

## MAHARASHTRA OWNERSHIP OF FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT, 1963

*An act to regulate for a certain period, in the State of Maharashtra, the promotion of the construction of, the sale and management, and the transfer of flats on ownership basis*

WHEREAS, It has been brought to the notice of the State Government that, consequent on the acute shortage of housing in the several areas of the State of Maharashtra, sundry abuses, malpractices and difficulties relating to the promotion of the construction of, and the sale and management and transfer of flats taken on ownership basis exist, and are increasing;

AND WHEREAS, the Government in order to, advise itself as respects the manner of dealing with these matters appointed a committee by Government Resolution in the Urban Development and Public Health Department No. S. 248-79599-F, dated the 20th May 1960, to inquire into and report to the State Government on the several matters referred to aforesaid with the purpose of considering measures for their amelioration;

AND WHEREAS, the aforesaid Committee has submitted its report to Government in June 1961, which report has been published for general information;

AND WHEREAS, it is now expedient after considering the recommendations and suggestions made therein, to make provision during the period of such shortage of housing, for the regulation of the promotion of the construction, sale and management and transfer, of flats taken on a ownership basis in the State of Maharashtra; It is hereby enacted in the Fourteenth Year of the Republic of India as follows:

### SECTION 01: SHORT TITLE, EXTENT, COMMENCEMENT AND DURATION

(1) This Act may be called the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963.

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

(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force in 'such areas, and on such dates as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different areas.

(4) This Act shall remain in force up to and inclusive of the 31st day of March 21995 and shall then expire.

(5) Section 7 of the Bombay General Clauses Act, 1904, shall apply upon the expiry of this Act, as if it had then been repealed by a Maharashtra Act.

### SECTION 02: DEFINITION

In this Act, unless the context otherwise requires -

(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 for carrying on any industry or business] (and includes a garage), the premises forming part of a building 2[and includes an apartment].

*Explanation.* - Notwithstanding 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;

(b) “prescribed” means prescribed by rules made under this Act;

(c) “promoter” means a person “ho constructs or causes to be constructed a block or building of flats; 3[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 person who sells re different persons, the term includes both;

(d) “Registrar” means the Registrar as defined in the Maharashtra Co operative Societies Act, 1960, or, as the case may be, in the Companies Act, 1956;

(e) to construct a block or building of flats 4[or apartments] includes to convert a building or part thereof into flats 4[or apartments];

5(f) the expressions, “apartment” and” apartment owner” shall have the meanings, respectively assigned to them in the Maharashtra Apartment Ownership Act,1970.

### SECTION 03: GENERAL LIABILITIES OF PROMOTER

(1) Notwithstanding anything in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned.

(2) A promoter, who constructs or intends to construct such block or building of flats, shall--

(a) make full and true disclosure of the nature of his title to the land on which the flats ale constructed, or are to be constructed, such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years standing, have been duly entered in the property, card or extract of Village Forms V or VII and X or any other relevant revenue record;]

(b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;

(c) give inspection on seven days’ notice or demand, of the plans and specifications of the building built or to be built on the land; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force;

(d)disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided;

(e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the building, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement, the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the buildings;

- (1) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly);
- (g) 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 therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken;
- (h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats;
- (i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority);

1. These words were added by Mah. 36 of 1986, s, 3(a).

- (j) make a full and true disclosure of all outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any);
- (k) make a full and true disclosure of such other information and document; in such a manner as may be prescribed; and give on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor;
- l[(l) display or keep all the documents, plans or specifications (or copies thereof referred to in clauses (a), (b) and (c), at the site and permit inspection thereof to persons intending to take or taking one or more flats;
- (m) when the flats are advertised for sale, disclose inter alia in the advertisement the following particulars, namely -
  - (i) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;
  - (ii) the price of the flat including the proportionate j of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which the installments thereof 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, if any.]

#### SECTION 04: PROMOTER BEFORE ACCEPTING ADVANCE PAYMENT OR DEPOSIT TO ENTER INTO AGREEMENT AND AGREEMENT TO BE REGISTERED

[Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats all or some of 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 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 not be registered under 2[the Registration Act, 1908 (hereinafter in this section referred to as “the Registration Act”)] 3[and such agreement shall be in the prescribed form.]

4[(1A) The agreement to be prescribed under sub-section (1) shall contain inter alias the particulars as specified in clause (a); and to such agreement there shall be attached the copies of the documents specified in clause (b)

(a)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,

1. Section 4 was renumbered as sub-section ( of that section by Mah.5 of 1984, s.2(I).

2 These words, figures and brackets were substituted for the words and figures “the Indian Registration Act,1908’, ibid. s.2(1)

3. These words were substituted for the portion beginning with the words and such agreement” and ending with the words ‘may prescribed” by Mah. 36 of 1986. s.4(a).

4. Sub-section (1A) was inserted, by Mah 36 of 1986. S4(b)

(ii) the d 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 which should be shown separately;

(iv) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which installments thereof may be paid;

(v) the precise nature of the organisation to be constituted of the persons who have taken or are to take the flats;

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

(vii) the nature, extent and description of limited common areas and facilities, if any;

(viii) percentage. of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold;

(ix) statement of the use for which the flat is intended and restriction on its use, if any;

(x) percentage of undivided interests in the limited common areas and facilities, if any, appertaining to the flat agreed to be sold;

(b) copies of documents, --

(i) the certificate by an Attorney-at-law or Advocate under clause (a) of sub-section (2) of section (3);

(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.]

1[(2) Any agreement for sale entered into under sub-section (1) 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, within the time allowed under sections 23 to 26 (both inclusive) of the said Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assign or agent as laid down in sections 34 and 35 of the said Act also within the time aforesaid:

1. Sub-section (2) was added by Mah. 5 of 1984, s. 2(2).

**Provided that**, where any agreement for sale is entered into, or is purported to be entered into, under sub-section (1), at any time before the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment and Validating Provisions) Act, 1983, and such agreement was not presented for registration, or was presented for registration but its execution was not presented before the registration officer by the person concerned, before the commencement of the said Act, then such document may be presented at the proper registration office for registration. and its execution may be admitted, by any of the persons concerned referred to above in this sub-section, on or before the 31st December 1984, and the registering officer shall accept such document for registration, and register it under the Registration Act, as if it were presented and its execution was admitted, within the time laid down in the Registration Act:

**Provided further that**, on presenting a document for registration as aforesaid if the person executing such document or his representative, assign or agent does not appear before the registering officer and admit the execution of the document, the registering officer shall cause a summons to be issued under section 36 of the Registration Act requiring the executants to appear at the registration office, either in person or by duly authorised agent, at a time fixed in the summons if the executant fails to appear in compliance with the summons, the execution of the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly. If the executant appears before the registering officer as required by the summons but denies execution of the document, the registering officer shall, after giving him a reasonable opportunity of being heard, if satisfied that the document has been executed by him, proceed to register the document accordingly.]

#### SECTION 04A: EFFECT OF NON-REGISTRATION OF AGREEMENT REQUIRED TO BE REGISTERED UNDER SECTION 4

Where an agreement for sale entered into under sub-section 4, whether entered into before or after the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment and Validating Provisions) Act, 1983, remains unregistered for any reason, then notwithstanding anything contained in any law for the time being in force, or any judgment, decree or order of any Court, it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property

Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.]

**SECTION 05: PROMOTER TO MAINTAIN SEPARATE ACCOUNT OF SUMS TAKEN AS ADVANCE OR DEPOSIT AND TO BE TRUSTEE THEREFOR; AND DISBURSE THEM FOR PURPOSES FOR WHICH GIVEN**

The promoter shall maintain a separate accounting any bank of sums taken, by him, from persons intending to take or who have taken flats, as advance or deposit including any sums so taken towards the share capital for the formation of co-operative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances if any); and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes and shall on demand in writing by an officer appointed by general or

**SECTION 06: RESPONSIBILITY FOR PAYMENT OF OUTGOING STILL PROPERTY IS TRANSFERRED**

A promoter shall, while he is in possession and where he collects from persons who have taken over flats or are to take over flats sums for the payment of outgoings ever thereafter, pay all outgoings (including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any), until he transfers the property to the persons taking over the flats, or to the organisation of any such persons.

Where any promoter fails to pay all or any of the outgoings collected by him from the persons who have taken over flats or are to take over flats, before transferring the property to the persons taking over the flats or to the organisation of any such persons, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges (if any) to the authority or person to whom they are payable and to be responsible for any legal proceedings which may be taken therefor by such authority or person.

**SECTION 07: ALTER PLANS AND SPECIFICATIONS ARE DISCLOSED NO ALTERATIONS OR ADDITIONS WITHOUT CONSENT OF PERSONS WHO HAVE AGREED TO TAKE THE FLATS; AND DEFECTS NOTICED WITHIN 1[THREE YEARS] TO BE RECTIFIED**

(1) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agree to take one or more flats, the promoter shall not make -

(i) any alteration in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person;

2[(ii) any other alterations or additions in the structure of the building without the previous consent of all the persons who have agreed to take flats in such building.

(2) subject to sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid; and if any defect in the building or material used, or if any unauthorised change in the construction is brought to the notice of the promoter within a period of 3[three years] from the date of handing over possession, it shall wherever possible 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 4[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, on payment of such fee as may be prescribed Stand within a period of three years from the date of handing over possession, be referred for decision -

1. The words Three Years substituted in Marginal note by Mali. 360 1986, s. 6
2. Clause ii) was substituted *ibid.*, s. 6
3. For the words One Year the words Three Years subs. s. 6(6II)
4. These words were deemed always to have been inserted by Mah. 11 of 1970. s, 3.

(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 under clause (d) of section 2 of that Act, and

(ii) 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, as the State Government may, by general or special order, specify in this behalf. Such competent authority, Deputy Chief Engineer or, as the case may be, The other officer of a Board shall, after inquiry, record his decision, which shall be final.]

#### SECTION 07A: REMOVAL OF DOUBT

For the removal of doubt, it is hereby declared that clause (ii) of sub-section (I) of section 7 having been retrospectively substituted by clause (a) of section 6 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Act, 1986 (hereinafter in this section referred to as “the Amendment Act”), it shall be deemed to be effective as if the said clause (ii) as so substituted had been in force at all material times; and the expression “or construct any additional structures” in clause (ii) of sub-section (1) of section 7 as it existed before the commencement of the Amendment Act and the expressions “constructed and completed in accordance with the plans and specifications aforesaid” and “any unauthorised change in the construction” in sub-section (2) of section 7 shall, notwithstanding anything contained in this Act or in any agreement, or in any judgment, decree or order of any court, be deemed never to apply or to have applied in respect of the construction of any other additional buildings or structures constructed or to be constructed under a scheme

or project of development in the layout after obtaining the approval of a local authority in accordance with the building rules or building bye-laws or Development Control Rules made under any law for the time being in force.}

#### SECTION 08: REFUND OF AMOUNT PAID WITH INTEREST FOR FAILURE TO GIVE POSSESSION WITHIN SPECIFIED TIME OR FURTHER TIME ALLOWED

If

(a) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or

(b) the promoter for reason beyond his control and of his agents, is unable to give possession of (he flat by the date specified, or a further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist, then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat (with simple interest at nine percent per annum from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances.

#### SECTION 09: NO MORTGAGE ETC., TO BE CREATED WITHOUT CONSENT OF PARTIES AFTER EXECUTION OF AGREEMENT FOR SALE

No promoter shall, after he execute an agreement to sell any fiat, mortgage or create a charge on the flat or the land, without the previous consent of the persons who take or agree to take the flats, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 4 is registered, it shall not affect the right and interest of such persons.

#### SECTION 10: PROMOTER TO TAKE STEPS FOR FORMATION OF CO-OPERATIVE SOCIETY OR COMPANY

1[(1)As soon as a minimum number of persons required to form a co-operative society or a company have taken fiats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be of. a company. Nothing in this section shall effect the right' of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

(2) If any property consisting of building or buildings is constructed or to be constructed 2[and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing and registering a Declaration as provided by that Act] then the promoter shall inform the Registrar as define in the Maharashtra Co operative



Societies Act, 1960, accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

3[ \* \* \* \* \* ]

1. Section 10 was renumbered as sub-section (1) of that section and sub-section (2) was added by Mah. 15 of 1971. Sch.

2. This portion was substituted for the portion beginning with “and the apartment takers propose to submit” and ending with “as required by that Act” by Mali. 53 of 1974, s. 6(a).

3. The words “and each apartment owner shall be entitled to the exclusive ownership and possession of his apartment as provided in the first mentioned Act”, were deleted, *ibid.* S. 6

#### SECTION 11: PROMOTER TO CONVEY TITLE, ETC. AND EXECUTE DOCUMENTS, ACCORDING TO AGREEMENT

A 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 as aforesaid, or to an association of flat-takers [apartment-owners] his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall 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.

#### SECTION 12: GENERAL LIABILITIES OF FLAT-TAKER

(1) Every person who has executed an agreement to take a flat shall pay at the proper time and place the price, his proportionate share of the Municipal taxes, water and electricity charges, ground rent (if any) and other public charges in accordance with his agreement with the promoter and where the co-operative society or company of persons taking the flats is to be constituted, co-operative in the formation of such society or company, as the case may be.

(2) Any person who has executed an agreement to take a flat and who, without reasonable excuse, fails to comply with or contravenes sub-section (1) shall, on conviction, be punished with fine which may extend to two thousand rupees.

#### SECTION 12A: MANAGER NOT TO CUTOFF, WITHHOLD, CURTAIL OR REDUCE ESSENTIAL SUPPLY OR SERVICE

(1) No person, who is a promoter, or who is in-charge of management or connected with the management of a block or building of flats, whether as member of a managing committee, director, secretary or otherwise, or is responsible for the maintenance thereof (herein after in this section referred to as the manager”) shall, without just and sufficient cause, 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, if the manager has contravened the provisions of sub-section (I), make an application to the Court for a direction to restore such supply or service.

(3) If the Court on enquiry 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.

(4) The manager 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 a further direction by the Court to that effect, to fine which may extend to one hundred rupees.

(5) Notwithstanding anything contained in any law for the time being in force

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

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

(c) elsewhere, the Court of the Civil Judge (Senior Division), shall have 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; but 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 for the purpose of satisfying itself that the order made was according to law, call for the case in which such order was made and the Bench or Court aforesaid or the District judge or any Judge to which the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit.

(6) Any manager who contravenes the provisions of sub-section (1) shall, on conviction be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

(7) The offence under sub-section (6) shall be cognizable, and shall not be triable by any Court inferior to that of a 1[Metropolitan Magistrate, or a Judicial Magistrate of the First Class].

Explanation I. - In this section, essential supply or service includes the supply of water, electricity, lights in passages and on stair-cases, and lifts and conservancy or sanitary service.

Explanation II. - For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority.]

1. These words were substituted for the words "Presidency Magistrate. or a Magistrate of the First Class" by Mah.12o1 1986, s. 3.

### SECTION 13: OFFENCES BY PROMOTERS

(1) Any promoter who, without reasonable excuse, fails to comply with, or contravenes, the provisions of section 3,4, 5 (save as provided in sub-section (2) of this section), 10 or 11 shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine, or with both.

(2) Any promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section 5 shall, on conviction, be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Any promoter who, without reasonable excuse, fails to comply with, or contravenes, any other provision of this Act or of any rule made thereunder, shall, if no other penalty is expressly provided for the offence, be punished, on conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

### SECTION 13A: POWER OF MAGISTRATE TO PASS SENTENCES UNDER THIS ACT

Notwithstanding anything contained in the Code of Criminal Procedure, it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the First Class to pass on any person convicted of any offence under this Act a sentence of imprisonment or of fine or both as provided in the relevant section of this Act, in excess of his powers under section 27 of the said Code.]

### SECTION 14: OFFENCES BY COMPANIES

(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business by the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

**Provided that**, nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been connected with the consent or connivance of, or is attributable to any negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, --

(a) “company” means a body corporate and includes a firm or other association of individual and

(b) “director” in relation to a firm means a partner in the firm.

#### SECTION 15: POWER OF MAKE RULES

(1) The State Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules for carrying into effect the provisions of this Act.

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

(a) under section 3, the particulars as respects the design and the materials to be used in the construction of the building and the other information and documents to be disclosed, the manner in which disclosure to be made and the documents of which true copies shall be given by the promoter,

1. Clause(b) was substituted for the original by Mah 36 1986. s. 9.

(b) under section 4, the form of agreement;1

(c) under section 10, the period within which the promoter shall submit an application for registration of a co-operative society or a company;

(d) under section 11, the period within which the promoter shall execute the conveyance;

(e) any other matter which has to be, or may be, prescribed by rules.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and it, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

#### SECTION 16: ACT TO BE IN ADDITION TO TRANSFER OF PROPERTY ACT AND TO OVER RIDE CONTRACT TO THE CONTRARY

The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882, and shall take effect notwithstanding anything to the contrary contained in any contract.

#### SECTION 17: APPLICATION OF CERTAIN PROVISIONS TO FLATS ALREADY IN EXISTENCE

As respects flats which on the commencement of this Act have already been constructed, or converted, the provisions of sections 2, 6,8,9,10,11, 12,13,14,15 and 16 apply with the following modifications, that is to say

- (a) in section 2, in clause ( the words “means a person who constructs” shall be read as if the words “means a person who has constructed” had been substituted;
- (b) in section 8, if the date specified or agreed to has already passed at the commencement of this Act, then the promoter shall give possession within three months from such commencement of this Act; and if for any reasons beyond his control and of his agent, the promoter has been unable to give possession of the flat within three months from such commencement, he shall give possession thereof within a period of three months thereafter, or a further period of three months if those reasons still exist; and thereafter the promoter shall be liable on demand to refund the amounts on the terms and conditions provided in the said section;
- (c) in section 9, the words and figure “after the agreement referred to in section 4 is registered” shall be read as if the words “after the commencement of this Act” had been substituted;
- (d) in section 10, the words “As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period” shall be read as if the words “Where the minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within three months from the commencement of this Act” had been substituted;
- (e) in section 11, the words and figure “in accordance with the agreement executed under section 4” shall be read as if the words “in accordance with any agreement made in respect thereof” had been substituted and the words “within the prescribed period” shall, be read as if the words “within three months from the commencement of this Act” had been substituted.

#### SECTION 18: ACT NOT TO APPLY TO HOUSING AND AREA DEVELOPMENT AUTHORITY AND BOARDS

Nothing in this Act shall apply to the Maharashtra Housing and Area Development Authority and the Boards established under the Maharashtra Housing and Area Development Act, 1976.]

#### THE MAHARASHTRA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, ETC.) RULES, 1964

1. Short title. - These rules may be called the Maharashtra Ownership Flats (Regulation of the promotion of construction etc.) Rules. 1964.
2. Definitions. - In these rules unless the context otherwise requires
  - (a) ‘Act’ means the Maharashtra Ownership Flats (Regulation of construction, sale, management and transfer) Act, 1963 (Mal XLV of 1963);
  - Ra-i) “Form” means a form appended to these rules.]
  - (b) “section” means a section of the Act.
3. Manner c making disclosure. (1) A promoter for the purposes o making disclosure of any document referred to in section 3 or prescribed thereunder shall produce the original of such document before the person intending in take or taking one or more flats.

The promoter shall display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c) of sub-section (2) of the said section 3 at the site and permit inspection thereof ]

Such person may ask the promoter all relevant questions for seeking further information or clarification in respect of any document or matter required to be disclosed, produced or furnished by or under the provisions of the Act and the promoter shall be legally bound to answer all such questions to the best of his knowledge and belief.

(2) The promoter while making disclosure of the outgoings as required by clause (j) of sub-section (2) of section 3 shall state the basis on which any estimated figures or other information is given.

(3) The promoter shall, when the flats are advertised for sale, disclose in the advertisement the particulars as required by sub-clauses (i) to (iv) (both inclusive) of clause (m) of sub-section (2) of section 3].

4. True copies of certain documents to be given.- A promoter shall on demand and payment of a reasonable charge therefor, give to any person intending to take or taking one or more flats true copies of the following documents, namely

(a) all documents of title relating to the land on which the flats are constructed, or are to be constructed, which are in the promoter's possession or power;

(b) the certificate by an Attorney-at-law or Advocate referred to in clause (a) of sub-section (2) of section 3;

(c) all documents relating to encumbrances (if any) on such land, including any right, title, interest or claim, or any party in or over such land;

(d) the plans and specifications of the building built or to be built on the land referred to in clause (c) of sub-section (2) of section 3;

(e) a list of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided for the flat or apartments;

(f) a list referred to in clause (g) of sub-section (2) of section 3;

(g) a list of all outgoings referred to in clause (j) of sub-section (2) of section 3 and the basis on which any estimated figures or other information is given to the person intending to take or taking the flat.

1. Ins, by ON. of 2321965.

2. Inserted by C. N. FOB 1085/7956/11 10.4.87, s. 2 M. O. CIV B, 1987 p. 412).

3. Added, by ibid s.2(11).

5 Particulars to be contained in agreement. - The promoter shall before accepting any advance payment or deposit, enter into an agreement with the flat purchaser in Form V containing the particulars specified in clause (a) of sub-section (2) of section 4 and shall attach thereto the copies of the documents specified in clause (b) of the said sub-section (IA)].

2[6 \* \* \* \* \* ]

7 Fees to be paid under section 7(2). - Where a dispute is to be referred for decision under sub-section (2) of section 7.

(a) if the dispute is in respect of a single flat, or lithe reference is to be made by a single flat-purchaser the fees payable shall be Rs. 100;

(b) if the dispute is in respect of more than one but less than ten flats or a common reference is to be made by more than one but less than Len flat-purchasers, the fee payable shall be Rs. 100 per flat;

(c) if the dispute is in respect of more than ten but less than twenty-five flats or a common reference is to be made by more than ten but less than twenty five flat-purchasers, the fee payable shall be Rs. 1,000 in lump sum;

(d) if the dispute is in respect of more than twenty-five flats or a common reference is to be made by more than twenty-five flat-purchasers, the fee payable shall be Rs. 2,000 in lump sum.

8. Period for submission of application for registration of co-operative society or company of flat-purchasers.-Where a co-operative society or a company of persons taking the flats is to be constituted, the promoter shall submit an application to the Registrar for registration of the co-operative society or the company, as the case may be within four months from the date on which the minimum number of persons required to form such organisation have taken flats. Where the apartment takers propose to submit the Apartments to the provisions of the Maharashtra Apartment Ownership Act 1970, by executing Declarations and Deeds of apartments as required by that Act, the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960,as soon as possible after the date on such all the apartment owners (being not less than five) have executed such Declarations and Deeds of Apartment.

9. Period for conveyance of title of promoter to organisation of flat-purchasers.- If no period for conveying the title of the promoter to the organisation of the flat-purchasers is agreed upon, the promoter shall (subject to his right to dispose of the remaining flats, if any) execute the conveyance within four months from the date on which the co-operative society or the company is registered or, as the case may be, the association of the flat-takers is duly constituted. When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing the registering a Declaration as required by section 2 of the Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment-taker is agreed upon, the promoter Shall execute the conveyance or deed of apartment in favour of each apartment-taker within four months from the date the apartment-taker has entered in to possession of his apartment.

[Manner of making disclosure before the officer appointed under section 5. -(1) For the purpose of making disclosure of all transactions in respect of the account referred to in section 5 or for the purpose of making disclosure of information and documents in the manner prescribed in these rules, a promoter shall produce before the officer, appointed under the said section, the following documents in relation to such account within such time as that officer may fix in that behalf, namely: --

1. The Cash Book.
2. The General Ledger.
3. The Personal Ledger.

4. The Nominal Accounts.
  5. The Receipts of Advances and Deposits.
  6. The Vouchers of Expenditure.
  7. Bank Pass Book.
  8. The Register of Flat-Purchasers.
  9. The Register of Flats.
  10. The Statement indicating Receipts and Disbursement (General).
  11. The Statement indicating Receipts and Disbursement of Individual Accounts.
- (2) The Register of Flat-Purchasers and the Register of Flats shall be in Forms I and II, respectively and the statement at serial numbers 10 and 11 in sub-rule (1) shall be in Form III and Form IV respectively. The other documents referred to in sub-rule (1) may be maintained according to the trade practice. I

1. Substituted by G.N., F. 0.8. )1085/7956(1)dated 10-4-87O.4.87s. 3(M.G.G.,IV-B. 9SY.p.
2. Rule 6 shall be deleted by 0. N. F 0. B. 1085f1956/11, dated 10.4.87 s.4 -M. G. C. IV-B 1987.. p. 413.
3. Substituted by G.N.P. W. & H. Dept. No. FOB 1171/21306-D 37, dated 17. ( M. C. 0. Pt. IV B p. t483.