

**The Maharashtra Ownership Flats (Regulation of the
Promotion of Construction, Sale, Management and Transfer)
(Amendment) Act, 2005**

[Act No.4 of 2008 w.e.f. 25-2-2008]

An Act

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

(As passed by the Legislative Assembly on the 6th December, 2005.)

(As passed by the Legislative Council with amendments on the 16th April, 2007.)

WHEREAS it is expedient further to amend the Maharashtra Ownership Flat Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 for the purposes hereinafter appearing; it is hereby enacted in the Fifty-sixth Year of the Republic of India as follows:

1. Short title

This Act may be called the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) (Amendment) Act. 2005.

2. Amendment of section 2 of Mah. XLV of 1963

In Section 2 of the Maharashtra Ownership Flats (Regulation of the promotion of Construction, Sale, Management and Transfer) Act. 1963 (hereinafter referred to as "the Principal Act")-

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

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

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

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

3. Amendment of Section 5 of Mah. XLV of 1963

In Section 5 of the Principal Act, for the words "an officer of officer appointed by general or special order by the State Government for the purpose" the words "a Competent Authority" shall be substituted

4. Insertion of Section 5A in Mah. XLV in 1963

After section 5 of the principal Act, the following section shall be inserted, namely:-

"5A. Competent Authority

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

5. Amendment of section 10 of Mah. XLV of 1963

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

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

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

6. Amendment of Section 11 of Mah. XLV of 1963

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

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

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

a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

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

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

7. Amendment of Section 13 of Mah. XLV of 1963

In Section 13 of the principal Act-

(a) in sub-section (3), for the portion beginning with the words "with an imprisonment" and ending with the words "or with both", the following shall be substituted, namely:-

"with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees or with both."

(b) after sub-section (3), the following sub-sections shall be added. namely:-

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

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

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

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

8. Insertion of Sections 13B, 13C, 13D and 13E in Mah. XLV of 1963.

After Section 13A of the principal Act, the following sections shall be inserted namely:-

13B. Competent Authority to be public servant

The Competent Authority shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

13C. Proceedings before Competent Authority to be judicial proceedings

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

13D. Competent Authority deemed to be the Civil Court for certain purposes

Every competent authority shall be deemed to be a Civil Court for the purposes of sections 345 and 347 of the Code of Criminal Procedure, 1973.

13E. Indemnity for acts done in good faith

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