as heritable and transferable property within the meaning of law in force in India.

This position leads to following rights to apartment owner ---

1. Apartment owner may transfer his apartment and the percentage of undivided interest in common areas and facilities appertaining to it by way of sale, mortgage, gift, lease, and exchange or in any other manner like Will. (Section 4)

2. Each apartment owner is entitled to exclusive ownership and possession of his apartment as specified in Declaration to be registered under section 2. (Section 5)

3. Each apartment owner is entitled to percentage of undivided interest in common areas and facilities. Accordingly have may use it in accordance with the purposes for which they are intended without hindering or encroaching upon the right of other apartment owner.

4. He may carry out necessary work of maintenance, repair or and replacement of the common areas and facilities and may make additions or improvements thereto.

5. Association of Apartment Owners shall have the irrevocable right to have access to each apartment as may be necessary for the maintenance, repairs and replacement of any of the common areas and facilities in it and for making emergency repairs therein to prevent damage to common areas and facilities or another apartment or apartments. (Section 6)

6. Apartment owner is entitled to common profit according to percentage of undivided interest in the common areas and facilities. (Section 10)

•Liabilities of Apartment Owners•

Apartment owner is subject to liabilities as laid down in this Act. Following are liabilities of apartment owner --

1. Apartment owner shall execute deed of apartment relating to his apartment and same is to be registered under section 13. (Section 5 (2))

2. Each apartment owner shall comply strictly with--

the bye-laws and

the administrative rules and regulations

and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his apartment. (Section 7)

3. No apartment owner shall do any work which could jeopardize the soundness or safety of the property, reduce its value or impair any easement or hereditament work or apartment owner shall not add any material structure or excavate any additional basement or cellar without the unanimous consent of all the other apartment owners. (Section 8)

4. The common expenses shall be charged to the apartment owners according to the percentage of the undivided interest in the common areas and facilities. (Section 10)

5. The Declaration and all amendments to it and the Deed of Apartment respect of each apartment and the floor plans of the buildings shall all be registered under the Registration Act, 1908 by appointment. (Section 13)

6. No apartment owner shall exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common use of common areas and facilities or by abandonment of apartment. (Section 17)

7. Apartment is transferable property within the meaning of the law in force in India. Accordingly owner is subject to liabilities under law on transfer.

Buy laws (relating to administration of property) and its content. (Section 16)

The administration of every property shall be governed by bye-laws. Its true copy is annexed to the Declaration. The bye-laws contain following matters :—

(a) The election, from among the apartment owners, of a Board of Managers.

The number of persons constituting it.

The terms of at least one-third of the members of such Board shall expire annually.

The powers and duties of the Board.

The compensation of the members of the Board.

The method of removal from office of members of the Board.

And whether the Board may engage the services of a Secretary, a Manager or Managing Agent or and specifying which of the powers and duties granted to the Board by this Act or otherwise may be delegated by the Board to either or both of them.

(b) Method of calling meetings of the apartment owners

what percentage of apartment owners, shall constitute a quorum.

(c) Election of a President from among the members of the Board of Managers who shall preside over the meetings of such Board and of the Association of Apartment Owners.

(d) Election of a Secretary who shall keep a minute book wherein resolutions shall be recorded.

(e) Election of a Treasurer who shall keep the financial records and books of accounts .

(f) Maintenance, repair and replacement of the common areas and facilities and payments therefor.

(g) Manner of collecting, from the apartment owners their, share of the common expenses.

(h) Designation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities.

(i) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities .

(j) Such restrictions on the requirements respecting the use and maintenance of the apartments

and the use of the common areas and facilities not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners .

(k) The percentage of the votes required to amend the bye-laws.

(3) The bye-laws may also provide for the following matters :—

a) provision for regulating transfer or partition of any apartment and percentage of undivided interest in the common areas and facilities appurtenant to such apartment.

(b) Provisions enabling the Board of Managers to retain certain areas of the building and lease to non-residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or its application in reduction of their common charges for maintaining the building.

(c) Any other provisions not inconsistent with the provisions of this Act, relating to the audit and accounts and administration of the property and annual and special general meetings annual report and the like.

- Disposition of property :distrust ion or damage (section22)

Section 22 lays down that if within sixty days of the date of damage or destruction to all or part of the of property it is not determined by the Association of Apartment Owners to repair, destruction reconstruct or rebuild, 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 previously owned by such owner in the common areas and facilities.

(c)any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided therein.

(d)the property shall be subject to an action for partition at the suit of any apartment owner.

And in that event the net proceeds of sale together with the net proceeds of the insurance on the property, shall be considered as one fund and shall be divided among all the apartment owners 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 apartment owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

Distinction between ownership of apartment and ownership of share in joint property and holding flat in cooperative society.

Ownership of apartment and ownership of share in joint property and holding flat in cooperative society are different concepts. Accordingly these are governed by different laws.

Ownership of Apartment is governed by Maharashtra Apartment Ownership Act . Under Apartment OwnershipAct

apartment together with its undivided interest in the common areas and facilities, appurtenant to such apartment is heritable transferable immoveable property within the meaning of any law for the time being in force in the State.

And accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner.

Each apartment owner shall be entitled to the exclusive ownership and apartments. possession of his apartment in accordance with the Declaration executed under Maharashtra Apartment Ownership Act.

In ownership of share in joint property person holds share in joint property.

Joint property is property with more than one owner. Joint property may be owned under different forms of ownership. For example, in real estate law, joint property may be held as tenants in common, tenants by the entireties, or joint tenants.

Section 44 of Transfer of Property Act is another example of joint property. It lays down when that one of two or more co-owners of immovable property, legally competent in that behalf, transfers his share of such property or any interest therein, the transferee acquires, the transferors right to joint possession or other common or part enjoyment of the property.

And right to enforce a partition of the same. But subject to the conditions and liabilities affecting the share or interest so transferred.

Person may hold flat in cooperative housing society. In such case he shall be governed by Maharashtra Co-operative Societies Act. Accordingly he is subjected to rights and liabilities under this Act.

Module 03

Real Estate (Regulation and Development) Act 2016.

Introduction

The Real Estate (Regulation and Development) Act, 2016 is an Act of the Parliament of India. It is law on the subject of regulation and promotion of real estate sector.

Act protects interest of person who enters into agreement for sale with promoter to take plot, apartment or building.

Since past few decades, the demand for housing has increased. Despite Government's efforts through various schemes, it was not able to curtail the increasing demand.

Accordingly many promoters entered real estate project that means constructing building, apartment to sell or developing land.

However person entering into agreement to take plot apartment, building from promoter suffered non transparency in transaction of sale, defect in title, high rate of purchase price, uncertainty about possession.

Accordingly Legislature intervened to deal with these evils and passed Real Estate (Regulation and Development) Act 2016.

- Objects of Act

Parliament enacted present Act with following objectives --

I. to regulate and promote real sector.

II. to ensure sale of plot, apartment or building in efficient and transparent manner.

III. to protect interest of consumers in real estate sector.

IV. to establish adjudicating mechanism (Real Estate Regulatory Authority) for speedy dispute redressal

V. to establish Appellate Tribunal to hear appeals from decision, direction or order of regulatory authority and adjudicating officer.

• Definitions •

(Section 2)

Act lays down following important definitions --

(b) "advertisement" means:

- any document described or issued as advertisement through any medium

- and includes

any notice, circular or other documents or publicity in any form informing persons about a real estate project or

offering for sale of a plot, building or apartment or

inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes.

(d) "allottee" in relation to a real estate project, means

- the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or

otherwise transferred by the promoter,

and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise

but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name,

means a separate and self-contained part of any immovable property,

including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used

for any residential or commercial use such as residence, office, shop, showroom or godown

or

for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

(j) "building" includes

any structure or erection or part of a structure or

erection which is intended to be used for residential, commercial

or for the purpose of any business, occupation, profession or trade,

or for any other related purposes.

(k) "carpet area" means

the net usable floor area of an apartment,

excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area

but includes the area covered by the internal partition walls of the apartment.

Explanation.— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee.

(m) "commencement certificate" means the commencement certificate

or the building permit

or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan.

(n) "common areas" means—

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

(vii) all community and commercial facilities as provided in the real estate project;

(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use.

(o) "company" means a company incorporated and registered under the Companies Act, 2013 and includes —

(i) a corporation established by or under any Central Act or State Act;

(ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force.

(p) "competent authority" means - the local authority or any authority created or established under any law for the time being in force by the appropriate Government

which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property.

(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws.

(zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity.

(zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or 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 assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder.

(zl) "prospectus" means

any document described or issued as a prospectus

or any notice, circular, or other document offering for sale or any real estate project or inviting any person to make advances or deposits for such purposes

(zm) "real estate agent" means any person, who negotiates or acts on behalf of one person

in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person

or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise

and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be,

and includes property dealers, brokers, middlemen by whatever name called.

(zn) "real estate project" means the development of a building or a building consisting of apartments,

or converting an existing building or a part thereof into apartments,

or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be,

and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

(zq) "sanctioned plan" means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan

and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project.

(s) "development" with its grammatical variations and cognate expressions, means

carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land

and includes re-development;

(t) "development works" means the external development works and internal development works on immovable property

(y) "garage" means

a place within a project having a roof and walls on three sides for parking any vehicle

but does not include an unenclosed or uncovered parking space such as open parking areas.

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid.

Registration of Real Estate Project (section3)

Introduction

One of the salient features of present Act is formation of Real Estate Regulatory Authority . Accordingly Real Estate Regulatory Authority is formed by the Centre and States to oversee the activities of the sector.

The responsibility of Authorities is to consider the complaints of buyers against developers/promoters. Therefore Act makes provisions creating statutory obligation to register his project.

The promoter of the project has to register his project (both residential and commercial) with the Real Estate Regulatory Authority before booking, selling or offering apartments for sale in such projects.

•Registration of Real Estate Project •

1. According to section 3 no promoter shall advertise, market, book, sell

or offer for sale, or invite persons to purchase any plot, apartment or building,

in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.

Proviso to section 3 lays down that projects which are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

Similarly for projects which are developed beyond the planning area but with the requisite permission of the local authority, are also to be registered with the Authority.

In following cases registration of the real estate project shall not be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases.

However the appropriate Government may, reduce the threshold below five hundred square meters or eight apartments for exemption from registration under this Act.

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act.

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

2. Procedure for Registration.(Section 4)

Every promoter shall make an application to the Authority for registration of the real estate project. Form, manner, time for registration and fee are specified by the regulations made by the Authority.

The promoter shall enclose the following documents along with the application :—

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority),

and the particulars of registration,

and the names and photographs of the promoter

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or to be developed, including the current status of the said projects,

any delay in its completion, details of cases pending,

details of type of land and payments pending

(c) an authenticated copy of the approvals and commencement certificate from the competent authority

and where the project is proposed to be developed in phases,

an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases.

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof,

and the whole project as sanctioned by the competent authority.

(e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof

including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy.

(f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project.

(g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any.

(i) the number and areas of garage for sale in the project;

(j) the names and addresses of his real estate agents, if any, for the proposed project;

(k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person.

(B) that the land is free from all encumbrances or

details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details

(C) the time period within which he undertakes to complete the project or phase.

(D) that seventy per cent of the amounts shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

Clause (3) lays down that the Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

3 . Grant of Registration.

According to section 5 on receipt of the application the Authority within a period of thirty days shall

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority

and to create his web page and to fill therein the details of the proposed project or

(b) reject the application if such application does not conform to the provisions of this Act or the rules or regulations made thereunder.

However no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

According to clause (2) If the Authority fails to grant the registration or to reject the application the project shall be deemed to have been registered.

And the Authority shall within a period of seven days of the expiry of the said period of thirty days provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase.

According to section 6 the registration granted under section 5 may be extended by the Authority on an application made by the promoter.

However the Authority may extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year.

No application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Force majeure may affect period required for completion of work.

Explanation.— For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

4. Revocation of registration. (Section 7)

The Authority may revoke application for registration

- on receipt of a complaint
- or suo motu in this behalf
- or on the recommendation of the competent authority

in following cases

- (a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder
- (b) the promoter violates any of the terms or conditions of the approval given by the competent authority
- (c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.- the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice.

Following practices are included in unfair practice :—

- (A) the practice of making any statement, whether in writing or by visible representation which,—

- (i) falsely represents that the services are of a particular standard or grade
- (ii) represents that the promoter has approval or affiliation which such promoter does not have;
- (iii) makes a false or misleading representation concerning the services
- (B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered
- (d) the promoter indulges in any fraudulent practices.

According to clause (2) the registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice stating the grounds on which application is revoked.

And has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

The Authority may permit registration to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

The Authority on the revocation of the registration,—

- (a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration
- (b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8
- (c) shall direct the bank holding the project back account to freeze the account
and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8
- (d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

5. Upon lapse of the registration or on revocation of the registration the Authority, may consult the appropriate Government to take such action as it may deem fit

including the carrying out of the remaining development works by competent authority

or by the association of allottees or in any other manner, as may be determined by the Authority.

No direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act.

In case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works(.Sectiin8)

6. Consequences of non registration(Section 59)

In case of non-registration of the real estate project, Section 59 stipulates a penalty of up to 10% of the estimated project cost and in case of continued default, an additional fine up to 10% of the estimated project cost or imprisonment up to 3 (Three) years or both.

In terms of the provisions of Section 31 of any aggrieved person may file a complaint with the Authority against the Promoter for violation of the provisions. The Authority has very wide powers under this Act in relation to any non-compliance on the part of the Promoter.

Authority may direct refund of consideration amount received by the Promoter from various allottee(s), change in the developer / Promoter, etc., on a case to case basis.

Registration of Real Estate Agent(section 9)

To achieve the objective of regulating the real estate sector and to standardize this sector making it more transparent, the Act and the Rules made thereunder require for the real estate agents to obtain a registration certificate from the Real Estate Regulating Authority. Act mandates the registration. It prohibits an agent to operate his business without such registration.

Section 9

No real estate agent shall facilitate the sale or purchase of any plot, apartment or building, in a real estate project or part of it without obtaining registration under this section.

•Procedure for Registration•

Every real estate agent shall make an application to the Authority for registration.

Form, manner, time , fee and documents are prescribed under this section.(clause 2)

According to clause (3) the Authority shall, upon satisfying itself of the fulfillment conditions, —

- (a) grant a single registration to the real estate agent for the entire State of Union territory.
- (b) reject the application if such application does not conform to the provisions of the Act or the rules or regulations made thereunder.

No application shall be rejected unless the applicant has been given an opportunity to be heard in the matter.

According to clause (4) on the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

Clause (5) lays down that every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority.

Such number shall be quoted by the real estate agent in every sale facilitated by him under this Act.

Every registration shall be valid for period prescribed by Authority. And shall be renewable for a period and on payment of such fee as may be prescribed.[clause 6]

- Revocation /Suspension of registration of agent.

The Authority may revoke the registration or suspend the registration of agent if

- any real estate agent who commits breach of any of the conditions thereof
- or any other terms and conditions specified under this Act or any rules or regulations made thereunder
- or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud.

No such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

- Consequences of non registration by agent (Section 62)

If any real estate agent fails to comply with or contravenes the provisions of section 9 (registration) he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or buildings, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

Functions of Real Estate Agents(10)

Following are provisions concerning functions of Real Estate Agent --

Every real estate agent registered under this Act is

- (a) to facilitate the sale or purchase of any plot, apartment or building, in a real estate project or part of it, to be sold by the promoter in any planning area, which is not registered with the Authority
- (b) to maintain and preserve such books of account, records and documents as may be prescribed
- (d) to facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be;

(e) discharge such other functions as may be prescribed.

•Duties /Liabilities of Real Estate Agent•

Following are liabilities -

1.Real Estate Agent shall not involve himself in any unfair trade practices which are, —

(i) the practice of making any statement, whether orally or in writing or by visible representation which—

(A) falsely represents that the services are of a particular standard or

(B) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;

(C) makes a false or misleading representation concerning the services;

2. not permit the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.

Module 04

•Functions duties of Promoter •

Act lays down following important provisions relating to functions of promoter--.

1.The promoter shall create his web page on the website of the Authority upon receiving his Login Id and password under section 5 and

2. shall enter all details of the proposed project as provided under section 4, for public viewing, including—

(a) details of the registration granted by the Authority

(b) quarterly up-to-date the list of number and types of apartments or plots booked

(c) quarterly up-to-date the list of number of garages booked

(d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate

(e) quarterly up-to-date status of the project and

(f) such other information and documents as may be specified by the regulations made by the Authority. (Section 11)

- Duties and liabilities of promoter •

Following are provisions concerning duties /Liabilities of promoter-

I. The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

II. The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information :—

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority

(b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

III.(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under this Act or the rules and regulations made under it

or to the allottees as per the agreement for sale

or to the association of allottees, till the conveyance of all the apartments, plots or buildings to the allottees

or the common areas to the association of allottees or the competent authority.

The responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force

and to make it available to the allottees individually or to the association of allottees.

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid,

and to make the lease certificate available to the association of allottees.

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

(e) enable the formation of an association or society or co-operative society of the allottees, or a federation of the same, under the laws applicable.

The association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building in the project.

(f) execute a registered conveyance deed of the apartment, plot or building in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority as provided under section 17 of this Act.

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project)

where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charge to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person.

(h) after he executes an agreement for sale for any apartment, plot or building,

not mortgage or create a charge on such apartment, plot or building and if any such mortgage or charge is made or created then it shall not affect right and interest of allottee who has taken or agreed to be taken such plot or building.

IV. Clause (5) the promoter may cancel the allotment only in terms of the agreement for sale.

The allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

V. Clause (6) the promoter shall prepare and maintain all such other details as specified from time to time, by regulations made by the Authority.

•Obligations of promoter•

Act makes following provisions relating to obligations of promoter_

1 Obligations regarding veracity of the advertisement or prospectus. (Section 12)

According to section 12 where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus

or on the basis of any model apartment, plot or building and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act

If the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus

or the model apartment, plot or building intends to withdraw from the proposed project,

he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

2.No deposit or advance to be taken by promoter without first entering into agreement for sale. (Section 13)

A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person

and register the said agreement for sale, under any law for the time being in force.

The agreement for sale shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works,

the dates and the manner by which payments towards the cost of the apartment, plot or building are to be made by the allottees

and the date on which the possession of the apartment, plot or building is to be handed over,

the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.(clause 2)

3 . Adherence to sanctioned plans and project specifications by the promoter. (Section 14)

The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

After the sanctioned plans, layout plans and specifications

and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications

and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, which are agreed to be taken, without the previous consent of that person.[clause 2]

The promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—"minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

4 . Obligations of promoter in case of transfer of a real estate project to a third party. (Section 15)

The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

5.Obligations of promoter regarding insurance of real estate project. (Section 16)

The promoter shall obtain all insurances notified by the appropriate Government, including insurance in respect of--

(i) title of the land and building as a part of the real estate project and

(ii) construction of the real estate project

promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1)

and shall pay the same before transferring the insurance to the association of the allottees.

The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees at the time of promoter entering into an agreement for sale with the allottee.(clause 3)

On formation of the association of the allottees, all documents relating to the insurance shall be handed over to the association of the allottees.(clause 4)

Transfer of Title (section 17)

Section 17 of Act lays down that the promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the

allottees or the competent authority and hand over the physical possession of the plot, apartment of building to the allottees and

the common areas to the association of the allottees or the competent authority in a real estate project, and the other title documents pertaining to it within specified period as per sanctioned plans as provided under the local laws.

Conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

After obtaining the occupancy certificate and handing over physical possession to the allottees it shall be the responsibility of the promoter to hand over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority as per the local laws. (Clause 2)

In the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

Agreement for sale [Sec.13(2)]

It is agreement entered into between promoter and person for sale of apartments,plot,or building.

A promoter shall first enter into a written agreement for sale with person entering with him for sale and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale shall be in such form as may be prescribed. It shall specify

I.the particulars of development of the project including

II the construction of building and apartments, along with specifications and internal development works and external development works,

III.the dates and the manner by which payments towards the cost of the apartment, plot or building are to be made by the allottees and

IV.the date on which the possession of the apartment, plot or building is to be handed over

V. the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default,

and such other particulars, as may be prescribed.

According to clause 1 promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person.

Rights and Duties /Liabilities Allottees (section 19)

Following are rights of allottees

1.The allottee is entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

2.The allottee is entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

3.The allottee is entitled to claim the possession of apartment, plot or building

and the association of allottees is entitled to claim the possession of the common areas, as per the declaration given by the promoter under section 4.

4.The allottee is entitled to claim the refund of amount paid along with interest and compensation as provided under this Act from the promoter.

If he fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale

or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

5.The allottee is entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building by the promoter.(clauses1-5)

Duties of Allottees

Following are duties of allottee-

1. Every allottee, who has entered into an agreement for sale to take an apartment, plot or building under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale

and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges. 2.The allottee shall be

liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

3. Every allottee of the apartment, plot or building shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

4. Every allottee shall take physical possession of the apartment, plot or building within a period of two months of the occupancy certificate issued for the said apartment, plot or building.

6. Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building as provided under sub-section (1) of section 17 of this Act. (clauses 6,7,9,10,11)

According to clause 8 the obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

Module 05

Real Estate Regulatory Authority.

One of the purposes of this Act is to establish real estate regulatory authority. Accordingly Act made provisions for establishment of regulatory authority.

It facilitates growth and promotion of real estate sector by making recommendations to appropriate Government. And protects interest of allottee, promoter and real estate agent.

Act lays down following important provisions relating to real estate regulatory authority-

1. Establishment and incorporation of Real Estate Authority (section 20)

The appropriate Government shall establish the Real Estate Regulatory Authority within a period of one year from the date of coming into force of this Act by notification.

It exercises the powers conferred on it and performs the functions assigned to it under this Act.

The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority. It may also establish more than one Authority in a State or Union territory.

However until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act.

After the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

The Authority is a body corporate by the name aforesaid.

It has perpetual succession and a common seal. It has power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract. It may, by the said name, sue or be sued.

2. Composition. (Section 21)

The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

3 . qualifications and of chair person and members of authority. (Section 22)

The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson

and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration.

Person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government.

Also a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

4 . Meetings of Authority (section 29)

The Authority shall meet at such places and times and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings) specified by the regulations made by the Authority.

If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.[clause 2]

All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.[clause 3]

The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application [clause 3]

Where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.

Powers and functions of Real Estate Authority.

Act makes following provisions relating to powers to be exercised by real estate authority --

1. Power of authority to call for information, conduct investigation (section 35)

where the Authority considers it expedient to do so, may call upon any promoter or allottee or real estate agent, at any time, to furnish information or explanation relating to its affairs as the Authority may require.

And may appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or real estate agent. It may call for information on a complaint or suo motu.

While exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters:—

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority

(ii) summoning and enforcing the attendance of persons and examining them on

(iii) issuing commissions for the examination of witnesses or documents

(iv) any other matter which may be prescribed.

2. Power to issue interim orders (section 36)

Where during an inquiry the Authority is satisfied-

that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed

or that such act is about to be committed,

the Authority may restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

3. Power of authority to issue direction (section 37) The Authority may issue such directions to the promoters or allottees or real estate agents as it may consider necessary. And such directions shall be binding on all concerned for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder.

4. Power of authority (to impose penalty) (section 38)

The authority has powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

The Authority shall be guided by the principles of natural justice. and, the Authority shall have powers to regulate its own procedure.

The Authority may suo motu make reference to the Competition Commission of India under following cases -Where an issue is raised relating to agreement, action, omission, practice or procedure that—

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely. [clause 3]

Functions of Real Estate Authority.

Following are functions--

1. Functions of Real Estate Authority for promotion of real estate sectors (section 3)

The Authority shall make recommendations to the appropriate Government of the competent authority on,—

(a) protection of interest of the allottees, promoter and real estate agent;

(b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;

(c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;

(d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment

(e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardisation and use of appropriate construction materials, fixtures, fittings and construction techniques

(f) measures to encourage grading of projects on various parameters of development including grading of promoters;

(g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations

(h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee

(i) to render advice to the appropriate Government in matters relating to the development of real estate sector

(j) any other issue that the Authority may think necessary for the promotion of the real estate sector

in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.

2 . Functions of authority under section 34.

The functions of the Authority shall also include—

(a) to register and regulate real estate projects and real estate agents registered under this Act.

(b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted.

(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration which has been revoked or have been penalised under this Act, for access to the general public.

(d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked.

(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent.

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act.

(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

Filing complaints(section 31)

Act lays down provision relating to filing complaint. According to section 31 any aggrieved person may file a complaint with the Authority or the adjudicating officer for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent.

Explanation.— "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as the case may be.

Enforcement of orders(Section 40)

If a promoter or an allottee or a real estate agent fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, under this Act or the rules and regulations made thereunder,

it shall be recoverable from such promoter or allottee or real estate agent as an arrears of land revenue.

If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced in such manner as may be prescribed.

Appearance in person and legal representation.(section 56)

The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer.

Explanation.--

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 or any other law for the time being in force and who has obtained a certificate of practice under that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

Effect of the Act (section 88-89)

Act consists of following provisions which explain its effect. According to section 88 provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Section 89 lays down that provisions of this Act shall have effect, notwithstanding anything inconsistent contained in any other law for the time being in force.

Bar of jurisdiction (section 79)

Jurisdiction of Civil court is barred. Section 79 lays down that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine.

And no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

According to section 80 cognizance of offence is not allowed except complaint by Authority or Officer of Authority.

Offence punishable under this Act shall be tried by Metropolitan Magistrate or Judicial Magistrate First Class.

Appeals.

Act lays down following provisions relating to appeal--

1. Appeal to Appellate Tribunal by person (Section 43)

The appropriate Government shall establish an Appellate Tribunal to be known as Real Estate Appellate Tribunal. It consists of one Judicial Member and one Administrative or Technical Member. [Section 43]
Any person aggrieved by any direction or decision or order made by the Authority (real estate authority) or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter. [Clause 5]

Where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first deposits with the Appellate Tribunal at least thirty per cent. of the penalty

or such higher percentage as may be determined by the Appellate Tribunal,

or the total amount to be paid to the allottee including interest and compensation imposed on him, or with both, before the said appeal is heard.

Explanation.— "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

2. Appeal by The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer (Section 44)

The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person.

The Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass orders, including interim orders.

The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer.

The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal.

Where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

Appellate Tribunal may call for the records relevant to disposing of such appeal on its own or otherwise and make such orders as it thinks fit for the purpose of examining the legality or propriety or

correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise [clauses 1-6]

3. Appeal to High Court (Section 58)

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court.

It is to be filled within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him.

Appeal may be filed on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

The High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.—The "High Court" means the High Court of a State or Union territory where the real estate project is situated.

No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

Establishment of the Real Estate Authority (Section 43)

Act lays down following provision relating to establishment-

The appropriate Government shall, by notification, establish an Appellate Tribunal to be known as the Real Estate Appellate Tribunal within a period of one year from the date of coming into force of this Act.

The appropriate Government may establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative to Technical Member.

The appropriate Government of two or more States or Union territories may establish one single Appellate Tribunal

Until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act.

After the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred.

•Appeal to Real Estate Tribunal•

Any person aggrieved by any direction or decision or order made by the Authority

or by an adjudicating officer under this Act

may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.

Where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal

or the total amount to be paid to the allottee including interest and compensation imposed on him or with both before the said appeal is heard.

Explanation.—"person" shall include the association of allottees

or any voluntary consumer association registered under any law for the time being in force.

Application to Tribunal for settlement of disputes and appeals to Appellate Tribunal (Section 44)

The appropriate Government or the competent authority or any person aggrieved

by any direction or order or decision of the Authority or the adjudicating officer

may prefer an appeal to the Appellate Tribunal.

Every appeal made shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person.

The Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

On receipt of an appeal the Appellate Tribunal may pass such orders, including interim orders, as it thinks fit after giving the parties an opportunity of being heard.

The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating office.

The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal.

Where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

The Appellate Tribunal may call for the records relevant to deposing of such appeal and make such orders as it thinks fit for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise.

•Composition of Appellate Tribunal•(Section 45)

The Appellate Tribunal shall consist of a Chairperson and not two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Explanation.—

(i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46

(ii) "Technical or Administrative Member" means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.

•Powers of Tribunal (Section 53)

Following are Provisions concerning powers of Tribunal -

1.Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908.

But it shall be guided by the principles of natural justice.

The Appellate Tribunal shall have power to regulate its own procedure.

The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters :—

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

(b) requiring the discovery and production of documents

(c) receiving evidence on affidavits

(d) issuing commissions for the examinations of witnesses or documents

(e) reviewing its decisions

(f) dismissing an application for default or directing it ex parte; and

(g) any other matter which may be prescribed.

All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code.

And the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2. Administrative powers of chairman of administrative Tribunal (Section 54)

The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal.

And he shall, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed in addition to presiding over the meetings of the Appellate Tribunal.

Offences and Penalties by promoter, allottee and real estate agent. (59-68)

Act lays down following provisions relating to offences and penalties-

1. Punishment for non registration under section 3. (Section 59)

If any promoter contravenes the provisions of section 3, he shall be liable to a Punishment for penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.

If any promoter does not comply with the orders, decisions or directions issued under sub-section 1 or continues to violate the provisions of section 3,

he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.

2. Penalty for contravention of section 4 (section 60)

If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project, as determined by the Authority.

3. Penalty for contravention of other provisions of this Act (section 61)

If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4,

or the rules or regulations made thereunder,

he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

4. Penalty for non-registration and contravention under section 9 and 10 (section 62)

If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

5. Penalty for failure to comply with orders of Authority by promoter (section 63)

If any promoter fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.

6. Penalty for failure to comply with orders of Appellate Tribunal by promoter (section 64)

If any promoter fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project, or with both.

7. Penalty for failure to comply with orders of Authority by real estate agent (section 65)

If any real estate agent fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated and as determined by the Authority.

8. Penalty for failure to comply with orders of Appellate Tribunal by real estate agent (section 66)

If any real estate agent fails to comply with or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend

up to ten per cent. of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.

9. Penalty for failure to comply with orders of Authority by allottee (section 67)

If any allottee fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority.

10 . Penalty for failure to comply with orders of Appellate Tribunal by allottee(section 68)

If any allottee fails to comply with or contravenes any of the orders or directions of the Appellate Tribunal he shall be punishable with imprisonment for a term which may extend up to one year

or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the plot, apartment or building cost, as the case may be, or with both.

Power to Adjudicate compensation(section 71-72)

Act makes following provisions relating to compensation-

1 . power to appoint adjudicating officer.(Section 71)

According to section 71 for adjudging compensation (under sections 12, 14, 18 and section 19,) the Authority shall appoint one or more judicial officer as deemed necessary in consultation with the appropriate Government. Who is or has been a District Judge to be an adjudicating officer. He shall hold inquiry in the prescribed manne after giving any person concerned a reasonable opportunity of being heard.

Any person whose complaint(in respect of matters covered under sections 12, 14, 18 and section 19) is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of thisAct, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it.

And file an application before the adjudicating officer under this Act.

The application for adjudging compensation shall be dealt with by the adjudicating officer as expeditiously as possible.

And shall be disposed of the same within a period of sixty days from the date of receipt of the application.

Where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons.

While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry.

And if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

2. Factors to be taken in to account by adjudicating officer. (Section 72)

While adjudging the quantum of compensation or interest the adjudicating officer shall have due regard to the following factors :—

(a) the amount of disproportionate gain or unfair advantage made as a result of the default if it is quantifiable.

(b) the amount of loss caused as a result of the default

(c) the repetitive nature of the default

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice

Module 07

Maharashtra Rent control Act 1999

Historical Background/Introduction.

Second World War, Industrial Revolution, Social and Political changes and exodus (departure) of people to urban areas changed situation regarding accommodation in cities and compelled Legislature to take note of existing laws on rent control.

Bombay Rent Restriction Act 1939 was first law on rent control operating in Bombay State (now part of Maharashtra). Apart from this Act, three more enactments were prevailing, however, operating in different areas.

All these three enactments have different provisions and procedure. And courts or Authorities deciding matters under these enactments were not uniform. These enactments were Bombay Rent, Hotel and Lodging House Rates Control Act 1947, applicable in Bombay State, Central Provinces and Berar Letting of Houses and Rent Control Order 1949, applicable in Vidarbha areas (formerly part of Madhya Pradesh).

But now part of State of Maharashtra) and Hyderabad House (Rent, Eviction and Lease) applicable in Marathwada(formerly part of Hyderabad now part of Maharashtra)

These laws became outdated and not in tune with changed circumstances. This attracted Government's attention. Accordingly State Government appointed Rent Act inquiry committee with a view to study, examine and to give recommendation to Government in respect of unified/uniform law on rent control in place of previous three laws, if feasible.

Rent Act inquiry committee as well as State Law Commission in its twelfth report recommended unified law. It also submitted draft law.

Moreover Economic Administration Reforms Commission, National Commission on Urbanization recommend reform in rent laws on a way which will balance interest of landlord and tenant.

Central Government announced National Housing Policy(1992) which suggested amendments in existing rent law which will involve housing activity and will guarantee shelter to poor.

Existing rent laws affected investment in rental housing and rental housing stock. Central Government formulated model rent law incorporating views of National Housing Policy.

Supreme Court of India in *Malpe Vishwanath v State of Maharashtra* AIR 1998 S.C. 602

declared that Bombay Rent, Hotel and Lodging House Rates Control Act 1947 relating to determination and fixation of standard rent could no longer be considered to be reasonable. And, Court further observed that we hope that new rent control Act will be enacted.

Bombay Rent, Hotel and Lodging House Rates Control Act 1947 was about to expire. In view of all these circumstances present Act was enacted.

• Objects of Maharashtra Rent control Act.

Maharashtra Rent control Act was enacted by Legislature of Maharashtra with a view -

I. to unify, consolidate and amend the law relating to the control of rent and repairs of certain premises and of eviction

II. to encourage the construction of new houses by assuring a fair return on the investment by landlords and

III. to provide for the matters connected with the purposes aforesaid.

• Application and Exemption of Act. (Sections 2-3)

Maharashtra Rent Control Act, 1999 extends to the whole of the State of Maharashtra. That means Act applies to premises let for the purposes of residence, education, business, trade or storage in the areas specified in Schedule 1 and Schedule II.

Clause (2): it shall also apply to the premises or,

houses let out in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 and The Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 were extended and applied before the date of commencement of this Act.

Clause (3):It shall also apply to the premises let for the purposes specified in sub-section (1) in such of the cities or towns as specified in Schedule II.

Clause (4) The State Government may, by notification in the Official Gazette, direct that -

(a) this Act shall not apply to any of the areas specified in Schedule 1 or Schedule II or that it shall not apply to any one or all purposes specified in sub-section (1);

(b) this Act shall apply to any premises let for any or all purposes specified in sub-section

(1) in the areas other than those specified in Schedule 1 and Schedule II.

3. Exemption:

Section 3 lays down that -

(1 This Act shall not apply -

(a) to any premises belonging to the Government or a local authority

or

to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government,

including any premises taken on behalf of the Government on the basis of -

tenancy

or licence

or other like relationship

by, or in the name of any officer subordinate to the Government authorised in this behalf.

(b) to any premises let or sub-let to banks,

or any Public Sector Undertakings

or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies and private limited companies and public limited companies having a paid up share capital of more than rupee one crore or more.

Explanation: According to explanation bank means following banks -

(i) State Bank of India constituted under the State Bank of India Act 1955

(ii) Subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act 1959.

(iii) Corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 or

(iv) Any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.

Base for application of Act to premises is -

i) Purposes which are residence, education, business, trade or storage.

ii) area to which previous rent laws were (Bombay Rent, Hotel and Lodging House Rates Control Act 1947, Central Provinces and Berar Letting of Houses and Rent Control Order 1949 and Hyderabad House (Rent, Eviction and Lease) Control Act 1954) were extended and applied before the commencement of this Act.

Purpose of letting premises is to be ascertained by reference to the instrument. Purpose is to be main and dominant. Because it is test to determine issue relating to use of land in case premises is used for mixed use. Case on the point is *Dakshinamoorthy v Tulja Bai* AIR (1952) Mad 413.

Section 3 exempts premises from its application. Exemption is available to three types of premises-

I. Premises belonging to Government or local authority

II. Premises let or sub-let to bank or public sector undertaking or Corporation established by Central or State Government, foreign mission, international agencies, multinational companies and public limited companies and private limited companies having paid up share capital of rupees one crore or more

III. Premises mentioned in clause 2 (i, ii, iii, iv),

Which may be used for charitable purpose or

Which may be belonging to University

In *Sarwatibai Bank v State of Maharashtra* 2007(1) Mah.L.J. 875 it was held that Act is not unconstitutional.

Section 3 (b) which exempts premises let to bank was challenged on the ground that clause makes discrimination. But Act was held to be constitutional.

Section 4 of the Act confers Power to State Government to issue orders in respect of premises belonging to local authority, etc. Accordingly the State Government may direct that the exemption granted to a local authority under sub-section (1) of section 3 shall be subject to conditions and terms.

5. Cessation of exemption.

Where there is any contravention of any conditions or terms subject to which any exemption is granted under the provisions of this Act,

State Government can direct that such exemption shall cease to have effect from such date as may be specified in the order.

However, no such order shall be made, unless the local Authority or the religious or charitable institutions or the university referred to in sub-section (2) of section 3 has been given a reasonable opportunity of showing cause.

•Important Definitions•

(Section 7)

1. Landlord:

Clause (3) defines Landlord means any person who is receiving, or entitled to receive, rent in respect of any premises,

whether on his own account

or on account or on behalf, or for the benefit of,

any other person or as a trustee, guardian, or receiver for any other person

or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant;

and also includes any person not being a tenant who from time to time derives title under a landlord,

and further includes, in respect of his sub-tenant,

a tenant who has sub-let any premises

and also includes, in respect of a licensee deemed to be a tenant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947,

the licensor who has given premises on licence

and in respect of the State Government or

the Government allottee referred to in sub-clause (b) of clause (2) deemed to be a tenant by section 27, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the 7th December, 1996, that is before the coming into force of the Bombay Rent, Hotel and Lodging House Rates Control, Bombay Land Requisition and the Bombay Government Premises (Eviction) (Amendment) Act, 1996.

Definition of landlord is wide. It includes following categories of persons -

I. Person who is receiving rent or who is entitled to receive rent that is who has right to receive rent. He can receive rent on his own account or on behalf of other person as trustee, guardian, or receiver for other person.

II. person who derives title from landlord

III. Tenant who has sub-let any premises

IV. Licensor who has given premises on licence

V Government allottee.

VI Person who is entitled to receive the rent before coming into force of Bombay Rents Hotel and Lodging House Rates Control Act, Bombay Land Requisition Act and Bombay Government Premises (Eviction) Amendment Act.

In *Bombay Municipality v Charandas* (1927) 2 K.B. 279

Court held that definition has been made so wide that the word landlord is not limited to owner, freeholder or head landlord and includes agent receiving rent on behalf of the owner.

In *Baker v Levis*. (1947) 1 K.B. 186.

Court held that two or more persons can constitute landlord.

2. legal representative:

Clause (4) defines legal representative. It means

a legal representative as defined in the Code of Civil Procedure, 1908,

and includes also, in the case of joint family property,

the joint family of which the deceased person was a member.

Section 2 (11) of Civil Procedure Code defines legal representative.

Clause (11) lays down that legal representative means a

-person who, in law, represents the estate of a deceased person,

and includes

-any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character

-the person on whom the estate devolves on the death of the party so suing or sued.

3. Licensee: Clause (5) defines - Licensee, in respect of any premises or any part thereof, means

the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes

any person in such occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960

but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor,

or a person conducting a running business belonging to the licensor

or a person having any accommodation for rendering or carrying on medical or para-medical services or activities in or near a nursing home, hospital, or sanatorium

or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanatorium, dharmashala home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his spouse who on account of exigencies of service or provisions of residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increase for such premises, and any additional sum for service supplied with such premises or a person having accommodation in any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions "licence", "licensor" and "premises given on licence" shall be construed accordingly;

Comment.

According to definition following persons are licensee-

I. Person who is in occupation of premises under subsisting agreement for licence given.

II. person in occupation of premises vested in or leased to cooperative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act 1960.

However following persons are not licensee-

I) paying guest

II) a member of a family residing together

III) a person in the service or employment of the licensor or

(IV) a person conducting a running business belonging to the licensor or

V) a person having any accommodation for rendering or carrying on medical or para-medical services or activities in or near a nursing home, hospital, or sanatorium or

VI) a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanatorium, dharmashala home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his spouse who on account of exigencies of service or provisions of residence attached to his or her post or office is temporarily not occupying the premises and charges licence fee or charges.

Mani Nariman v Firoz N. Bhatena AIR 1991.S.C.1494.

is on the point that occupation of licensee must be under subsisting agreement for licence.

4. Paying guest:

Clause (7) lays defines paying guest. It means a person, not being a member of the family, who is given a part of the premises, in which the licensor resides, on licence.

Comment:

Paying guest means person who is given part of premises wherein licensor resides on licence.

In Firoz N Dotiwala v P.M. Wadhvani.S.C.1640. Court held that person to be paying guest must fulfil conditions specified in section 7(7).

5 . premises :

Clause 9 defines premises.

Premises means

any building or part of a building let or given on licence separately (other than a farm building) including,-

(i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof

but does not include a room or other accommodation in a hotel or lodging house

Comment:

Premises means any building or part of building let or given on licence . And things mentioned in clause 9 (I, ii).However definition does not include Farm building.

In Pradup Advertising v Sri Aurbindo Services 2015(2)Mh.L.J. 167. Court held that mere open space garden,ground without letting building is not covered under definition.

6. Tenant:

Clauses 15 defines tenant.

Tenant means-

any person by whom or on whose account rent is payable for any premises

and includes -

(a) such person

(i) who is a tenant, or

(ii) who is a deemed tenant, or

(iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord,
or

(iv) who has derived title under a tenant, or

(v) to whom interest in premises has been assigned or transferred as permitted,

by virtue of, or under the provisions of, any of the repealed Acts;

(b) a person who is deemed to be a tenant under section 25;

(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,-

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court.

Explanation-- The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

Comment :

According to definition following persons are tenant-

i. Person by whom rent of premises is payable

ii) Tenant

iii) deemed tenant

iv) sub tenant under contract or by permission or consent of landlord

v) person who has derived title under tenant

vi) person to whom interest in premises has been assigned or transferred

vii) person who is deemed to be tenant under section 25 viii) person to whom interest in premises has been assigned or transferred under section 26.

ix) in case of death of tenant any member of tenant's family who is residing or using premises at the time of death of tenant or heir of tenant in absence of such member decided by court.

Last type of tenant is case of the transmission of tenancy on death tenant.

Explanation--Transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

Supreme Court of India in *Kailashbhai v. Jostna Pujara* AIR 2006 S.C. 741 held that question whether person is member of the family of tenant to be decided on the fact and circumstances of case. And mere residing for convenience will not make him member of family of tenant.

• Relief Against Forfeiture •

(Section 15)

Introduction

Maharashtra Rent control Act has been enacted State Legislature with a view to control rent and eviction of tenant. Accordingly Act makes provision for relief against eviction /forfeiture .Act protects tenant even if he fails to perform his statutory obligation that is to pay standard rent or permitted increase to landlord.

Act does not warrant Landlord to recover possession of premises on the ground that tenant has failed to pay standard rent or permitted increase. Maharashtra Rent control Act is special Statute.Case on point is Abedadli Khan v Devidas. 2012(2)Bom.C.R.835.

Section 15.

Section 15 lays down relief against forfeiture as under-

No ejection ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

Comment:

Section 15 affords protection to tenant in three form-

I. Landlord has no right to recover possession of premises.

II.Landlord is prohibited from instituting suit for recovery of possession.

III.Court is prevented from passing decree eviction in suit filed for recovery of possession.

Conditions For Relief .

Statutory benefit given to tenant, under section 15, is subject to conditions as specified in provision itself. These conditions are-

1. If tenant pays or is ready and willing to pay standard rent and permitted increases and observes and performs other conditions of tenancy.
2. If demand notice of standard rent and permitted increases has been served on tenant and ninety days next after demand notice has been served are expired.

Demand notice to be given in the manner prescribed by section 106 Transfer of Property Act 1882.

3. If tenant pays or tenders in court areas of the standard rent and permitted increases together with fifteen percent of interest and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided.

Judicial view in respect of demand notice is that it is mandatory pursuant to clause (2) for instituting suit for eviction. If not given suit will not lie.

Notice pursuant to 15 (2) is demand notice of standard rent and permitted increases and not notice of termination of tenancy.

Case on the point is

Tarun Kumar v Ganga Madnani 2009 (6) Mh.L.J.

Demand notice of standard rent and permitted increases to be given to the tenant in the manner provided under Transfer of Property Act which is as under -

1. Notice shall be in writing.
2. It shall be posted or be delivered personally to party (tenant) or family member or servant. or
3. It shall be affixed to conspicuous part of property, where former mode of notice is not practicable.

Object of this provision is to afford benefit to tenant to protect him from losing possession of premises on the ground of non-payment of standard rent and permitted increases. And to restrict landlord from exercising his right to recover possession.

- Recovery of possession by landlord • (Section 16)

Introduction

Maharashtra Rent control Act is intended to control rent of premises and eviction of tenant. Act affords statutory benefits to tenant. Non-payment of rent and permitted increases will not disentitle him for possession of premises.

And at the same time non-payment of rent and permitted increases will not entitle landlord for recovery of possession of premises tenant, if tenant pays or is ready and willing to pay that same.

However Act laid down grounds on which landlord is entitled to recover possession of premises from tenant. In this way landlord's interest is also protected. Act balances right of tenant and right of landlord.

Section 16.

Section 16 lays down when landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-(a) that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882

Explanation.- For the purposes of this clause, replacing of tiles or closing of balcony of the premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto; or

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

Explanation.- For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or

(c) that the tenant, his agent, servant, persons inducted by tenant or claiming under the tenant or, any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention of any of the provisions of clause (a) of sub-section (1) of section 394 or of section 394A of the Mumbai Municipal Corporation Act, or of sub-section (1) or of section 376 or of section 376A of the Bombay Provincial Municipal Corporations Act, 1949, or of section 229 of the City of Nagpur Municipal Corporation Act, 1948 or of section 280 or of section 281 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965; or

(d) that the tenant has given notice to quit and in consequence of that notice, the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession of the premises; or

(e) that the tenant has-

(i) on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied; or

(ii) on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State, unlawfully sub-let or given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

(f) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment; or

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h) that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

(i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

(j) that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the demolition thereof and erection or raising of a floor or floors on such terrace;

Explanation.-For the purposes of this clause, if the premises let include the terrace or part thereof, or garages, servants quarters or out-houses (which are not on the terrace), or all or any one or more of them, this clause shall nevertheless apply; or

(k) that the premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority; or

(l) that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new building which a municipal authority has approved or permitted him to build thereon; or

(m) that the rent charged by the tenant for the premises or any part thereof which are sub-let is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium or like sum of consideration in respect of such premises or part; or

(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

Comment.

Section 16 confers right to recover possession of premises to the tenant. Landlord is entitled to recover possession of premises on the grounds specified in clauses (a) to (n). Right of landlord to recover possession is subject to section 25 of Act (which makes sub-tenant tenant of landlord when tenancy is terminated/determined) and if Court is satisfied.

Following are grounds:

1. Tenant has committed any act which is contrary to section 108 of Transfer of Property Act.

2. Tenant has erected permanent structure without consent of landlord.

3. Tenant or his agent, servant, person induced by him or claiming under him, or person residing with tenant is guilty of conduct which is nuisance or annoyance to adjoining or neighbouring occupier

or using of premises for illegal

or immoral purpose

or contravention of provisions of Mumbai Municipal Corporation Act 1888, Bombay Provincial Municipal Corporations Act 1949, City of Nagpur Municipal Corporation Act 1948, Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act 1965.

4. The landlord has contracted to sell or let the premises or has taken any other steps and he would be seriously prejudiced if he could not obtain possession of the premises. Because the tenant has given notice to quit.

5. The tenant has unlawfully sub-let or given on licence premises or assigned or transferred his interest

on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied

or

(ii) on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State.

6. The premises were let to the tenant for use as a residence because he was in the service or employment of the landlord, and that the tenant has ceased, to be in such service or employment.

7. The premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or

the premises are required for occupation for the purposes of the trust in case landlord is public charitable trust.

8. Carrying out repairs by landlord which cannot be carried out without vacating the premises.

9. for the immediate purpose of demolishing premises and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished.

10. Premises (in the form of tenements on terrace) are required by the landlord for the purpose of the demolition thereof and erection or raising of a floor or floors on such terrace.

11. The premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority.

12. The premises are land in form of garden or grounds appurtenant to a building such land is required by the landlord for the erection of a new building approved or permitted to him by Municipal authority.

13. The rent charged by the tenant for the premises which are sub-let is in excess of the standard rent and permitted increases or

the tenant has received any fine, premium or other like sum of consideration in respect of such premises.

14. The premises have not been used, without reasonable cause, for the purpose for which they were let for a continuous period of six months.

In *Gangadhar Laxman v Keshav Laxman* 2005 (3) Mh.L.J. 947.

Court held that when eviction of tenant is sought under section 16 (1) No notice is required. After conditions mentioned in grounds are fulfilled landlord can directly file suit for possession.

Clause (2) lays down that court shall not pass decree for eviction on the ground specified in clause (g) if the court is satisfied that greater hardship would be caused by passing the decree than by refusing to pass it.

In *Badrinarayan Chunilal v Govindram Gopal* 2003 AIR SCW 3307

Court held that hardship is to be assessed on fact of each case there can not be inflexible rule about hardship.

According to clause (3) landlord shall not be entitled to recover possession of any premises under clause (g) if the premises are let to the Central Government in a cantonment area, and such premises are used for residence by members of the armed forces of the Union or their families.

Clause (6) lays down that no decree for eviction shall be passed on the ground specified in clause (i) or (j) unless the court is satisfied-

(a) that the necessary funds for the purpose of the erection of new building or for erecting or raising of a new floor or floors on the terrace are available with the landlord.

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared.

(c) that the new building or new floor or floors to be erected by the landlord shall contain residential tenements not less than the number of existing tenements which are sought to be demolished.

(d) that the landlord has given an undertaking.-

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in area.

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or on the new floor or floors.

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall obtain the consent of the tenant or tenants concerned in writing to accept the premises with larger area

and on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area to any permissible use.

(iv) that the work of demolishing the premises shall be commenced by the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date.

However where the court is satisfied that the work of demolishing the premises could not be commenced or completed

or the work of erection of the new building or the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may by order extend the period by such further periods not exceeding three months. However that the extended period shall not exceed twelve months in the aggregate.

Clause (9) lays down that where the premises let to any person include-

(i) the terrace or its part or

(ii) following structures

tower-rooms, sitting-out- rooms, ornamental structures, architectural features, landings, attics on the terrace of a building

or one or more rooms of whatsoever description on such terrace (such room or rooms being in the aggregate of an area not more than one-sixth of the total area of the terrace) or

(iii) the terrace or part thereof and any such structure,

and the court is satisfied that the terrace or structure or terrace including structure, as aforesaid, are required by the landlord for the purpose of demolition and erection or raising of a floor or floors on such terrace, the landlord shall be entitled to recover possession of terrace including such tower-rooms sitting out rooms ornamental structures, architectural features.

According to clause (10) suit for eviction on the grounds specified in clause (h), (i), (i) or (k) of sub-section (1) may be filed by the landlord jointly against all the tenants occupying the premises sought to be demolished.

In *Abedadli Khan v Devidas* 2012 (2) Bom.C.R. 835.

Court held that suit filed by co-owner (landlords) is maintainable in law consent of other co-operative is not required.

According to section 17 at the time of passing a decree on the ground specified in clause (h) court ascertains from the tenant whether he elects to be placed in occupation of the premises from which he is to be evicted

And if the tenant so elects court shall specify in the decree the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs.

Clause (2) lays down that when the tenant delivers possession the landlord shall, two months before the date on which the work of repairs is likely to be completed, give notice to the tenant of the date on which the said work shall be completed. Within thirty days from the date of receipt of such notice the tenant shall intimate to the landlord his acceptance of the accommodation offered and deposit with the landlord rent for one month.

If the tenant gives such intimation and makes the deposit, the landlord shall, on completion of the work of repairs, place the tenant in occupation of the premises or part thereof on the terms and conditions existing on the date of the passing of the decree for eviction.

If the tenant fails to give such intimation and to make the deposit, the tenant's right to occupy the premises shall terminate.

Clause (3) lays down that If, after the tenant has delivered possession on or before the date specified in the decree, the landlord fails to commence the work of repairs within one month of the specified date or fails to complete the work within a reasonable time or having completed the work fails to place the tenant in occupation of the premises in accordance with sub-section (2) the court may,

on the application of the tenant made within one year of the specified date,

order the landlord to place him in occupation of the premises or part thereof on the terms and conditions existing on the date of passing of the decree for eviction.

And on such order the landlord and any person who may be in occupation shall give vacant possession to the tenant of the premises.

Clause (4) lays down that landlord who fails to commence the work of repairs

and any landlord or other person in occupation of the premises who fails to comply with the order made by the court under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

According section 18 of Act where a decree for eviction has been passed by the court on the ground specified in clause (g) and the premises are not occupied within a period of one month from the date the landlord recovers possession

or the premises are re-let within one year of the said date to any person other than the original tenant

the court may order the landlord to place him in occupation of the premises and the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant subject to the terms and conditions existing on the date of passing of the decree for eviction.

However application by tenant to court is required.

According to clause (2) landlord who recovers possession on the ground specified in clause (g) and keeps the premises unoccupied without reasonable excuse, landlord or other person in occupation of the shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both.

Section 19 lays down that where a decree for eviction has been passed by the court on the ground specified in clause (i) or (j) and the work of demolishing the premises has not been commenced by the landlord within the period specified the tenant may give the landlord a notice of his intention to occupy the premises from which he has been evicted.

And if the landlord does not forthwith deliver to him the vacant possession of the premises eviction, the tenant may make an application to the court within six weeks from the date on which he delivered vacant possession of the premises to the landlord.

(2) If the court is satisfied that the landlord has not commenced the court shall order the landlord to deliver to the tenant vacant possession of the premises on the terms and conditions on which he occupied them immediately before the eviction.

the landlord shall forthwith deliver vacant possession of the premises to the tenant.

According to Clause (3) landlord who recovers possession on the ground specified in clause (i) or (j) and fails to carry out any undertaking referred to in sub- clause (i), (ii), (iii), (iv) or (v) of clause (d) of sub-section (6) without any reasonable excuse or fails to comply with the order of the court under sub-section (1) shall be punishable with imprisonment for a term which may extend to thirty days or with fine which may extend to five thousand rupees or with both.

In Chandrakant v Lalit kantilal 2009 (6)Bom.C.R.

Court held that landlord is sole judge of his needs. When house became dilapidated and landlord is residing in rented house, it is bona-fide requirement.

According to section 21 Landlord to intimate to tenant date of completion not less than three months before the date on which the erection of the new building or new floor or floors is likely to be completed.

On the said date, the tenant shall be entitled to occupy the premises assigned to him by the landlord.

Clause (2) lays down that (a) If the tenant fails to occupy the premises within a period of one month from the date on which he is entitled to occupy it under the tenant's right to occupy the said premises shall terminate and the landlord shall be entitled to recover from the tenant a sum equal to three times the amount of the monthly standard rent in respect of the premises.

According to clause (b) If the landlord fails, without reasonable excuse, to comply or to place the tenant in occupation of the premises, he shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both.

Section 22 is about recovery of possession in case of tenancy created during service period. Landlord and the employee may enter into an agreement in writing to create a service tenancy in respect of the said premises.

The tenancy so created shall remain in force during the period of service or employment of the tenant with the landlord.

Clause (2) lays down after the creation of the service tenancy if the tenant ceases to be in the service or employment of the said landlord either by retirement, resignation, termination of service, death or for any other reason,

the tenant or any other person residing with him or claiming under him fails to vacate such premises then

the Competent Authority shall make an order that the tenant or any such person as aforesaid shall place the landlord in vacant possession of such premises.

Competent Authority may proceed to take action under section 45.

The Competent Authority may entertain an application under after the expiry of the said period, if it is satisfied that the applicant was prevented by sufficient cause from making

where the tenant is a workman or an employee whose services are terminated and a dispute in respect of such termination is pending before a tribunal, court or any other competent authority, the order for a eviction shall not be passed until such tribunal, court or authority, under the relevant law, finally upholds the order of such termination.

In *Tukaram Kasare v Milton Gonsalvis* 2005 (3) Bom.C.R. 417

Court held that issue of jurisdiction to entertain application may be raised in writ petition.

Landlord's Rights and Duties.

Introduction

Maharashtra Rent control Act is law relating to relationship (tenancy) between landlord and tenant. This relationship comes in to existence when former lets premises to latter on rent.

Landlord receives rent in respect of premises. Tenant pays rent to landlord . Act controls eviction of tenant .He is given enough opportunities by court before he is evicted.

Act balances interest of landlord and tenant. It lays down some provisions which are landlord oriented.

Right of landlord

Act lays down following provision relating to right of landlord :

Inspection of premises. (Section 28)

Pursuant to provisions of Maharashtra Rent control Act premises may be either let or given on licence to tenant or licensee subject to conditions of tenancy.

Section 28 confers right to landlord to inspect premises. It lays down that landlord is entitled to inspect premises let or given on licence.

However before inspection prior statutory notice to tenant or licensee is to be given. Right to inspect includes critical examination of premises along with architect or other person to determine past and present condition of premises.

Case on the point is

Employee Portfolio Services v Sharda Navinchandra Shah 2006 (1) Bom.C.R.674. Wherein court held that landlord is permitted to inspect premises with notice to tenant.

Duties of landlord

1. Land lord not to cut-off or withheld essential supply or services. (Section 29)

According to this section no landlord himself or through any person acting or purporting to act on his behalf shall cut-off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him without just or sufficient cause.

Clause (2) lays down that tenant in occupation of the premises may make an application to the court for a direction to restore such supply or service, if the landlord has contravened the provisions.

According to clause 3 the court, may order directing the landlord to restore the essential supply or service before giving notice to the landlord of the enquiry to be made in the application under sub-section (3) or during the pendency of such enquiry if it is necessary. And considering the circumstances of a particular case

On the failure of the landlord to comply with such interim order of the court, the landlord shall be liable to the same penalty as is provided for in sub-section (4).

Clause(4) lays down that if the court on inquiry finds that the tenant has been in enjoyment of the essential supply or service and that it was cut-off or withheld by the landlord without just or sufficient cause

the court shall make an order directing the landlord to, restore such supply or service before a date to be specified in the order.

Any landlord who fails, to restore the supply or service before the date so specified, shall, for each day during which the default continues thereafter, be liable upon further directions by the court to that effect, to fine which may extend to one hundred rupees.

(5) Any landlord, who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

According to clause (6) an application under this section may be made jointly by all or any of the tenants of the premises situated in the same building.

Explanation clarifies essential supply or services as under-

(a) essential supply or service includes supply of water, electricity, lights in passages and on staircases, lifts and conservancy or sanitary service;

(b) withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut-off by the municipal authority or any other competent authority.

According to clause (7) tenant

(a) who has been in enjoyment of any essential supply or service and the landlord has withheld the same or

(b) who desires to have, at his own cost, any other essential supply or service for the premises in his occupation,

may apply to the Municipal or any other authority authorised in this behalf, for the permission or for supply of the essential service.

Supply of such essential supply or service applied may be granted for without insisting on production of a "No Objection Certificate" from the landlord by such tenant.

In *Dhanrajmal v State of Maharashtra* 75.Bom.L.R.

Court stated ingredients of this section(29)

2. Conversion of residential into commercial premises prohibited.(Section 30)

Section 30(1) lays down another Duty of landlord. He shall not use or permit to be used for a commercial purpose any premises which were used for a residential purpose.

According to clause (2) landlord who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

3. Giving receipt for any amount received compulsory (Section 31) Clause (1) lays down one more Duty of landlord. He shall give a written receipt for any amount at the time when such amount is received by him in respect of any premises.

According to clause (2) landlord shall, without charging any consideration, issue the rent receipt in respect of the premises let out to the deceased tenant in the name of the family member referred to in sub-clause (d) of clause (15) of section 7.

Clause (3) lays down penalty for contravention of this section. Landlord or person who fails to give a written receipt for any amount received by him in respect of any premises shall be punishable with fine which may extend to one hundred rupees for each day of default

Jurisdiction of courts and Appeals.

Introduction

Maharashtra Rent control Act controls eviction of tenant. It regulates relationship between landlord and tenant. Accordingly Act makes provision for relief against eviction and recovery of possession of premises let to tenant. And provisions for making application or filing suit to court or authorities prescribed under Act.

Act lays down territorial as well as subject matter jurisdiction.

Jurisdiction of courts.

(Section 33)

According to section 33(1) no suit or proceedings shall lie except within its jurisdictions of following courts-

(a) in Brihan Mumbai

the Court of Small Causes Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act 1887,

such Small Causes Court and

(c) elsewhere,

the court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate

or if there is no such Civil Judge

the court of the Civil Judge (Senior Division) having ordinary jurisdiction

shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act.

(except applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority)

no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

Clause (2) lays down that -

(a) the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887 and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area.

(b) where any suit, proceeding or application has been withdrawn under clause (a)

the Court of the Civil Judge (Senior Division) may either re-try it or proceed from the stage at which it was withdrawn.

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes shall be deemed to be the Court of Small Causes for purposes of such suit, proceeding or application.

In *Jogani Sachadev v Lawrence Disousa* 2006 (3)All.M.R.81

Court stated about exclusive jurisdiction of Small Causes Court at Bombay to try suit between landlord and tenant. And held that city civil court has no jurisdiction to entertain try suit only Court of Small Causes at Bombay has exclusive jurisdiction.

Appeal

(Section 34)

Section 34 lays down provision relating to appeal.

Appeal shall lie

(a) in Brihan Mumbai

- to a bench of two Judges of the Court of Small which shall not include the Judge who made such decree or order . Appeal shall lie from a decree or order made by the Court of Small Causes Mumbai.

(b) elsewhere to the District Court

from a decree or order made

- by a Judge of the Court of Small Causes established under the Provincial Small Causes Courts Act, 1887

- or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c) of sub-section (2) of section 33

-or by a Civil Judge exercising such jurisdiction.

However no such appeal shall lie from-

(a) a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908

(b) a decree or order made in any suit or proceeding (other than a suit or proceeding relating to possession) in which the plaintiff seeks to recover rent in respect of any premises and the amount or value of the subject matter of which does not exceed-

(i) where such suit or proceeding is instituted in Brihan Mumbai Rs. 10,000 and

(ii) where such suit or proceeding is instituted elsewhere, the amount upto which the Judge or Court specified in clause (b) is invested with jurisdiction of a Court of Small Causes, under any law for the time being in force.

(c) an order made upon an application for fixing the standard rent or for determining the permitted increases in respect of any premises except in a suit or proceeding in which an appeal lies.

(d) an order made upon an application by a tenant for a direction to restore any essential supply or service in respect of the premises let to him.

According to (2) appeal under sub-section (1) shall be made within thirty days from the date of the decree or order.

In computing the period of limitation prescribed by this sub section, the provisions contained in sections 4, 5 and 12 of the Limitation Act, 1963 shall apply.

Clause (3) lays down that no further appeal shall lie against any decision in appeal under sub-section (1).

According to clause (4) Where no appeal lies under this section from a decree or order in any suit or proceeding in Brihan Mumbai

-the bench of two Judges specified in clause (a) of sub- section (1) and elsewhere

- the District Court, may call for the case in which such decree or order was made

and shall pass such order with respect thereto as it or he thinks fit for the purpose of satisfying itself that the decree or order made was according to law.

This Clause has created revisional jurisdiction to Bench of two Judges and to District Court in case there is no appeal.

In *Abeda Iqbal v Cormorant Investment* 2009 (2)Mh.L.J.446.

Court clarified the phrase "in accordance with the law used in clause 4.And court held that phrase covers various doctrines including-

doctrine of precedent

doctrine of natural justice

Practice and procedure of law

especially when it affects sustainable rights of parties.

Any judgement order which needs to be in accordance with law whether final or interlocutory if not revision is maintainable.

According to section 35 party to a suit, proceeding or appeal in which a question of title to premises arises and is determined, may sue competent court to establish his title to such premises.

Section 36 lays down compensation in respect of proceedings which are not bona fide or are false, frivolous or vexatious.

If the court finds that any suit, proceeding or application is not bona fide or is false, frivolous or vexatious, the court may order that compensation, not exceeding two thousand rupees, be paid by such plaintiff or applicant to the defendant or opponent.

According to section 37 Courts specified in sections 33 and 34 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them.

Section 38 is about time limit for disposal of suits, proceedings or appeals.

(a) a suit or proceeding under this Act shall be heard and disposed of as expeditiously as possible.

And endeavour shall be made to dispose of the case, as far as may be practicable, within a period of twelve months from the date of service of summons to the defendant.

(b) an appeal against the decree or order made by the Court, shall be heard and disposed of as expeditiously as possible and endeavour shall be made to dispose of the appeal, as far as may be practicable, within a period of six months from the, date of service of notice of appeal on the respondent.

Module 08

Maharashtra Rent control Act 1999.

Definitions(Section 7)

Standard Rent: Section 7 clause(14) lays down definition of standard rent as under-

"standard rent " in relation to any premises means,-

(a) where the standard rent is fixed by the Court

or, as the case may be,

the Controller under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944

or the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947

or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946,

or the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954,

such rent plus an increase of 5 per cent, in the rent so fixed or

(b) where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8

(i) the rent at which the premises were let on the 1st day of October 1987 or

(ii) where the premises were not let on the 1st day of October 1987, the rent at which they were last let before that day, plus an increase of 5 per cent, in the rent of the premises let before the 1st day of October, 1987, or

(c) in any of the case specified in section 8, the rent fixed by the court.

Comment.

Maharashtra Rent control Act pursuant to its Preamble has been enacted by Legislature of Maharashtra with a view to control rent of premises let on rent. In case of dispute between landlord and tenant on rent of premises this definition may be invoked.

Standard rent is fixed by court in circumstances laid down in this Act(section 8)

According to section 7 (14) standard rent is of following types :

I. Rent fixed by court or Controller (under various enactments as laid down in clause a) plus five per cent increase in it or

II.The rent at which the premises were let on the 1st day of October 1987 or

the rent at which they were last let before that day plus an increase of 5 per cent, in the rent of the premises let before the 1st day of October,1987

III.Rent fixed by court in cases specified in section 8 of Act.

Permitted increase:

Section 7(8)defines as under -

"permitted increase" means an increase in rent permitted under the provisions of this Act.

This section is to be read along with other provisions relating to permitted increases,section 8,11,12.

Increase in rent by landlord is permitted on different grounds.For example increase on account of improvement,payment by landlord to Government or local authority.

In New Laxmi Cycle v Jagdishchandra 2009(6) Mh.L.J 906

Court held that increasing rent by landlord is discretionary law does not compel him to increase.And tenant is not voluntarily required to pay.

Standard rent : Concept.

Maharashtra Rent control Act regulates relationship between landlord and tenant. Relation comes in to existence on account of letting premises by landlord to tenant.

Landlord is entitled to receive the rent in respect of premises let to tenant. Rent is to be paid when property (premises) is used for the purposes specified in Act. It is consideration for use of premises.

Paying rent is contractual obligation pursuant to agreement entered into between landlord and tenant. It is right of landlord to receive rent and it is obligation of tenant to pay.

When there is dispute on rent of premises or when there is no evidence at what rate premises was let? standard rent is fixed by court pursuant to provisions of Act.

Section 7 (14) defines standard rent. Section 8 empowers court to fix standard rent in cases specified in its various clauses.

Components:

Maharashtra Rent control Act lays down important concepts, premises, landlord, tenant and standard rent. Relation as landlord and tenant comes in to existence when premises are let on rent. This relation is called tenancy relation.

1. Standard rent is consideration payable by tenant to landlord under tenancy agreement.
2. Tenant's interest is protected if he is ready and willing to pay standard rent and permitted increases. In this case he can not be evicted.
3. Court is empowered to fix standard rent in respect of premises in cases/circumstances specified in section 8 of Act.
4. Landlord is entitled to receive standard rent.
5. Tenant is to pay standard rent in respect of premises to landlord.

Increase in rent.

Standard rent is payable, in respect of premises, by tenant. Maharashtra Rent control Act permits increase in rent on account of various grounds. Following are provisions concerning increase in rent -

1. Increase in rent annually and on account of improvement, etc. special addition etc. and special or heavy repairs. (Section 11).

Pursuant to provision of section 11 a landlord shall be entitled to make an increase of 4 per cent per annum. (Clause 1)

2. A landlord shall also be entitled to make such increase in the rent of the premises as may be reasonable for an improvement or structural alterations of the premises which has been made with the consent of the seventy per cent of the tenants given in writing.(clause 2)

3. A landlord shall further be entitled to make an increase in the rent of premises by an addition to the rent ,amount not exceeding fifteen per cent per annum of the expenses incurred

on account of -

special additions to premises

or special alterations made

or additional amenities provided for the premises

or

improvements or structural alterations.(clause 3)

4. The landlord shall also be further entitled to make, a temporary increase at a rate not exceeding twenty-five per cent of the standard rent on account of special or structural repairs.

And the increase of rent shall be payable from the date of completion of the repairs till the amount of the expenditure for such repairs is recovered from the tenant.(clause 4)

Explanations to Section 11.

1.Improvements and alterations do not include repairs which the landlord is bound to make under sub-section (1) of section 14.

2.Expenses incurred means total cost incurred for execution of work certified by Municipal authority or Architect from panel of architects notified by State Government.

2. Increase in rent on account of payment of rates,etc (Section12)

According to section 12(1) where a landlord is required to pay to Government

or to any local authority

or statutory authority

any fresh rate, cess, charges, tax, land assessment, ground rent of land

or any other levy on lands and building,

or increase in rate, cess, charges, tax, land assessment, ground rent of land

or any other levy on lands and buildings,

he shall be entitled to make an increase in the rent of such premises.

The increase in rent shall not exceed the amount of any such rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings, as the case may be.

Clause (2) lays down that where the rent is inclusive of charges for electricity and water and the landlord is required to pay any increase in these charges in respect of any premises, he shall be entitled to make an increase in the rent of such premises by an amount not exceeding the additional amount payable by him in respect of such premises on account of such increase.

According to clause (3) the amount of the increase in rent recoverable from each tenant under sub-sections(1) and (2) shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of any such rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings, or increase in electricity or water charges.

New Laxmi Cycle v Jagdishchandra 2009(6)Mh.L.J 906.

Is on the point that increase is not automatic but is discretion of landlord law does not compel him to increase. And tenant is not voluntarily required to pay.

Liability To pay Standard Rent.

Maharashtra Rent control Act has been enacted with a view to control rent of premises and eviction of tenant. Act permits letting premises by creating legal relation in the form of tenancy, licence, grant, lease and subletting.

Standard rent is payable by tenant and it is his obligation arising from contract and also under present Act. Receiving standard rent is right of landlord.

Failure to pay standard rent creates ground for recovery of possession by landlord. However tenant is entitled to be in possession of premises if he is ready and willing to pay standard.

Standard rent is consideration for premises to be given by tenant. Act empowers court to fix standard rent in cases specified in its provision.

Application for fixing standard rent And

Court's power to fix standard rent (section 8)

Section 8 empowers court to fix standard rent in cases specified in its various clauses . Landlord, tenant may make application to court.

In any of the following cases the court may fix the standard rent at such amount as the court deems just.

Court may fix upon an application made to it for the purpose, or in any suit or proceedings considering the provisions of this Act and the circumstances of the case. Subject to the provisions of section 9

(a) where the court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in paragraphs (i) and (ii) of sub-clause (b) of clause (14) of section 7 or

(b) where by reasons of the premises having been let at one time as a whole or in parts and at another time, in parts or as a whole

or for any other reasons or

(c) where any premises have been or are let rent-free

or at a nominal rent

or for some consideration in addition to rent or

(d) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

Clause (3) lays down that If application for fixing the standard rent or for determining the permitted increase is made by a tenant

(a) the court shall forthwith specify the amount of rent, or permitted increase which are to be deposited in court by the tenant. And shall make an order directing the tenant to deposit such amount in court.

or it may make an order to pay to the landlord such amount thereof as the court may specify pending the final decision of the application.

Clause (b) lays down that out of amount deposited in the court under clause (a), the court may make an order for payment of such reasonable sum to the landlord towards payment of the rent or increases due to him.

According to clause (c) if the tenant fails to deposit such amount or fails to pay amount to the landlord as directed by court, his application shall be dismissed.

According to clause (4) (a) where at any stage of a suit for recovery of rent the court is satisfied that the rent is excessive and standard rent should be fixed, the court may fix.

Clause (b) lays down that the court may further make an order directing the tenant to deposit in court periodically such amount as it considers proper as interim standard rent or

order to pay to the landlord, such amount as the court may specify during the pendency of the suit.

According to clause (c) if the tenant fails to comply with any order he shall not be entitled to appear in or defend the suit except with leave of the court and subject to such terms and conditions as the court may specify.

According to clause (6) application under this section may be made jointly by all or any of the tenants interested.

Fixing standard rent and permitted increases is subject to section 9. It lays down that no applications for standard rent in certain circumstances-

i) if the standard rent or the permitted increase in respect of the same premises have been duly fixed by a competent court on the merits of the case and

ii) there has been no structural alterations or change in the amenities or in respect of any other factors which are relevant to the fixation of the standard rent, or change in such increases, thereafter in the premises.

According to section 10 rent in excess of standard rent is illegal.

Clause (2) lays down that contravention of provisions of sub-section (1) shall be an offence punishable with imprisonment not exceeding three months or fine not exceeding rupees five thousand or with both.

In *Datta Nagosa v Madhukar Dattoba* 2005 (4) All.M.R.508.

Court held that tenant is not entitled to any protection if there is irregularity in making payment of rent as fixed by court.

Landlords' duty to keep premises in good repair (Section 14)

Landlord is entitled to make increase in rent on account of improvement to premises. Court may determine increase in rent.

However improvement does not include repairs which landlord is bound to make. Act imposes statutory duty on landlord to keep premises in good repair.

According to section 14 every landlord shall be bound to keep the premises in good and tenantable repair.

Clause (2) lays down that if the landlord neglects to make any repairs which he is bound to make and notice of fifteen days is served upon him by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or recover otherwise from the landlord

The amount to be deducted or recovered with interest by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such repairs together with simple interest at fifteen per cent per annum on such amount and shall not exceed one-fourth of the rent payable by the tenant for year.

Clause (3) lays down that in calculating the expenses of the repairs made under sub-section(2), the accounts together with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord.

Recovery of possession by landlord for repairs (Section 16(h) ,17)

Landlord is entitled to recover possession on various grounds among those one is for carrying out repairs.

According to clause (h) landlord shall be entitled to recover possession of any premises if the court is satisfied that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated.

Clause 7 protects interest of tenant in case premises is recovered for repair. According to this clause if landlord transferred premises before tenant is placed in occupation of premises, such transfer is subject to right and interest of tenant.

Bona fide requirement as ground for recovery of possession of premises is recognised in Narayan v Balamma 2005(4)Mah.L.J 538.

Section 17

(1) The court shall, when passing a decree on the ground specified in clause 16 (h) court ascertains from the tenant whether he elects to be placed in occupation of the premises from which he is to be evicted and if the tenant so elects it shall record the fact of the election and specify the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs.

According to clause (2) landlord shall, two months before the date on which the work of repairs is likely to be completed, give notice to the tenant of the date on which the said work shall be completed. And within thirty days from the date of receipt of such notice, the tenant shall intimate to the landlord his acceptance of the accommodation offered and deposit with the landlord rent for one month.

If the tenant gives such intimation and makes the deposit, the landlord shall, on completion of the work of repairs, place the tenant in occupation of the premises on the terms and conditions existing on the date of the passing of the decree for eviction.

If the tenant fails to give such intimation and to make the deposit, the tenant's right to occupy the premises shall terminate.

According to clause (3) If the landlord fails to commence the work of repairs within one month of the specified date or fails to complete the work within a reasonable time or having completed the work fails to place the tenant in occupation of the premises in accordance with sub- section (2) the court may order the landlord to place him in occupation of the premises.

Clause (4) lays down that any landlord who fails to commence the work of repairs or any landlord or other person in occupation of the premises who fails to comply with the order made by the court under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

Certain sub-tenants to become tenants (Section 25.)

This provision makes certain sub tenants tenants when interest of tenant is determined for any reason. These sub tenants are of two types -tenant to whom the premises have been lawfully sub-let and such sub tenancy is subsisting on the date of commencement of this Act.

And sub tenant under contract between landlord and tenant.

Section 25 lays down that when the interest of a tenant of any premises is determined for any reason, any sub- tenant to whom the premises or any part thereof have been lawfully sub-let and such sub-tenancy is subsisting on the date of commencement of this Act

or where sub-tenancy is permitted by a contract between the landlord and the tenant such sub-tenant shall be deemed to become the tenant of his landlord.

on the same terms and conditions as he would have held from the tenant if the tenancy had continued.

In Anandram Chandramal v Dr.Surinder 2000 (1) Bom C.R. Supreme Court held that sub tenant becomes tenant only after interest of tenant comes to end.

Prohibition on Subletting,Assignment and Transfer.Section 26.

This provision prohibits tenant from subletting or assigning or transferring his interest in premises.

Section 26 lays down that it shall not be lawful for any tenant to sub-let or give on licence the whole or any part of the premises let to him or to assign or transfer in any other manner his interest in premises.

However the State Government may permit in any area the transfer of interest in premises held under such leases or class of leases any premises or class of premises other than those let for business, trade or storage to such extent as may be specified in the notification.

In *Veterang Investment and Finance v Premier Brass and Metal* 2002(4) Bom.C.R 169. Court held that tenant can transfer his interest in premises whether it is residential or non residential.

Module 09

Introduction

Maharashtra Rent control Act lays down provisions relating to recovery of possession by landlord on various grounds. Act classifies landlord as defined in section 7 (3) and landlord as specified in section 23.

Act makes special provisions for recovery of possession of premises for landlords laid down in section 23.

Special provisions for Members of armed forces of the Union, scientists or their successor-in-interest. (Section 23)

Section 23 lays down that

a landlord who -

(i) is a member of armed forces of the Union, or was such a member and has retired or

(ii) holds a scientific post in the Department of Atomic Energy of the Central Government or in any of its aided institution (that is scientist) or was such a scientist and has retired and one year has not elapsed since his retirement on the date of making of the application, or

(iii) is an employee of the Government of India, Government of any State or Union Territory,

Public Sector Undertaking of the Government of India or of any State Government (that is Government servant) and has retired

and one year has not elapsed since his retirement on the date of the application,

shall be entitled to recover from his tenant the possession of any premises owned by him on the ground that such premises are bona fide required by him for occupation by himself or by any member of his family.

An application for the purpose of recovery of possession of the premises shall be made to the Competent Authority.

The Competent Authority shall make an order of eviction on that ground if-

(a) in the case of landlord who is a member of the armed forces of the Union, he produces a certificate signed by the authorised officer to the effect that-

(i) he is a member of the armed forces of the Union or that he was such a member and has retired and
(ii) he does not possess any other premises suitable for residence in the local area where the premises are situated or

(b) in the case of a landlord who is scientist, he produces a certificate signed by an officer of the Department of Atomic Energy of, or above, the rank of Deputy Secretary to Government to the effect that-

(i) he is presently holding a scientific post in the Department of Atomic Energy or in any of its aided institutions specified in the certificate

or he was holding such post and has now retired with effect from the date specified in the certificate and

(ii) he does not possess any other suitable residence (excluding any residential accommodation provided by Government) in the local area where the premises are situated

(c) in the case of a Government servant, he produces a certificate signed by the Head of Department or the Head of the office, or the Chief Executive of the Public Sector Undertaking, by whatever designation called, to the effect that-

(i) he is presently holding the post in that Department, Office or Public Sector Undertaking or he was holding such post and has now retired with effect from the date specified in the certificate and

(ii) he does not possess any other suitable residence (excluding any residential accommodation provided by Government or Public Sector Undertaking) in the local area where the premises are situated.

(B) A successor-in-interest who becomes the landlord of the premises owned by any landlord referred to in clause (A) as a result of death of such a landlord while in service or where he is a member of the armed forces of the Union, within five years of his retirement, or where he is a scientist, or a Government servant, within one year of his retirement, shall be entitled to recover possession of such premises on the ground that such premises are bona fide required for occupation

by the successor-in-interest himself

or by any member of the family of the deceased landlord.

An application for the purpose of recovery of possession of the premises shall be made to the Competent Authority.

The Competent Authority shall make an order of eviction on that ground if-

(a) in the case of the successor - in- interest of a member of the armed forces of the Union

he produces a certificate signed by the authorised officer to the effect that-

(i) a successor-in-interest is a widow

or any other member of the family of the deceased member of the armed forces of the Union, who died while in service on the date specified in the certificate (or of a member of the armed forces of the Union who has retired and who died within five years of his retirement on the date specified in the certificate) and

(ii) such a successor-in-interest does not possess any other premises suitable for residence in the local area where such premises are situated; or

(b) in the case of a successor-in-interest of a scientist,

he produces a certificate signed by an officer of the Department of Atomic Energy of, or above, the rank of Deputy Secretary to Government,

to the effect that

(i) the successor-in-interest is a widow or any other member of the family of the deceased scientist who died while in service on the date specified in the certificate (or of a scientist who has retired and who died within one year of his retirement on the date specified in the certificate)

(ii) such successor-in-interest does not possess any other suitable residence (excluding any residential accommodation provided by Government) in the local area where such premises are situated; or

(c) in the case of a successor-in-interest of a Government servant,

he produces a certificate signed by the head of his Department, Head of the office, or the Chief Executive, by whatever designation called, of the Public Sector Undertaking, to the effect that-

(i) the successor-in-interest is a widow or any other member of the family of the deceased Government servant, who died while in service on the date specified in the certificate (or of a Government servant who has retired and who died within one year of his retirement on the date specified in the certificate) and in the local area where such premises are situated.

According to clause (2) any certificate granted under sub-section (1) shall be conclusive evidence of the facts stated therein.

Explanation. For the purposes of this section, -

(1) "authorised officer", in relation to a member of the armed forces of the Union, means the commanding officer or head of services, including,-

(i) in the case of an officer retired from the Army

the Area Commander,

(ii) in the case of an officer retired from the Navy,

the Flag officer Commanding-in Chief, Naval Command, and

(iii) in the case of an officer retired from the Air Force,

the Station Commander

Clause (2) "member of the family" means any of the following members of the family of a member of the armed forces of the Union, or a scientist, or a Government servant, as the case may be,

who is ordinarily residing with him and who is dependent on him

and where member of the armed forces of the Union

or a scientist

or a Government servant

has retired or died, any member of his family who is so residing, or dependent at the time of his retirement, or as the case may be, death, namely :-

spouse, father, mother, son, daughter, grandson, grand-daughter, son's wife, grandson's wife, widow of predeceased son or grand-son

Clause (3) "successor-in-interest" means-

(i) if the deceased landlord has a spouse living at the time of his death, spouse, and

(ii) in any other case, any other member of his family.

Explanation.- A landlord or his successor-in-interest by inheritance or otherwise shall not be entitled to recover possession under this section from the tenant or his successor-in-interest by transmission, where the landlord has acquired the property by purchase, gift, exchange or otherwise (but excluding acquisition by inheritance or succession or in the case of premises in a Co-operative Housing Society, by acquisition of a share or right and interest in such premises by nomination), and where, at the time of acquisition, by purchase gift, exchange or otherwise the premises had been in the occupation of the tenant or his predecessor-in-interest from whom the tenancy has been transmitted and notwithstanding anything contained in any judgement, decree or order of the court or anything contained in this Act or in any other law for the time being in force, the provisions of this explanation shall always be deemed to have applied to such a case, and the landlord shall not be entitled to recover possession in any such case.

Clause (4) "aided institution" means

the Tata Institution of Fundamental Research and the Tata Memorial Centre,

also any other institution which may be declared by the State Government in consultation with the Department of Atomic Energy.

Special provisions Recovery of possession by Licensor

(Section 24)

According to section Section 24 landlord (who has given premises on licence for residence) is entitled to recover possession of premises given on licence on expiry from a licensee.

Licensee shall deliver possession of such premises to the landlord on expiry of the period of licence.

And on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority.

The Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

Clause (2) lays down that licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

According to clause (3) the Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation- For the purposes of this section-

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord.

But does not include a tenant or a sub-tenant who has given premises on licence.

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

In Dinesh Khandelwal v kundanlal 2010 (2)All.M.R.588 Court held that proceeding under section 24 shall lie before Competent Authority and not before small causes court.

Competent Authority: Its powers and functions.

Introduction

Maharashtra Rent control Act lays down provisions relating to recovery of possession of premises by landlords. It also specified procedure for recovery of possession. Act makes some special provisions for certain landlords who can apply to competent authority for recovery of possession.

Act defines Competent Authority in section 7. It is authority appointed under section 40 of Act to perform functions as specified in Act.

Provisions

Act makes following provisions:

1. Appointment of Competent Authority . Section 40.

According to clause (1) the State Government may appoint one or more persons to be called Competent Authority.

According to clause (2) a person to be appointed as a Competent Authority shall be one-

- (a) who is holding or has held an office not lower in rank as Deputy Collector or
- (b) who is holding or has held a post of a Civil Judge, Junior Division; or
- (c) who has been for not less than five years an Advocate, enrolled under the Advocates Act, 1961.

According to section 41 following landlords are covered under these special provisions - landlord who is-

- (a) a person who has created a service tenancy in respect of his premises in favour of his employee under section 22.
- (b) a member of the armed forces of the Union or a scientist or a Government servant or a successor-in-interest, referred to in section 23. or
- (c) a person who has given premises on licence for residence or a successor-in-interest referred to in section 24.

Section 42 lays down that these landlords may apply to Competent Authority to recover possession of premises from tenant or licensee.

The manner of application has been provided in rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908, as if it were a plaint.

2.Special procedure for disposal of applications (section 43)

According to section 43(1) every application by a landlord under this Chapter for the recovery of possession shall be accompanied by fees. The Competent Authority shall deal with the application in accordance with the procedure laid down in this section.

Clause (2) lays down that the Competent Authority shall issue summons in the form specified in Schedule III to tenant or licensee.

According to (4) (a) the tenant or licensee on whom the summons is duly served in the ordinary way or by registered post shall file an affidavit stating grounds on which he seeks to contest the application for eviction. And in default of his appearance in pursuance of the summons or his obtaining such leave to

contest application, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee.

And the applicant/ landlord shall be entitled to an order for eviction on the ground aforesaid.

According to clause (b) the Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24.

Clause (c) lays down that where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable.

And shall, as far as possible, proceed with the hearing from day to day, and decide the same, within six months of the order granting of such leave to contest the application.

According to clause (5) the Competent Authority shall, while holding an inquiry in a proceeding follow practice and procedure of a court of small causes, including the recording of evidence.

According to section 44 (1) no appeal shall lie against an order for the recovery of possession of any premises made by the Competent Authority in accordance with the procedure specified in section 43.

However according to clause (2) the State Government or such officer, not below the rank of an Additional Commissioner of a Revenue Division may suo motto or on the application of any person aggrieved, call for the record of that case and pass such order as he thinks fit.

However no such order shall be made except after giving the person affected, a reasonable opportunity of being heard in the matter.

And, no powers of revision at the instance of person aggrieved shall be exercised, unless an application is presented within ninety days of the date of the order sought to be revised.

According to section 45 If any person refuses or fails to comply with the order of eviction made under section 43 within thirty days of the date on which it has become final, the Competent Authority or any other officer duly authorised by the Competent Authority in this behalf may evict that person from and take possession and deliver the same to the landlord and for that purpose may use such force as may be necessary.

3. Bar of jurisdiction (section 47)

According to section 47 no civil court shall have jurisdiction in respect of any matter which the Competent Authority

or the State Government

or an officer authorised by it is empowered by or under this Act, to decide.

And no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the Competent Authority or the State Government or such Officer.

According to section 49 Competent Authority appointed under this Chapter shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Section 50 lays down that all proceedings before a Competent Authority shall be deemed to be judicial proceedings for the purposes of sections 193 and 228 of the Indian Penal Code.

Competent Authority to be deemed to be civil court for certain purposes. Section 51.

Every Competent Authority shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

55. Tenancy agreement to be compulsorily registered.

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the

of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification made or issued under this Act;

(d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law.

Module 06

Maharashtra Regional and Town Planning Act, 1966.

Introduction

Town planning is the planning and design of all the new buildings, roads, and parks in a place to make them attractive and convenient for the people who live there.

The purpose of town planning is to protect / improve the commonwealth of a particular location, to protect the environment, improve public health and safety, and increase the wealth of choices available to each and every citizen.

It is an incremental approach to implementing urban planning. It guides the process of land redevelopment toward a long-term vision of the city.

In India, local governments have increasingly relied on town planning schemes to influence urban growth and to finance affordable housing and basic infrastructure.

Town planning is a hybrid land readjustment system which requires owners of agricultural land who transfer up to 40 percent of their land to the government for redevelopment. In return, they receive cash compensation for the land taken and retain the remaining 60 percent of their land, which is reconstituted as urban plots with public infrastructure. The landowners can either build new homes on these serviced plots or sell the plots to developers. The government builds roads and other public facilities on a portion of the land received from the landowners and reserves a portion to sell at auction to cover the costs of infrastructure development.

Town Planning performs the role of planning as a means to produce aesthetically pleasing everyday surroundings. Town planning is implemented by legislation.

Maharashtra Regional Town Planning Act 1966 is State enactment on town planning and Town Planning schemes in Maharashtra.

Object of Act

Act was enacted by State of Maharashtra with following objectives-

I. to make provision for planning the development and use of land in region created by Government.

II. to development plans to ensure that town planning schemes are made in proper manner.

III. to create new towns by the means of Development Authority.

IV. to make provision for compulsory acquisition of land required for public purposes.

Apex Court analyzed main object of town planning law in

Prakash Amichand v State Gujarat. (1986) 1 S.C. 581. and held that principal objects of town planning legislation are to provide planning, the development and control of use of land and to confer on public authorities (city Municipality, town municipalities, town Panchayats) powers in respect of acquisition and development of land for planning and other purposes.

Application of Act

Maharashtra Regional Town Planning Act is applicable to entire State of Maharashtra . Building operation, development (of land)and engineering operation, as defined in Act, are covered under Act.

- General Scheme of Act.

Act may divided in to:

- Important Definitions
- Provisions relating to Regional Plan.
- Area Development Authority.
- Town planning schemes.
- Land Acquisition.

- Important Definitions•

(2) “amenity” means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences.

In *Maidan Bachav Samitis v Ramachandra Padmakar* 2011 (3) ALL.M.R.49 Court held that open space is amenity to be used for future as per development plan.

(5)“ Building operations” includes

- erection or re-erection of a building or any part thereof
- roofing or re-roofing of any part of a building or of any open space,
- any material alteration or enlargement of a building, any such alteration of a building as is likely to affect an alteration of its drainage or sanitary arrangement or materially affect its security or the construction of a door opening on any streets or land not belonging to the owner.

(5A)“ compounded structure ” means an unauthorized structure, in respect of which the compounding charges as levied by the Collector under the provisions of sub-section (2B) of section 18 are paid by the owner or occupier of such structure and which, upon such payment, has been declared as such by the Collector.

(7)“ development” with its grammatical variations means-

the carrying out of buldings, engineering, mining or other operations in or over or under, land

or the making of any material change, in any building or land or in the use of any building or land

or any material or structural change in any heritage building or its precinct

and includes demolition of any existing building, structure or erection or part of such building, structure of erection

and reclamation, redevelopment and lay-out and sub-division of any land; and “ to develop” shall be construed accordingly.

(9)“ Development plan ” means-

a plan for the development or re-development of the area within the jurisdiction of a Planning Authority

and includes revision of a development plan and proposals of a special planning Authority for development of land within its jurisdictions

(9A)“ development right” means right to carry out development

or to develop the land or building or both

and shall include the transferable development right in the form of right to utilise the Floor Space Index of land utilisable either on the remainder of the land partially reserved for a public purpose or elsewhere, as the final Development Control Regulations in this behalf provide.

In Fairview Cooperative Society v Savinder S.Rekhi 2008 (2) Mh.L.J Court held that the definition of "development right" includes transferable development rights in the form of FSI to be used on remainder of land which is reserved partially for public purpose or in Development Control Regulations.

(11)“ engineering operations” includes the formation or laying out of a street or means of access to a road

or laying out of means of water-supply, drainage, electricity, gas or other public service

(13B)“Heritage building” means a building possessing architectural, aesthetic, historic or cultural values which is declared as heritage building by the Planning Authority in whose jurisdiction such building is situated.

(13C)“ Heritage precinct” means an area comprising heritage building or buildings and precincts thereof or related places.

(14)“ land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

(31A) “ Undeveloped area ” means

an area within the jurisdiction of one or more local authorities

(not being an area within the jurisdiction of a cantonment board of constituted under the Cantonment Act, 1924)

which is in the opinion of the State Government in a neglected condition,

or which is being developed or is in imminent likelihood of being developed in an uncontrolled or haphazard manner, and requires, in the public interest, to be developed in a proper and orderly manner.

•Provisions Relating to Regional Plan•

1 . Establishment of Region And Alterationof its Limits.(Section 3)

According to section 3 the State Government may establish any area in the State to be a region for the purposes of this Act by defining its limits.And may name and alter the name of any such its limits.

Clause (2) lays down that the State Government may-

(a)alter the limits of a Region so as to include in it or exclude from it therefrom such area as may be specified in the notification.

or

(b)amalgamate two or more Regions so as to form one Region

or

(c)split up any Region into two or more Regions

or

(d) declare that the whole or part of the area comprising a Region shall cease to be a Region or its part

According to clause (3) a plan showing the boundaries of the Region as established under this section shall be available for inspection at the office of the Collector and the Mamlatdar or Tahsildar concerned and also at the office of the Board.

(b) Constitution of Regional Planning Boards.

2. Constitution of Regional Planning Boards (section 4)

According to clause (1) for the purpose of planning the development and use of land in the Region, Regional the State Government shall constitute a Regional Planning Boards. It shall consist of-

a Chairman appointed by the State Government

-the Director of Town Planning (or a person nominated by him)

-such number of persons not exceeding four appointed by the State Government as are members of local authorities functioning in the whole or part of the Region

-such number of persons not exceeding ten appointed by the State Government who in have special knowledge or practical experience of matters relating to town and country planning, engineering, transport, industry, commerce or agriculture

- a Town Planning Officer appointed by the State Government

and such number of persons not exceeding four appointed by the State Government from the two Houses of the State legislature, representing the whole or part of the Region, so that not more than two members are appointed from each of the said Houses.

If any Region includes any area which is important from the military or defence point of view, the members appointed for their special knowledge or practical experience shall include a person suggested by the Government of India in that behalf.

The State Government may appoint a Vice-Chairman from amongst the other members. The Town Planning Officer shall be the Secretary to the Regional Board.

According to clause (2) the Regional Board shall have its office at such place as the State Government Maharashtra may appoint, and shall be known by the name specified in the notification.

Clause 3 lays down that the term of office and conditions Terms of of service of the members of a Regional Board and remuneration or allowances shall be determined by the State Government.

In Akbarali v Pandya AIR 1974 Gujarat 17

Court held that due to misbehavior person can be removed from office.

3.Powers And Duties of Boards (section 8)

Powers duties of Boards are -

- (a)to carry out a survey of the Region, and prepare reports on the surveys so carried out
- (b)to prepare an existing-land-use map, and such other maps as may be necessary for the purpose of preparing a Regional plan
- (c)to prepare a Regional plan
- (d)to perform any other duties or functions as are supplemental, incidental or consequential to any of the foregoing duties.

According to section 9 the Regional Board shall meet at such times and places as the Chairman may determine and may make regulations for regulating its procedure and the conduct of its business.

After the submission of draft Regional plan to the State Government, the Board shall meet only if so directed by the State Government.

Clause (2) lays down that the Chairman and in his absence the Vice-Chairman (if any) and in the absence of the Chairman and the Vice-Chairman, any other member chosen by the members present from amongst themselves, shall preside at a meeting of the Board.

According to clause (3)all questions at a meeting of the Board shall be decided by a majority of votes of the members present and voting; and in the case of an equality of votes, the person presiding shall have a second or casting vote.

4.Power of Board to appoint staff (section 4)

According to clause (1) for the efficient performance of its functions under this Act, a Regional Board, may appoint such officer and other staff as may be necessary. The officers and staff so appointed shall be entitled to receive such salaries or allowances, as may be determined by the State Government.

According to Clause (2)the officers and staff appointed by the Regional Board shall work under the superintendence and control of the Chairman.

5.Survey of region and preparation of Regional plan (section 13)

Regional Board shall carry survey,prepare an existing-land map with a view to securing planned development and use of land in Region.And other maps as are necessary for the purpose of preparing the Regional plan.

It shall also prepare a report of the surveys, prepare the Regional plan and such other documents, maps and information as the Regional Board may deem fit for illustrating or explaining the provisions of the Regional plan.

According to section 14 regional plan shall contain-

I. The manner in which the Regional Board proposes to use land in the Region.

II. The stages by which development is to be carried out.

III. The network of communications and transport, the proposals for conservation and development of natural resources, and such other matters as are likely to have an important influence on the development of the Region.

IV. Plan may provide following matters, or matters directed by the State Government —

(a) allocation of land for different uses, general distribution and general locations of land, and the extent to which the land may be used as residential, industrial, agricultural, or as forest, or for mineral exploitation

(b) reservation of areas for open spaces, gardens, recreation, zoological gardens, nature reserves, animal sanctuaries, dairies and health resorts;

(c) transport and communications, such as roads, highways, railways, waterways, canals and airports, including their development;

(d) water supply, drainage, sewerage, sewage disposal and other public utilities, amenities and services including electricity and gas;

(e) reservation of sites for new towns, industrial estates and any other large scale development or project which is required to be undertaken for proper development of the Region or new town;

(f) preservation, conservation and development of areas of natural scenery, forest, wild life, natural resources, and land-scaping;

(g) preservation of objects, features, structures or places of historical, natural, architectural or scientific interest and educational value;

(h) areas required for military and defence purposes;

(i) prevention of erosion, provision for afforestation, or reforestation, improvement and redevelopment of water front areas, rivers and lakes;

(j) proposals for irrigation, water supply and hydro-electric works, flood control and prevention of river pollution;

(k) providing for the relocation of population or industry from over- populated and industrially congested areas, and indicating the density or population or the concentration of industry to be allowed in any areas.

(l) Provisions for

- permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority or the Collector,

-imposition of fees, charges and premium, for grant of an additional Floor Space Index

-or for the special premissions -

-or for the use of discretionary powers under the relevant Development Control Regulations,

and also

-for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot

- the location, number, size, height, number of storeys

and character of buildings and density of population allowed in a specified area,

-the use and purposes to which buildings or specified areas of land may or may not be appropriated,

- the sub-division of plots

- the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and hoardings and other matters may be considered necessary for carrying out the objects of this Act.

6.Submission of plan to State Government for approval(Section15)

Every Regional plan shall be submitted to the State Government together Submission of with all connected documents, maps and plans for approval. The State Government may, by notification in the Official Gazette, either approve the Regional plan without modification

or with such modifications as it may consider necessary

or reject the plan with a direction to the Regional Board to prepare a fresh plan according to such direction.

Clause (2)lays down that State Government may approve separately any proposals or part of the Regional plan pending approval and it shall form part of the entire plan so approved.

7.Procedure to be followed in preparing and approving Regional plans (section 16)

Before preparing any Regional plan and submitting it to the State Government every Regional Board shall,

after carrying out the necessary surveys and preparing an existing-land-use map of the Region, or such other maps as are considered necessary, prepare a draft Regional plan and publish a notice stating that the draft Regional plan has been prepared.

The notice shall state the name of the place where a copy of such plan shall be available for inspection by the public.

Copies or any extract from it shall be available for sale to the public at a reasonable price.

And invite objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.

Such date is not earlier than four months from the publication of the notice.

The notice shall also state that copies of the following particulars in relation to the draft Regional plan as well as copies and extract are also available for inspection by the public-

(a) a report on the existing-land-use map and the regional survey carried out as aforesaid

(b) maps, charts and a report illustrating and explaining the provisions of the draft Regional plan and indicating the priorities of works to be executed thereunder

(c) a report of the stages of the development programme by which it is proposed to execute the Regional plan and

(d) recommendations to the State Government regarding the directions to be issued to the local authorities in the Region and the different departments of the State Government, if any, in respect of enforcement and implementation of the proposals contained in the draft Regional plan.

According to Clause (2) the Regional Board shall refer the objections, suggestions and representations received by it to the Regional Planning Committee appointed under section 10 for consideration and report.

According to clause (3) the Regional Planning Committee shall, after giving a reasonable opportunity to all persons affected by the Regional plan of being heard, submit its report to the Regional Board together with all connected documents, maps, charts and plans within such time as may from time to time be fixed in that behalf by the Regional Board.

Clause (4) lays down that after considering the report of the Regional Planning Committee, and the suggestions, objections and representations, the Regional Board shall prepare the Regional plan containing such modifications, if any, as it considers necessary, and submit it to the State Government for approval, together with the report of the Regional Planning Committee and all connected documents, plans, maps and charts.

8. Publication of Regional plan.

According to section 17 immediately after a Regional plan is approved by the State Government, the State Government shall publish, the notice of all persons concerned and , to all persons affected by the Regional plan-

stating that the Regional plan has been approved, and

-naming a place where a copy of the Regional plan may be inspected

-and stating also that copies thereof or any extract therefrom certified to be correct shall be available for sale to the public.

And shall specify therein a date (not being earlier than sixty days from the date of publication of the said notice) on which the Regional plan shall come into operation.

The plan which has come into operation shall be called the “ final Regional plan”.

9 . Restriction on change of user of land or development thereof.

According to section 18 (1) no person shall,

on or after the publication of the notice that the draft Regional plan has been prepared or has been approved,

institute or change the use of any land for any purpose other than agriculture

or carry out any development in respect of any land without the previous permission,—

(i)in case the land is situated in the limits of Municipal Corporation

or a Municipal Council,

or a Nagar Panchayat

or a Special Planning Authority or any other planning authority of such Municipal Corporation or Municipal Council, Nagar Panchayat or Special Planning Authority or other planning Authority, or

(ii)in case the land is situated in the gaothan, within the meaning of clause (10)

(iii)in case the land is situated in areas other than those mentioned in clauses (i) and (ii) above,

of the Collector of the District.

The Collector may delegate his powers under this clause to an officer not below the rank of Tahsildar.

Clause (2) lays down that the Village panchayat or, as the case may be, the Collector, in considering application for permission shall have due regard to the provisions of any draft or Regional plan or proposal published by means of a notice under this Act.

Clause (2A)(i) the provisions of sections 52, 53, 54, 55, 56, 57 and 58 shall apply mutatis mutandis to the unauthorized development carried out in the area of Regional plan, as they apply to the unauthorized development carried out in the area of a Planning Authority . and

(ii)the Collector shall be authority Competent to take action in respect of such unauthorized development.

Clause (2B) the State Government may, upon a request made by the Collector, specify the terms and conditions on compliance of which and the compounding charges on payment of which the Collector may declare an unauthorized structure to be a compounded structure.

On declaration of an unauthorised structure as compounded structure, the proceedings under any law for the time being in force against such structure initiated by the Collector shall stand abated

and if such proceedings are yet to be initiated, no proceedings shall be maintainable.

No further construction shall be permissible in any compounded structure, other than repairs and maintenance

and any redevelopment or reconstruction of such structure shall be only as per the provisions of the prevailing Development Control Regulations.

Clause (3) any person intending to execute an Integrated Township Project on any land, may make an application to the State Government. And on receipt of such application the State Government may grant such permission after inquiry and declare such project to be an Integrated Township Project.

Or State Government may reject the application.

In *Bandrar Cecelia Cooperative Society and other* AIR1996 Bom 426. Corton held that Planning Authority can change use of land as per the needs it is within its power.

According to section 19 of Act no compensation shall be awarded in following cases -

I . provisions of plan or scheme affected property or interest injuriously.

II.if compensation is already paid to such injurious affection of property or interest.

In *Jai Neptune Cooperative Housings Society v Lotus Logistics* (2015) Court held that Planning Authority's decision shall not be quashed by civil court.It has no power.

10 . Revision or modification of Regional plan.

According to section 20 State Government, not earlier than ten years from Regional plan has come into operation

or a Regional Board may, with the previous approval of the State Government revise the Regional plan.

if revision of plan is necessary and there is no Regional Board for the Region to which plan relates, to undertake such revision

According to clause 1) the State Government may, at any time after a Regional Plan has come into operation, make any modification in such plan if such modification is necessary for the development of the Region for which such plan has been prepared and approved.

For the purpose of modifying a Regional plan under sub-section (2) the State Government shall publish a notice announcing its intention to make the modification specified in the notice and invite objections or suggestions from any person with respect to such modification within such period as may be specified in the notice.

The notice shall also be published in at least one newspaper having wide circulation in the Region.

According to clause 4 after considering objections and suggestions, the State Government may approve the modification of the Regional plan with such amendments or decide not to accord approval

And shall publish a notification in the Official Gazette, stating that the modification of the Regional plan specified therein has been approved with or without amendment

or has not been approved.

In case the modification is approved, then such notification shall also state the place where a copy of modification to the Regional plan may be inspected.

And shall specify therein a date on which the modification of the plan shall come into operation.

In Chandulal Motilal v State of Maharashtra 2012 (4) All.MJR. 931.

Court held that when notice under section 20 (3) is issued no additional opportunity to be heard is required.

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• Area Development Authority •

This head includes following provisions :

1. Declaration of development area (section 42A)

State Government may declare by notification in the Official Gazette area to be a development area for the purpose of securing planned development of areas within the State.

Notification issued under sub-section (1) shall also define the limits of the area to which it relates .
(Clause 2)

According to clause (3) the State Government may -

amalgamate two or more development areas into one development area,
sub-divide any development area into different development areas
and include such sub-divided areas in any other development area.

The State Government may withdraw the whole or part of any development area declared under section 42A from operation of Act.

Where any notification is issued under sub-section (1) in respect of any development area or part, the relevant provisions of this Act

and all notifications, rules, regulations and orders made or directions issued

and powers conferred thereunder,

shall cease to apply to the said area or part thereof.

2. Constitution of Area Development (section 42C)

After the declaration of a development area the State Government shall constitute the Area Development Authority of that development for the purpose of carrying out the functions assigned under this Act.

Every Area Development Authority constituted under sub-section (1) shall be a body corporate by the name. It has perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and by the said name sue and be sued . (Clause (2))

An Area Development Authority shall consist of the following members:—

(a) Guardian Minister of the concerned district: Chairman

(b) The Presidents of Zilla Parishads and Chairman of Panchayat Samitis functioning in the development area or in any part thereof: Ex - officio Members.

(c) Mayors of Municipal Corporations and Presidents of Municipal Councils functioning in the development area or in any part thereof.

(d) Municipal Commissioners of Municipal Corporations and Chief Officers of Members; Municipal Councils, functioning in the development area or in any part thereof: Ex - officio Members.

(e)The Collectors of Districts or their representatives not below the rank of Deputy Collector having jurisdiction over the development area or in any part thereof:Ex - officio Members.

(f)Chief Executive Officers of Zilla Parishads or their representatives not below the rank of Deputy Chief Executive Officer, functioning in the development area or in any part thereof:Ex - officio Members.

(g)The Chief Engineer of Maharashtra Jeevan Authority or his representative not below the rank of Superintending Engineer having jurisdiction over the development area or in any part thereof:Ex- officio Members.

(h)Settlement Commissioner and Director of Land Records or his nominee not below the rank of Deputy Director of Land Records having jurisdiction over the development area or in any part thereto:Ex -officio Members.

(i)Chief Executive Officer not below the Member rank of Joint Director of Town Planning Secretary or an Officer appointed by Government for Metropolitan Area and Deputy Director of Town Planning elsewhere, to be appointed by the State Government.:Member Secretary.

The provisions of sections 9, 10 and 11 of this Act shall mutatis mutandis apply to an Area Development Authority constituted under sub-section (1)

The State Government may, instead of constituting an Area Development Authority for a development area, appoint any agency or authority or any company or corporation established by the State or Central Government to be the Area Development Area Development Authority for any development area. (Section 42D)

Every Area Development Authority constituted under section 42C or Metropolitan appointed under section 42D shall carry out such directions or instructions as may be issued, by the Metropolitan Planning Committee or the District and District Planning Committee, as the case may be, within whose jurisdiction the notified area of Development Authority, is situated.

If the notified area of an Area Development Authority is situated in the jurisdiction of a Metropolitan Planning Committee and also of a District Planning Committee, the directions issued by the Metropolitan Planning Committee shall prevail over the directions issued by the District Planning Committee.

Clause (2) lays down that any dispute between the Area Development Authority and the Metropolitan Planning Committee or , the District Planning Committee shall be referred to the State Government whose decision thereon shall be final.

In the discharge of its duties, the Area Development Authority shall be bound by the directions issued by the State Government. (Clause 3)

4. The powers and functions of an Area Development Authority. (Section 42F)

The powers and functions of an Area Development Authority are

(i) to undertake the preparation and execution of town planning schemes having regard to the draft development plan prepared by the Metropolitan Planning Committee or the District Planning Committee.

(ii) to carry out surveys in the development area for the preparation of town planning schemes

(iii) to control the development activities in accordance with the development plan and town planning schemes in the development area excluding the area under the jurisdiction of a local authority, which is permitted to execute the functions of a Planning Authority, in the manner provided for in Chapter IV.

(iv) to levy and collect such scrutiny fees for scrutiny of proposals submitted to the Area Development Authority for permission for development in accordance with the regulations, made in that behalf

(v) to enter into contracts, agreements or arrangements, with any person or organization as the Area Development Authority may deem necessary for performing its functions;

(vi) to acquire, hold, manage and dispose of property, movable or immovable, as the Area Development Authority may deem necessary.

(vii) to execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities

(viii) to levy and collect such fees, for the execution of work referred to in clause vii

(ix) to exercise such other powers and perform such other functions as are supplemental, incidental or consequential to any of the forgoing powers and functions or as may be directed by the State Government.

The Area Development Authority shall be a Planning Authority for the area under its jurisdiction excluding the area under jurisdiction of a local authority under this Act which is permitted to execute the functions of a Planning Authority. (Clause 2)

On the constitution or appointment of an Area Development Authority for any development area, the following consequences shall ensue, :—

(i) the authority or authorities functioning within the development area immediately before such constitution or appointment shall cease to exercise the powers and perform the functions and duties which the Area Development Authority is competent to exercise and perform under this Act;

(ii) the provisions of Chapters VI-A, VIII and IX alongwith the First and Second Schedule of this Act shall apply to the Area Development Authority, as if it was a New Town Development Authority

(iii) the provisions of section 21 shall not apply to the Area Development Authority.

Town planning schemes

Making of town planning schemes.(Sections 59-71)

Act makes following provisions relating to making of town planning schemes-

1.Preparation and content of town planning schemes.

According to section 59

(a) Planning Authority may prepare one or more town planning schemes for the area within its jurisdiction or any of its parts. These schemes shall be in respect of proposals to be implemented in final development plan or land which is likely to be in the course of development or which is already built.

According to clause (b) a town planning scheme may make provision following matters —

(i) any of the matters specified in section 22

(ii) the laying out or re-laying out of land, either vacant or already built upon, including areas of comprehensive development;

(ii-a) the filling-up or reclamation of low-lying, swampy or unhealthy area, or levelling-up of land

(ii-b) layout of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads and discontinuance of communications

(ii-c) the construction, alteration and removal of buildings, bridges and other structures ;

(ii-d) the allotment or reservation of land for open spaces, gardens, recreation grounds, schools, markets, green-belts, dairies, transport facilities and public purposes of all kinds;

(ii-e) drainage, inclusive of sewerage, surface or sub-soil drainage and sewage disposal

(ii-f) lighting (ii-g) water supply

(ii-h) the preservation of objects of historical or national interest or natural beauty and of building actually used for religious purposes

(iii) the suspension, as far as may be necessary for the proper carrying out of the scheme, of any rule, bye-law, regulation, notification or order made or issued under any law for the time being in force which the Legislature of the State is competent to make;

(iv) such other matter not inconsistent with the object of this Act, as may be directed by the State Government.

Clause (2) lays down that in making provisions in a draft town planning scheme for any of the matters referred to in clause (b) Planning Authority may provide for suitable amendment of the Development plan with approval of director of town planning and subject to section 68.

In Jaypur Development Authority v State of Maharashtra 1997 AIR SCW 1129

Court held that for aquisition of land framing of is not pre- condition.

According to section 60 Planning Authority may declare its intention to make planning scheme in respect of any part of the area within its jurisdiction by resolution.

Clause (2) lays down that not later than thirty days from the date of such declaration of intention to make declaration of a scheme (declaration) the Planning Authority shall publish the declaration in the Official Gazette .

And despatch a copy thereof to the State Government and also to the Director of Town Planning.

According to clause (3) copy of the plan shall be open to the inspection of the public at the head office of the Planning Authority.

2.Making and publication of draft schemes by means of notice.

According to section 61 not later than nine months from the date of the declaration the Planning Authority shall, in consultation with the Director of Town Planning, make a draft scheme for the area in respect of which the declaration by means of notice was made, and publish a notice in the Official Gazette stating that the draft scheme in respect of such area has been made.

The notice shall state the name of the place where a copy thereof shall be available for inspection by the public

and shall also state that copies thereof or any extract therefrom certified to be correct shall be available for sale to the public at a reasonable price.

Clause (2) lays down that if the Planning Authority fails to make a draft scheme and publish a notice regarding its making within the period specified in sub-section (1) or within the period extended under sub-section (3), the declaration shall lapse,

unless the State Government appoints an Officer to prepare and submit the draft scheme to the State Government on behalf of the Planning Authority not later than nine months from the date of such appointment or the extended period under sub-section (3)

But any such lapse of declaration shall not debar the Planning Authority from making a fresh declaration any time in respect of the same area.

According to clause (3)the State Government may, on application made by the the officer extend the period specified in sub-section (1) or (2) by such period not exceeding three months as may be specified in the notification.

According to section 62 If at any time before a draft scheme is prepared and submitted to the State additional area Government for sanction

the Planning Authority or the officer may include additional area in the said scheme.

All the provisions of sections 59, 60 and 61 shall apply in relation to such additional area.

3 . Contents of draft scheme.

According section 64 draft scheme shall contain the following particulars—

- (a)the ownership, area and tenure of each original plot;
- (b)reservation, acquisition or allotment of land required under sub-clause (i) of clause (b) of section 59 with a general indication of the uses to which such land is to be put and the terms and conditions subject to which, such land is to be put to such uses;
- (c)the extent to which it is proposed to alter the boundaries of the original plots by reconstitution;
- (d)an estimate of the total cost of the scheme and the net cost to be borne by the Planning Authority;
- (e)a full description of all the details of the scheme with respect to such matters referred to in clause (b) of section 59 as may be applicable;
- (f)the laying out or re-laying out of land either vacant or already built upon including areas of comprehensive development;
- (g)the filling up or reclamation of low lying swamp or unhealthy areas or levelling up of land;
- (g-1)the allotment of land from the total area covered under the scheme, to the extent of,—
 - (i)the reservation of land to the extent of ten per cent of the total area covered under the scheme, for the purpose of providing housing accommodation to the members of economically weaker section and for lower income group and for persons dispossessed in the scheme;
 - (ii)the allotment of land to the extent of forty per cent. of the total area covered under the scheme, in the aggregate, for any or all of the following purposes —
 - (A)for roads;
 - (B)for parks, playgrounds, garden and open spaces;
 - (C)social infrastructure such as schools, dispensary, fire brigade and public utility place;
 - (D)sale by Planning Authority for residential, commercial or industrial use depending upon the nature of development

However —

(I)the proceeds from the sale of land referred to in sub-clause (D) of this clause shall be used for the purpose of providing infrastructural facilities in the area covered under the scheme ;

(II)the use of land allotted for the purposes referred to in sub-clause (B) of this clause shall not be changed by variation of scheme for a purpose other than the purpose for which it is so allotted ;

(III)the land allotted for the purposes referred to in sub-clause (C) of this clause may be allowed to be developed, without variation of scheme, for any public purpose not contrary to the intent of the provisions of the draft scheme.

(h)any other prescribed particulars.

Reconstituted plot

According to section 65 in the draft scheme, the size and shape of every reconstituted plot shall be determined, to render it suitable for building purposes, and to ensure that the buildings as far as possible comply with the provisions of the scheme as regards open spaces in case plot is already built.

According clause (2) a draft scheme may also contain proposals—

(a)to form a final plot by reconstitution of an original plot by alteration of the boundaries of the original plot, if necessary;

(b)to form a final plot from an original plot by the transfer wholly or partly of the adjoining lands;

(c)to provide, with the consent of the owners, that two or more original plots each of which is held in ownership in severally or in joint ownership shall hereafter, with or without alteration of boundaries be held in ownership in common as a final plot;

(d)to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(e)to transfer the ownership of an original plot from one person to another.

•Compensation for discontinuance of use (section66)

According to section 66 If under section 59 (i) (b) the purposes to which for the buildings or areas may not be appropriated or used in pursuance of clause (m) of section 22 have been specified, then the building or area shall cease to be used for a purpose other than the purposes specified in the scheme.

And the person affected by this provision shall be entitled to such compensation, from the Planning Authority as may be determined by the Arbitrator.

In ascertaining whether compensation be paid, the time within which the person affected was permitted to change the user shall be taken into consideration.

4 . Objections to draft scheme to be considered

According to section 67 If within thirty days from the date of the publication of notice regarding the preparation of the draft scheme any person affected thereby communicates in writing any objection relating to such scheme the Planning Authority, or the officer appointed under sub-section (2) of section 61 or section 63 shall consider such objection and may modify such scheme as it or he thinks fit before it is submitted to the State Government.

5. Power of State Government to sanction draft scheme.

According to section 68 the Planning Authority or, the officer aforesaid shall submit the draft scheme with modification if made to State Government along with a copy of objections received by it or him to the State Government, and shall at the same time apply for its sanction.

Clause (2) lays down that on receiving such application and after making inquiry and consulting the Director of Town Planning the State Government may either sanction such draft scheme with or without modifications. But not later than three months from the date of its submission. And subject to such conditions as it may think fit to impose.

Or it may refuse to give sanction.

According to clause (3) If the State Government sanctions such scheme it shall -

state at what place and time the draft scheme shall be open to the inspection of the public

and also state that copies of the scheme or any extract therefrom certified to be correct shall on application be available for sale to public at a reasonable price.

6. Effect of sanction of draft scheme.

According to section 68A (1) where a draft scheme has been sanctioned by the State Government all lands required by the Appropriate Authority for the purposes under section 59 shall vest absolutely in the Appropriate Authority free from all encumbrances.

However (2) this shall not affect any right of the owner of the land vesting in the Appropriate Authority under that sub-section.

The provisions of sections 89 and 90 shall, mutatis mutandis apply, to the sanctioned draft scheme as if sanctioned draft scheme were preliminary scheme.

7. Restriction on use and development of land after declaration for town planning scheme.

According to section 69 on or after the date on which a declaration of intention to make a scheme is used and published in the Official Gazette

(a)no person shall within the area included in the scheme, institute or change the use of any land or building or carry out any development, unless permission by the Planning Authority in the prescribed form is granted. Permission shall contain in commencement certificate and if applied by such person.

(b)the Planning Authority on receipt of such application shall at once furnish the applicant with a written acknowledgment of its receipt, and

(i)in the case of a Planning Authority other than a municipal corporation, after inquiry and if an Arbitrator has been appointed in respect of a draft scheme after obtaining his approval; or

(ii)in the case of a municipal corporation, after inquiry,

may either grant or refuse such certificate,

or grant it subject to such conditions as the Planning Authority may, with the previous approval of the State Government thinks fit to impose.

According to clause (2)If a municipal corporation gives permission it shall inform the Arbitrator accordingly, and shall send him a copy of the plan.

However a municipal corporation shall not grant a commencement certificate for any purpose which is in conflict with the provisions of the draft scheme.

unless the corporation first obtains concurrence of the Arbitrator for the necessary change in the proposal of the draft scheme.

Clause (3) lays down that If a Planning Authority does not communicate decision to the applicant within two months from the date of such acknowledgment, the applicant shall be deemed to have been granted such certificate.

According to (4) If any person contravenes the provisions contained in clause (a) or (b) the Planning Authority may direct such person by notice in writing to stop any development in progress.

And after making inquiry in the prescribed manner

may remove, pull down or alter any building or other development

or restore the land in respect of which such contravention is made to its original condition.

According to clause (5) any expense incurred by the Planning Authority under sub-section (4) shall be a sum due to the Planning Authority under this Act from the person in default or the owner of the plot.

The provisions of Chapter IV shall, mutatis mutandis apply in relation to the development and use of land included in a town planning scheme.

Clause (7) lays down that the restrictions imposed by this section shall cease to operate in if the State Government refuses to sanction the draft scheme or the final scheme

or in case of the withdrawal of the scheme under section 87

or in the event of the declaration lapsing under sub-section (2) of section 61.

According to section 70 where a Planning Authority has published a declaration under section 61 the State Government may, on an application of the Planning Authority suspend, to such extent only as may be necessary to suspend, rule, bye-law, for the proper carrying out of the scheme any rule, bye-law, regulation, notification etc.

or order made or issued under any law which the Legislature of the State is competent to amend.

According to clause (2) any order issued under sub-section (1) shall cease to operate

in the event of the State Government refusing to sanction the scheme,

or in the event of the withdrawal of the scheme under section 87

or in the event of the coming into force of the final scheme or in the event of the declaration lapsing under sub-section (2) of section 61.

In *Raju Jethmalani v State of Maharashtra* 2006 (1) ALL M.R. Supreme Court held that citizen can be deprived of use of land without squirming land.

8. Disputed Ownership

According to section 71 where there is a disputed claim as to the ownership of any land included in an area in respect of which a declaration of intention to make a town planning scheme has been made

and any entry in the record of rights or mutation register relevant to such disputed claim is inaccurate or inconclusive,

an inquiry may be held on an application being made by the Planning Authority or the Arbitrator at any time prior to the date on which the arbitrator draws up the final scheme under clause (xviii) of sub-section (3) of section 72

by such officer as the State Government may appoint for the purpose of deciding who shall be deemed to be owner for the purposes of this Act.

Clause (2) lays down that such decision shall not be subject to appeal but it shall not operate as a bar to a regular suit. Such decision shall, be corrected, modified or rescinded in civil court by decree.

Where a decree of the civil court is passed after final scheme has been sanctioned by the State Government under section 86, such final scheme shall be deemed to have been suitably varied by reason of such decree .

Land Acquisition (section 125-129)

Following are provisions concerning land acquisition -

1 . Compulsory Acquisition of land needed for purposes of Regional plan, Development plan or town planning.

Section 125 lays down that any land required, reserved or designated in a Regional plan, Development plan or town planning scheme

for a public purpose or purposes including plans for any area of comprehensive development

or for any new town shall be deemed to be land needed for public purpose within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

In *Maidan Bachav Samitis v Ramachandra Padmakar*.2011 (3)All.M.R.497 Court held that Acquisition of land to be carried out as prescribed under Act.

2 . Acquisition of land required for public purposes specified in plans. (Section 126)

According to section 126 (1) any land is required or reserved for any of public purposes specified in any plan or scheme under this Act, the Planning Authority, Development Authority, or Appropriate Authority may, acquire the land,—

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 , Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances,

and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Rehabilitation and Resettlement Act 2013.

And the land (together with the amenity, so developed or constructed) so acquired

by agreement or

by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or Land Acquisition Rehabilitation and Resettlement Act 2013

shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, any Appropriate Authority.

Clause (2) on receipt of such application, if the State Government is satisfied that the land is needed for the public purpose or

if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose,

it may make a declaration to that effect in the manner provided in section 6 of the Land Acquisition Act, 1894.

No such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme.

Clause (3) on publication of a declaration the Collector shall proceed to take order for the acquisition of the land under the said Act.

The provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,—

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as undeveloped area; and

(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft Town Planning Scheme.

No date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning Act shall be affected.

The market value in respect of land included in any undeveloped area prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972

shall be the market value prevailing on the date of such commencement .

According to clause (4) if a declaration is not made within the period referred to in sub section (2)

(or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act 1993 the State Government may make fresh declaration for acquiring the land.

The market value of the land shall be the market value at the date of declaration made for acquiring the land afresh.

In *Jayesh Dhanesh v Municipal Corporation of Greater Bombay* 2013. S.C.882. Supreme Court held that even after townplanning scheme is framed and finalised remedy to land owner is available under Maharashtra Regional Town Planning Act.

According to 127 If any land reserved, allotted or designated for any purpose specified in any plan is not acquired by agreement within ten years from the date on which reservations, a final Regional Plan, or final Development Plan comes into force

or

if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period

the owner or any person interested in the land may serve notice and

if within twelve months from the date of the service of such notice, the land is not acquired or

no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation

(It)shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development.

Clause (2)on lapsing of reservation, allocation or designation of any land Government shall notify the same.

In *State of Maharashtra v Bhakti Vedanta Book Trust* 2013 AIR S.C.1667 Court held that land can be acquired within ten years by following prescribed procedure or by agreement . However if acquisition procedure is not followed within that period reservation will be deemed to have lapsed and owner will have prerogative to develop land available.

3 . Power of State Government to acquire land for purpose other than one for which is designated in any or scheme. (Section 128)

This provision permits State Government to acquire land for different purpose than specified in plan or scheme.

Clause (2)In the proceedings under the relevant Land Acquisition law the Planning Authority or Development Authority or Appropriate Authority, shall be deemed to be a person interested in the land acquired.

And in determining the amount of compensation to be awarded, the market value of the land shall be assessed as if the land had been released from the reservation, allotment or designation made in the any plan or scheme or new town.

And the Collector or the Court shall take into consideration

- the damage, which Planning Authority or Development Authority or Appropriate Authority may sustain by reason of acquisition of such land

- the proportionate cost of the Development plan or town planning scheme or new town, if any, incurred by such Authority and rendered abortive by reason of such acquisition.

According to clause (3) on the land vesting in the State Government Land of Acquisition law the relevant plan or scheme shall be deemed to be suitably varied by reason of acquisition of the said land.

Harkchand M. Solanki v The Collector. 2009 (1) All.M.R. 799 is on the point that provision of section 128 is not attracted when the land is not either reserved, allocated or designated for any specific purpose in development plan.

4. Possession of land in case of urgency (Section 129)

According to section 129 after the publication of a notification, where the State Government is satisfied that the possession of any land which is reserved or designated for a public purpose either under a Regional plan or Development plan is urgently required in the public interest the State Government may authorise the Collector to enter on and take possession of the land after giving a notice of fifteen days.

After this the right or interest in that land shall be extinguished from the date specified in the order. The date on which possession is taken the land shall vest the State Government.

However before or at the time of taking possession of any land under this sub-section, the Collector shall offer to the person interested compensation for the standing crops and trees, on such land and for any damage sustained by him by such sudden dispossession.

If such offer is not accepted, the value of such crops and trees and of such other damage shall be allowed in awarding compensation.

Clause (2) lays down that where possession of land is taken under sub-section (1), the Planning Authority, the Development Authority or Appropriate Authority shall pay to the owner concerned interest at 4 per cent per annum, on the amount of compensation from the date of taking possession of the land under acquisition to the date of payment.

According to clause (3) at the request of the person interested, an advance amount may be paid. Which shall be not exceeding two-thirds of the amount payable to such person after executing an agreement in that behalf under section 157.

In Samba Purshottam v State of Maharashtra 2017 (5) All.M.R 504.

Development plan.

Introduction

Object of Maharashtra Regional Town Planning Act is to make provision for planning the development and use of land in region created for it (development) and to prepare development plan.

Development plan ensures that town planning schemes are made in proper manner and its execution is made effective .

Apex Court in Prakash Amichand v State of Gujarat (1986)1 S.C. 581. held that object of this Act is to confer power on public authorities like City Municipality, Town municipalities ,Town Panchayats for planning and development of land.

Act makes provision for establishment/constitution of Regional Planning Board for planning and development of land. Accordingly State Government constitutes Regional PlanningBoard.

•Provisions Relating to Development Plan.

Development plan involves declaration of intention, preparation, submission and sanction to development plan.

Act makes following provisions -

1. Development Plan(Section 21)

Every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft Development plan for the area within its jurisdiction in accordance with the provisions of a Regional plan to be approved by State Government.

Planning Authority publishes notice stating that draft plan is prepared and submits it to State Government for sanction.

The Planning Authority also submits a quarterly -Report to the State Government about the progress made in carrying out the survey and preparing the plan.

According to clause (2) every Planning Authority constituted Act shall declare its intention to prepare a draft Development plan. And publishes a notice of such preparation in the Official Gazette and submit the draft Development plan to the State Government for sanction.

On an application made by any Planning Authority, the State Government may extend such period.

If the declaration of intention to prepare Development plan under section 23 is not made

or

if the draft Development plan is not submitted to the State Government for sanction by any Planning Authority within the period specified or within the extended period the concerned Divisional Joint

Director or Deputy Director of Town Planning and Valuation Department or an officer not below the rank of an Assistant Director of Town Planning nominated by him

may, after declaring the intention, carry out necessary survey of the area and prepare an existing-land-use map in consultation with the Director of Town Planning and prepare such Development plan and publish a notice in the Official Gazette and submit it to the State Government for sanction.

The cost of such plan to be recovered from the funds of that Planning Authority. Such officer shall exercise all the powers and perform all the functions of a Planning Authority which may be necessary for the purposes of preparing a Development plan and publishing a notice as aforesaid and submitting it to the State Government for sanction. [Clause 4]

If at any stage of preparation of the draft Development plan, the time fixed under sections 6, 25, 26, 6 and 30 for doing anything specified in the said sections lapses,

the Planning Authority shall be deemed to have failed to perform its duty imposed upon it under Act.

Any work remaining to be done upto the stage of submission of the draft Development plan under section 30 shall be completed by the concerned Divisional Joint Director or Deputy Director of Town Planning and Valuation Department or an officer nominated by him no below the rank of an Assistant Director of Town Planning.

The said officer shall exercise all the powers and perform all the duties of a Planning Authority which may be necessary for the purpose of preparing a Development plan and submitting it to the State Government for sanction. The cost of such plan shall be recovered from funds of planning authority.

The said Officer shall exercise all the power and perform all the duties of the Planning Authority within such period as may be specified by an order by the Director of Town Planning. [clause 4A]

If any local authority, which is a Planning Authority, is

converted into

or

amalgamated with any other local authority

or

is sub-divided into two or more local authorities

the Development plan prepared for the area by that Planning Authority

so converted, amalgamated or sub-divided

shall, with such alterations and modifications as the State Government may approve,

be the Development plan for the area of the new Planning Authority or Authorities. [clause 5]

Govind Bajirao v State of Maharashtra 2016 (6)All.M.R. 655 is on the point that if time limit has been expired planning authority can not proceed further without seeking extension of time.

2. Content of development plan. (Section 22)

Development plan shall generally indicate-

I. the manner in which the use of land Contents of in the area of a Planning Authority shall be regulated and also

II. the manner in Development which the development of land therein shall be carried out.

III. In particular, it shall provide plan all or any of the following matters,—

(a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational;

(b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment,

or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government;

(c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;

(d) transport and communications, such as roads, high-ways, park-ways, railways, water-ways, canals and air ports, including their extension and development;

(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;

(f) reservation of land for community facilities and services;

(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;

(h) preservation, conservation and development of areas of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and of heritage buildings and heritage precincts

(j) proposals for flood control and prevention of river pollution;

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to acquisition

for public purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act;

(l)the filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land;

(m)provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of fees, charges and premium, at such rate as may be fixed by the State Government or the planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations,

and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area,

the use and purposes to which buildings or specified areas of land may or may not be appropriated,

the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods,

parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act.

Anahila Pandole v State of Maharashtra AIR 2004 (3)All.M.R.731 is on the point that heritage structure should be preserved.The planning authorities should consult heritage conservation committee before carrying out any work that will affect them.

3.Implementation of plan.

This section imposes statutory responsibility on planning authority to take necessary steps to carry out provisions of such plan.

Section 42 lays down that on the coming into operation of any plan or plans referred to in this Chapter, it shall be the duty of every Planning Authority to take such steps as may be necessary to carry out the provisions of such plan or plans.

In Sayyed Ratanbhai v Shirdi Panchayat 2016 All.M.R.414 S.C.

Apex Court held that compromise contrary Town Planning Act will not give protection to rights created under lease as well as long possession of the land will no make no change in position.

Control of Development and use of land included in Development plans (section 43-58)

Introduction

Maharashtra Regional Town Planning Act, pursuant to its Preamble, explains its object that is to make provisions for planning the development and use of land included in region. Development is planned by preparing development plan, which ensures that town planning schemes are made in proper manner.

Accordingly Act made provisions for controlling development and use of land included in development plan. Development plan is prepared by Planning Authority and State Government sanctions it.

Development control is significant matter. Apex Court in *M. C. Metal v Union of India (1996)* discussed this aspect. It said that development control regulations constitute the corner stone of urban planning.

•Provisions•

Maharashtra Regional Town Planning Act lays down following provisions relating to control of development and use of land included in development plans.

1.Restrictions on development of land.

According to section 43 when intention to prepare development plan for any area is published or when undeveloped area is notified or any area is designated as site for new town, no person is permitted to institute or change use of land or to carry out development of land without permission of planning Authority.

However no such permission shall be necessary—

(i)for carrying out works for the maintenance, improvement or other alteration of any building, (being works)

which affect only the interior of the building

or which do not materially affect the external appearance thereof except in case of heritage building or heritage precinct.

(ii)the carrying out of works in compliance with any order or direction made by any authority under any law for the time being in force.

(iii)the carrying out of works by any authority in exercise of its powers under any law for the time being in force.

(iv)for the carrying out work of following types by the Central or the State Government or any local authority.

Works—

(a)required for the maintenance or improvement of a highway, road or public street, being works carried out on land within the boundaries of such highway, road or public street.

(b) for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cable, telephone or other apparatus including the breaking open of any street or other land for that purpose.

(v) for the excavation (including wells) made in the ordinary course of agricultural operation.

(vi) for the construction of a road intended to give access to land solely for agricultural purposes.

(vii) for normal use of land which has been used temporarily for other purposes.

(viii) in case of land, normally used for one purpose and occasionally used for any other purpose, for the use of land for this other purpose on occasions.

(ix) for use, for any purpose incidental to the use of a building for human habitation of any other building or land attached to such building.

In *Hirenbai Parekh v Satishdas Asandas* AIR 2004 Gujarat 342

Court held that court ought actively participate in case there is violation of fundamental rights or natural justice and not to be mute spectator.

2. Application for permission for development.

Section 44 lays down that person, except Central or State Government or local authority, intending to carry out any development on any land shall make an application to the Planning Authority for permission.

However no such permission shall be necessary for demolition of an existing structure, erection or building or its part in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board established under the Maharashtra Housing and Area Development Act, 1976.

Any person intending to execute an Integrated Township Project on any land, may make an application to the State Government.

On receipt of such application the State Government, after making inquiry, may grant such permission or reject the application.

In *Cuffed Parade Residents Association v State of Maharashtra* 2011 ALL. M.R.46.

Court held that public notice is mandatory and public ought to be given opportunity to be heard.

3. Grant or refusal of permission.

Section 45 is on grant of permission or refusal of permission by Planning Authority.

When application under section 44 is made the Planning Authority permission may be granted-

(i) unconditionally

(ii) subject to general or special conditions as it may impose with the previous approval of the State Government

or

It may refuse permission.

Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate. [clause 2]

Every order granting permission subject to conditions or refusing permission shall state the grounds for imposing such conditions or for such refusal. [clause 3]

Every order under sub-section (1) shall be communicated to the applicant. If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days. [clause 4,5]

The development proposal, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations or bye-laws or regulations framed under any law for the time being in force.

Any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorised development for the purposes of sections 52 to 57.

The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned. [clause 6]

According to section 46 the Planning Authority while considering application for permission shall give due Provisions of regard to the provisions of any draft or final plan or proposal published by means of Development plan to before granting permission.

Planning Authority shall also give due regard to the provisions of the draft or sanctioned Regional plan, in case Development Control Regulations for such area are yet to be sanctioned.

if such area does not have draft or sanctioned Regional plan, then Development Control Regulations applicable to the area under any Planning Authority, shall apply till the Development Control Regulations for such area are sanctioned.

4. Appeal.

Pursuant to this provision any applicant aggrieved by an order granting permission on conditions or refusing permission under section 45 may appeal to the State Government or

to an officer appointed by the State Government in this behalf, being an officer not below the rank of a Deputy Secretary to Government.

Appeal to be preferred within forty days of the date of communication of the order to him.

The State Government or the officer so appointed, after giving a reasonable opportunity to the appellant and the Planning Authority to be heard, may dismiss the appeal, or allow the appeal

by granting permission unconditionally or subject to the conditions as modified.

In *N.K.Harchandani v State of Maharashtra* 2006 (5) All.M.R.582.

Court held that unauthorised structure can not be protected even though tax is levied by Municipal Corporation which can take action against unauthorised structure.

5 . Lapse of permission.(Section48)

Every permission granted or deemed to be granted under section 45 or granted under section 47 shall remain in force for a period of one year from the date of receipt of such grant and thereafter it shall lapse.

The Planning Authority may extend such period from year to year on making application to it. But such extended period shall not exceed three years.

If the development is not completed upto plinth level or where there is no plinth, upto upper level of basement or stilt, within the period of one year or extended period, under the first proviso, it shall be necessary for the applicant to make application for fresh permission.

In *Mutha Associates v State of Maharashtra* (2013)14 S.C.C.304

Court held that order passed by authority out mention reason in order to rule out arbitrariness of authority.

6. Obligation to acquire land on refusal of permission or on grant of permission in certain cases.

Section 49 lays down that (1)Where—

(a)any land is designated by a plan as subject to compulsory acquisition, or

(b)any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or

(c)any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

(d)any land for the development of which permission is refused or is granted subject to conditions,
and

any owner of land referred to in clause (a), (b), (c) or (d) claims —

(i)that the land has become incapable of reasonably beneficial use in its existing state, or

(ii)(where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or

(e)the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated,

the owner or person affected may serve a notice (called“the purchase notice”) on the State Government requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority and also order or decision of that Authority ,the State Government,[clause 2]

On receipt of a purchase notice, the State Government shall call from the Planning Authority and the Appropriate Authority report or records or both.

Authorities shall forward to State Government as soon as possible but not later than thirty days from the date of their requisition.[clause 3]

And on receiving such records or reports, if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled

and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations

it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions which will make the land capable of reasonably beneficial use.

In any other case, it may refuse to confirm the purchase notice

But in that case, it shall give the applicant a reasonable opportunity of being heard.[clause 4]

If within a period of six months from the date on which a purchase notice is served, the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.[clause5]

If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed

And the land shall be deemed to be released from the reservation, designation or, allotment, indication or restriction.

Land shall become available to the owner for the purpose of development otherwise permissible.

In *Formento Hotel and Resorts v Milton fuel Martins* 2009 (4) Bom.C.R 348 (S.C.) court held that person has to make application under section 44 seeking permission from and development authority.

It can grant permission conditionally or otherwise taking in to account prescribed byelaws, regulations.

7. Power of revocation and modification of permission to development. (Section 51)

Planning Authority may revoke or modify the permission after giving the person concerned an opportunity of being heard. If it is expedient.

However -

a) no such order shall affect such of the operations as have been previously carried out.

or

No such order shall be passed after these operations have substantially progressed or have been completed.

b) no such order shall be passed at any time after the change of use of land has taken place.

Clause (2) lays down that where permission is revoked or modified and any owner claims compensation for the expenditure incurred in carrying out the development in accordance with such permission, the Planning Authority shall, after giving the owner reasonable opportunity of being heard by the Town Planning Officer and after considering his report, assess and offer such compensation to the owner as it thinks fit. [clause 2]

If the owner does not accept the compensation and gives notice of his refusal to accept, the Planning Authority shall refer the matter for the adjudication of the court.

And the decision of the court shall be final and be binding on the owner and Planning Authority.

In *Ambika Developers v State* 2012 (2) All.M.R.821 court recognised power to of Planning Authority to revoke permission. It held that if planning authority opines that permission regarding development plan must be revoked the said Power is conferred under section 51.

8. penalty for unauthorised development or for use otherwise than in conformity with development plan. (Section 52)

Any person who commences, undertakes or carries out development

or

institutes or changes use of land at his own instance or at the instance of any other person shall be punished.

If such change or use of land is-

(a) without permission required under this Act or

(b) not in accordance with any permission granted or in contravention of any condition subject to which such permission has been granted

(c) after the permission for development has been duly revoked; or

(d) in contravention of any permission which has been duly modified.

Punishment is-

imprisonment for a term which shall not be less than one month. But which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees.

And in the case of a continuing offence with a further daily fine which may extend to two hundred rupees for every day during which the offence continues.

According to clause 2 Any person who continues to use or allows the use of any land or building in contravention of the provisions of a Development plan without allowing to do so under section 45 or 47

or

where the continuance of such use is without complying with the terms and conditions under which the continuance of such use is allowed shall be punished.

Punishment is -

fine which may extend to five thousand rupees and in the case of a continuing offence, with a further fine which may extend to one hundred rupees for every day during which such offence continues.

9. Power to require removal of unauthorised development. (Section 53)

where any development of land has been carried out as indicated in sub-section (1) of section 52, the Planning Authority may serve on the owner a notice of 24 hrs requiring him, within such period, to restore the land to its condition existing before the said development took place.

Clause b lays down that if he fails to restore land Planning Authority shall immediately take steps to demolish such development and seal machinery and material used for it.

Planning Authority may serve one month's notice on owner, developer or occupier to require him to take necessary steps as specified in notice if development is carried out as specified in section 52 (b) or (d)

Notice under clause 1 (a) may require —

- (a) the demolition or alteration of any building or works;
- (b) the carrying out on land of any building or other operations; or
- (c) discontinuance of any use of land.

Any person aggrieved by such notice may apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land. He may apply within the period specified in the notice .[Clause 3]

If the permission applied for is granted, the notice served by Planning Authority shall stand withdrawn.

If the permission applied for is not granted, such notice shall stand.

or if such permission is granted for the retention only of some buildings, or works, or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land.

But shall stand as respects other buildings or works or other parts of the land.

And the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.[clause 5]

If within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice as stands is not complied with, the Planning Authority may—

- (a) prosecute the owner for not complying with the notice.

And where the notice requires the discontinuance of any use of land

any other person also who uses the land or causes or permits the land to be used in contravention of the notice.

- (b) itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified.

It may also take step for demolition or alteration of any building or works or carrying out of any building or other operations.

And may recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue . [Clause 6]

Person prosecuted under clause (a) shall be punished with imprisonment for a term which shall not be less than one month but which may extend to three years and with fine not be less than two thousand rupees but which may extend to five thousand rupees.

And in the case of a continuing offence with a further daily fine which may extend to two hundred rupees for every day during which such offence continues.

In Mahendra Builder v State of Maharashtra 2017(1)All.M.R.293. court held that power to review order made under section 53 must be conferred specifically and it is not inherent.

10. Power to remove unauthorised development. (Section 54)

Planning Authority has power to stop unauthorised developments. It can serve notice on the owner and the person carrying out the development. And it can require development of land to be discontinued from the time of the service of the notice.

(2) Any person shall be punished if he continues to carry out the development of land for himself or on behalf of the owner or any other person.

Punishment is-

imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both.

And when the non-compliance is a continuing one, with a further fine which may extend to one hundred rupees for every day after the date of the service of the notice during which the non-compliance has continued or continues.

11 . Removal or discontinuance of unauthorised temporary development plan (section 55)

where any person has carried out any development of a temporary nature unauthorisedly as indicated in sub-section (1) of section 52, the Planning Authority may direct to remove any structure or work erected or discontinue the use of land within fifteen days of receipt of such order.

Planning authority may request to District Magistrate or Commissioner of Police for removal if person does not comply with order.

12.. Power to require removal of unauthorised development or use (section 56)

Planning Authority has power to remove unauthorised development if it is expedient to do so. The power may be exercised in the Interest of proper planning of its areas and in the interest of amenities.

If it appears to Planning Authority -

- (a) that any use of land should be discontinued, or
- (b) that any conditions should be imposed on the continuance thereof, or
- (c) that any buildings or works should be altered or removed it may exercise power.

The Planning Authority may —

- (i) require the discontinuance of that use or
- (ii) impose such conditions as may be specified in the notice on the continuance thereof or
- (iii) require such steps, as may be specified in the notice to be taken for the alteration or removal of any buildings or works

within such period, being not less than one month, as may be specified after the service of the notice.

The person aggrieved by such notice may appeal to the State Government. On receipt of an appeal the State Government or any other person appointed by it in this behalf may dismiss the appeal or allow the appeal by quashing or varying the notice as it may think fit after giving a reasonable opportunity to be heard to the appellant and the Planning Authority.[clause 2,3]

If any person,—

- (i) who has suffered damage in consequence of the compliance with the notice by the depreciation of any interest in the land to which he is entitled or disturbed in his enjoyment of the land or otherwise or
- (ii) who has carried out any works in compliance with the notice, claims compensation from the Planning Authority, in respect of that damage, or of any expenses reasonably incurred by him for complying with the notice, then the provisions of sub-sections (2) and (3) of section 51 shall apply.[clause 4]

If any person having interest in land claims that the land will become incapable of beneficial use if compliance with notice is made he may serve on the State Government a purchase notice requiring his interest in the land to be acquired and thereupon, the provisions of section 49 for dealing with a purchase notice shall apply.

According to section 57 any expenses incurred by a Planning Authority under sections 53, 54, 55 and 56 shall be a sum due to the Planning Authority from the person in default expenses incurred or the owner of the plot.

13 . Development undertaken on behalf of government (section 58)

when any Government intends to carry out development of any land for the purpose of any of its departments or offices or authorities, the officer incharge thereof shall inform in writing the Planning

Authority the intention of Government to do so at least thirty days before undertaking such development.

Where a Planning Authority raises any objection to the proposed development on the ground that the development is not in conformity with the provisions either of any Development plan under preparation or of any building bye-laws in force for the time being, or for any other material consideration the officer shall—

(i) make necessary modifications in the proposals for development to meet the objections raised by the Planning Authority, or

(ii) submit the proposals for development together with the objections raised by the Planning Authority to the State Government for decision.(clause 2)

According to clause (3) the State Government shall, either approve the proposals with or without modifications or direct the officer to make such modifications in the proposals as it considers necessary in the circumstances in consultation with the Director of Town Planning,

Development proposals shall remain in force for one year . This period may be extended if applied by officer in charge.
