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കേരള ഗസറ്റ്
KERALA GAZETTE

അസാധാരണം
EXTRAORDINARY

ആധികാരികമായി പ്രസിദ്ധപ്പെടുത്തുന്നത്
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GOVERNMENT OF KERALA
Law (Legislation-C) Department

NOTIFICATION

No. 8052/Leg.C1/2015/Law. Dated, Thiruvananthapuram, 4th May, 2015,
20th Medam 1190,
14th Vaisakha, 1937.

The following Ordinance promulgated by the Governor of Kerala on the 4th day of May, 2015 is hereby published for general information.

By order of the Governor,

S. GIRIJA DEVI,
Special Secretary (Law).

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ORDINANCE No. 7 OF 2015

**THE KERALA REAL ESTATE
(REGULATION AND DEVELOPMENT) ORDINANCE, 2015**

Promulgated by the Governor of Kerala in the Sixty-sixth Year of the Republic of India.

AN

ORDINANCE

to provide for the establishment of a Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS, it is expedient to provide for the establishment of a Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot or building, as the case may be, in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector and to establish an Appellate Tribunal to hear appeals from, the decisions, directions or orders of the Authority and for matters connected therewith or incidental thereto;

AND WHEREAS, the Legislative Assembly of the State of Kerala is not in session and the Government of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Ordinance may be called the Kerala Real Estate (Regulation and Development) Ordinance, 2015.

(2) It shall come into force at once.

2. *Definitions.*—(1) In this Ordinance, unless the context otherwise requires,—

(a) “advertisement” means any document described or issued as advertisement through any form of media and includes any notice, circular or other documents offering for sale of a plot or building inviting persons to purchase in any manner such plot or building or to make advances or deposits for such purposes;

(b) “allottee” in relation to a real estate project, means the person to whom a plot or building has been allotted, sold 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 or building is given on rent;

(c) “apartment” whether called dwelling unit, flat, premises, suite, tenement, villa, unit or by any other name, means a separate and self-contained part of any immovable property located on one or more floors or any part thereof, in a building block or on a plot of land, used or intended to be used for residential purposes, or for any other type of independent use ancillary to the purpose specified and includes any covered garage, whether or not adjacent to the building block in which such apartment is located which has been provided by the promoter for the use of the allottee for parking any vehicle, or as the case may be, for the residence of any domestic help employed in such apartment;

(d) “Appellate Tribunal” means the Real Estate Appellate Tribunal established under section 37;

(e) “architect” means a person registered as an architect under the provisions of the Architects Act, 1972 (Central Act 20 of 1972);

(f) "association" means the association of allottees registered under section 10 consisting of all allottees in a colony and includes an apex association;

(g) "Authority" means the Real Estate Regulatory Authority established under sub-section (1) of section 20;

(h) "building" means a building unit or a building block or an apartment;

(i) "building block" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial, business or office purposes, information technology and information technology enabled services with limited common areas and parking spaces;

(j) "building permit" means any permit issued by the competent authority to begin development works in an immovable property;

(k) "building unit" means a separate and self contained unit in a building block;

(l) "carpet area" means the net usable floor area of an apartment, excluding the area covered by the walls;

(m) "Chairperson" means the Chairperson of the Real Estate Regulatory Authority appointed under section 21;

(n) "colony" means an area of contiguous land divided or proposed to be divided into plots or buildings with common areas in a real estate project;

(o) "common areas" mean the areas intended for the use of all the allottees in a colony and include the following, namely:—

(i) the part of the site or plot not occupied by buildings;

(ii) the common basement, parts, play areas, guest parking areas, if any and common storage spaces;

(iii) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staff;

(iv) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating;

(v) water tanks, sumps, motor, fans, compressors, ducts and all apparatus connected with installations for common use;

(vi) community and commercial facilities as may be provided and managed by the association;

(vii) all other portions of the property necessary or convenient for its maintenance, safety, etc., and in common use;

(p) "company" means a company incorporated and registered under the Companies Act, 2013 (Central Act 18 of 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;

(q) "competent authority" means the Local Self Government Institution or any Authority established under any law for the time being in force which has powers to give permission for development as mentioned in clause (r) of section 2;

(r) "development" 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;

(s) "development works" mean the external development works and internal development works on immovable property;

(t) "engineer" means a person who possesses a bachelor's degree or equivalent from an institution recognized by the All India Council for Technical Education or registered as an engineer under any law for the time being in force;

(u) "estimated cost of real estate project" means the total cost involved in developing the real estate project and includes the land cost;

(v) "external development works" include roads and road systems, landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station or any other work which may have to be executed in the periphery of, or outside, a colony for its benefit, as may be specified under the rules or bye-laws of the competent authority;

(w) "Government" means the Government of Kerala;

(x) "immovable property" includes land, building, right of way, light or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops or grass;

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

(z) "internal development works" means roads, foot paths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community building and for treatment and disposal of sewage and sullage water, social infrastructure such as educational, health and other public amenities or any other work in a colony necessary for its proper development;

(za) "limited common area" means the area intended for the use of allottees in one building block and includes entrance hall, staircases, lift, common passages on all floors, common parking areas, fire escapes, refuge areas, service floors, terraces above the upper most floor and all common areas in the building block;

(zb) "Local Self Government Institution" means Local Self Government Institution as defined in the Kerala Municipality Act, 1994 (20 of 1994);

(zc) "Member" means the member of the Real Estate Regulatory Authority appointed under section 21 and includes the Chairperson;

(zd) "Notification" means a notification published in the Official Gazette;

(ze) "occupancy certificate" means the completion certificate, or such other certificate, as the case may be, issued by the competent authority permitting occupation of any building under any law for the time being in force;

(zf) "person" includes,—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm;

(v) a competent authority;

(vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies;

(viii) any such other entity as the Government may, by notification specify in this behalf;

(zg) "prescribed" means prescribed by rules made under this Ordinance;

(zh) "project" means the real estate project under this Ordinance;

(zi) "promoter" means,—

(i) a person who constructs or causes to be constructed a building or converts an existing building or a part thereof for the purpose of selling all or part of the same to other persons and includes his assignees and a buyer who purchases in bulk for resale; or

(ii) a person who develops a colony for the purpose of selling to other persons all or some of the plots, whether with or without structures thereon; or

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

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

(v) any other person who acts himself as a builder, colonizer, 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 is constructed or colony is developed for sale; or

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

Explanation:—For the purposes of this clause, where the person who constructs or converts a building or develops a colony for sale and the person who sells building or plots are different persons, both of them shall be deemed to be the promoters;

(zj) “prospectus” means any document described or issued as a prospectus or any notice, circular, or other document offering for sale of any real estate project or inviting any person to make advances or deposits for such purposes;

(zk) “real estate agent” means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot 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 a commission or otherwise and includes a person who introduces prospective buyers and sellers to each other for negotiation for sale or purchase of plot or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

(zl) “real estate project” means the development of a building or conversion of an existing building or a part thereof or the development of a colony into plots or buildings, as the case may be, for the purpose of selling all or some of the said plots or buildings and includes the development works thereof;

(zm) “regulations” mean the regulations made by the Authority under this Ordinance.

CHAPTER II

REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

3. *Registration of Real Estate Project.*—(1) No promoter shall book, sell or offer for sale, or invite persons to purchase in any manner any plot or building, as the case may be, in any real estate project, or part of it, without registering the real estate project with the Real Estate Regulatory Authority established under this Ordinance:

Provided that no such registration shall be required,—

(a) where the area of land proposed to be developed in a real estate project does not exceed one thousand square metres;

(b) where the number of building units proposed to be developed in a real estate project does not exceed twelve:

Provided that where the total carpet area of the building units proposed to be developed exceeds one thousand square metres, registration shall be required.

(c) where the promoter has received all requisite approvals/permits for the development of the real estate project prior to commencement of this Ordinance;

(d) for the purpose of renovation or repair or re-development which does not involve re-allotment and marketing of 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 as an independent real estate project, and the promoter shall obtain registration under the Ordinance for each phase separately.

(2) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

(3) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, society, partnership, company) and the particulars of registration;

(b) an authenticated copy of the building permit from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approval and sanction from the competent authority for each of such phases;

(c) the layout plan of the proposed project or the phase thereof, and also the layout plan of the whole project as sanctioned by the competent authority;

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

(e) proforma of the agreements proposed to be signed with the allottees;

(f) the number and the carpet area of apartments for sale in the project;

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

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

(i) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, duly attested by an advocate having not less than three years experience as an advocate—

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

(B) that the land is free from all encumbrances, or as the case may be, 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 approximate period of time within which he undertakes to complete the project or phase thereof;

(D) that seventy per cent or such lesser percent as notified by the Government, of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank within a period of fifteen days of its realisation to cover the cost of construction and shall be used only for that purpose:

Provided that in the case of project started before the commencement of this Ordinance the amount to be deposited shall be based on the project cost to be incurred.

Explanation.—For the purpose of this clause, the term “scheduled bank” means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (Central Act 2 of 1934);

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

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

4. *Grant of registration.*—(1) On receipt of the application under subsection (2) of section 3, the Authority shall within a period of fifteen days—

(a) grant registration subject to the provisions of this Ordinance 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 for reasons to be recorded in writing, if such application does not conform to the provisions of this Ordinance or the rules or regulations made thereunder:

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

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within two days of the expiry of the said fifteen 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.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (c) of clause (i) of sub-section (3) of section 3 for completion of the project or phase thereof, as the case may be.

(4) The Authority may, from time to time, engage independent observers to assist the Authority for verifying and reporting the factual accuracy of the information furnished by the promoter on such terms and conditions as may be prescribed.

5. *Extension of registration.*—The registration granted under section 4 may be extended by the Authority on an application made by the promoter under such conditions, as may be prescribed, and in such form and on payment of such fee, as may be specified, by the regulations made by the Authority:

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

6. *Revocation of registration.*—(1) The Authority may, on receipt of a complaint in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 4, after being satisfied that—

(a) the promoter makes willful default in doing anything required of him by or under this Ordinance 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.—For the purposes of this clause, the term “unfair practice” means any unfair method or unfair or deceptive practice adopted for the purpose of promoting the sale or development of any real estate project including any of the following practices, namely:—

(A) the practice of making any statement, whether orally or 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.

(2) The registration granted to the promoter under section 4 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under subsection (1), permit it 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.

(4) Upon the revocation of the registration, the Authority,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters on its website;

(b) may recommend to the competent authority to facilitate the balance of the development works to be carried out in accordance with the provisions of section 7;

(c) may, to protect the interest of prospective buyers or in the public interest, issue such directions as it may deem necessary.

7. *Obligation of Authority consequent on lapse or revocation of registration.*—Upon lapse of the registration or on revocation of the registration under this Ordinance, the Authority, may consult the 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:

Provided that 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 Ordinance.

8. *Registration of Real Estate Agents.*—(1) No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter without obtaining registration under this section.

(2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

(3) The Authority shall, within such period, in such manner and satisfying itself of the fulfilment of such conditions, as may be prescribed,—

(a) grant registration to the real estate agent;

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions in this Ordinance or the rules or regulations made thereunder:

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

(4) Where 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.

(5) Every real estate agent who is registered as per the provisions of this Ordinance or the rules and regulations made thereunder, shall be granted registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under the Ordinance.

(6) Every registration shall be valid for such period, as may be prescribed, and shall be renewable for such period, in such manner and on payment of such fee as may be prescribed.

(7) Where any real estate agent who has been granted registration under this Ordinance commits breach of any of the conditions thereof or any other terms and conditions specified under this Ordinance 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, the Authority may, without prejudice to any other provisions under this Ordinance, revoke the registration or suspend the same for such period as it thinks fit:

Provided that 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.

9. *Obligations of real estate agent.*—Every real estate agent registered under section 8 shall,—

(a) not facilitate the sale or purchase of any plot or building as the case may be, in a real estate project or part of it, being sold by the promoter which is not registered with the Authority;

(b) maintain and preserve such books of account, records and documents as may be prescribed.

(c) not involve himself in any unfair trade practices, namely:—

(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 grade;

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

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

(ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.

(d) facilitate the possession of all 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.

10. *Registration of associations.*—(1) An association of allottees shall be formed by the promoter in respect of plots or buildings, in such manner as may be prescribed, within four months from the date on which occupation certificate is issued in respect of all the building units or a minimum of 60 per cent of the allottees have taken possession of the building units or the promoter has received full consideration or other amount, for the same, whichever is earlier and in the case of a colony, an Apex Association shall be formed in such manner, as may be prescribed, in addition to the association representing all the associations in any real estate project and every such association and apex association shall be registered before the Authority by filing an application in the prescribed form along with all documents as may be prescribed and the Authority shall give registration number to each such association.

(2) If the promoter fails to submit an application for registration of the association within the prescribed time, the association shall be formed by the allottees and the same shall be registered before the authority.

(3) Save as otherwise provided in this Ordinance, the association shall have such rights and duties as may be prescribed.

CHAPTER III

FUNCTIONS AND DUTIES OF PROMOTER

11. *Obligations of promoter.*—(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) of section 4 or under sub-section (2) of section 4, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all fields as provided, including,—

- (a) details of the registration granted by the Authority;
- (b) quarterly up-to-date list of number and types of buildings or plots, as the case may be, booked;
- (c) quarterly up-to-date status of the project; and
- (d) such other information and documents as may be specified by the regulations made by the Authority.

(2) 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.

(3) The promoter upon entering into an agreement of sale with the allottee, shall be responsible to make available to the allottee, the following information, namely:—

(a) site and lay out 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 water, sanitation and electricity.

(4) The promoter shall—

(a) be responsible to obtain occupancy certificate from the relevant competent authority as per the laws for the time being in force and to make it available to the allottees individually or to the association;

(b) be responsible for providing and maintaining the essential services, as may be specified in the agreements, on reasonable charges, till the taking over of the maintenance of the project by the association;

(c) take steps for the formation of an association of the allottees.

(5) The promoter may cancel the allotment only in terms of the agreement of sale:

Provided that 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 of sale, unilateral and without any sufficient cause.

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

12. *Compensation for loss.*—Where any person makes an advance or a deposit on the basis of the information contained in the advertisement or prospectus 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 Ordinance:

Provided that if the person affected by such incorrect, false statement contained in the advertisement or prospectus, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed.

13. *Agreement for sale.*—(1) A promoter shall not accept a sum more than ten per cent of the cost of the plot or building, as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person.

(2) The agreement referred to in sub-section (1) shall be in such form, as may be prescribed, and shall specify the particulars of development of the project including the construction of building along with specifications and external development works, the dates and the manner by which payments towards the cost of the plot or building, as the case may be, are to be made by the allottees and the likely date on which the possession of the plot or building is to be handed over and such other particulars, as may be prescribed.

14. *Adherence to approved plan and project specifications by promoter.*—(1) The proposed project shall be developed and completed by the promoter in accordance with the plans and structural designs and specifications as approved by the competent authorities.

(2) The promoter shall not alter in any manner the compulsory open spaces of the building or shall not alter the aggregate area of the park, recreational ground, play ground, garden etc. in the approved colony, in which allottees agreed to take one or more building units, without the consent of all such allottees except when such alteration is required by the competent authority due to change in law.

(3) In case any defect in such building or materials used, occurred not due to the fault of the allottee, is brought to the notice of the promoter within a period of two years of handing over possession of a building unit, by the allottee or the association from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within reasonable time, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees or association shall be entitled to receive appropriate compensation in the manner provided under this Ordinance.

15. *Transfer of title.*—(1) The promoter shall take all necessary steps to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas including the handing over of the possession of the plot or building, as the case may be, in a real estate project, and the other title documents pertaining thereto.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand over the necessary documents and plans, including that of common areas, to the association or the competent authority, as the case may be, as per the law for the time being in force.

16. *Creation of Mortgage or Charge.*—(1) No promoter shall after he executes an agreement for sale of any plot or building, mortgage or create a charge on such plot or building without the written previous consent of the person who has entered into such an agreement with him.

(2) Notwithstanding anything contained in sub-section (1), a mortgage or charge can be made or created by a person for the purpose of obtaining finance for the payment of the amount due to the promoter.

17. *Return of amount and Compensation.*—If the promoter fails to complete or is unable to give possession of a plot or building,—

(a) in accordance with the terms of the agreement or, as the case may be, duly completed by the date specified therein or any further date agreed to by the parties; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of his registration under this Ordinance or for any other reason,

he shall be liable on demand, without prejudice to any other remedy available, to return to the allottees, the amount received by him in respect of that plot or building, as the case may be, with interest at such rate, as may be prescribed, in this behalf including compensation to the allottees, in the manner provided under this Ordinance.

18. *Rights of Promoter and associations consequent to change in law or policy of Government or Local Self Government Institution.*—Notwithstanding anything contained in this Ordinance, the promoter shall be entitled to develop and continue to develop the land belonging to the Promoter in the colony remaining after the execution of one or more phases of the real estate project with the right to use the internal access roads and all the facilities, amenities and services in the colony and to construct additional structures thereon by using the balance floor area ratio and balance transfer of development right and balance additional floor area ratio relating to the said colony consequent to any future increase in floor area ratio occurred due to change in the law or the policies of the Government or the Local Self Government Institutions:

Provided that if the floor area ratio of the plot in a colony is increased as stated above, subsequent to conveyance of any one or more structures to allottees, then increase in floor area ratio which is proportionate to the floor area ratio utilised by the conveyed structure or structures to total floor area ratio of the colony, shall belong to the association of allottees and it shall not be necessary for the promoter to obtain any consent or permission from the association for the purpose of utilising the balance floor area ratio.

CHAPTER IV

RIGHTS AND DUTIES OF ALLOTTEES

19. *Rights and duties of allottees.*—(1) The allottee shall be entitled to obtain the information relating to site and layout plans along with the specifications, approved by the competent authority and such other information as provided in this Ordinance or the rules and regulations made thereunder or the agreement signed with the promoter.

(2) The allottee shall be entitled to know the stage-wise time schedule of completion of the project, including the provisions for water, sanitation and electricity.

(3) The allottee shall be entitled to claim the possession of plot or building, as the case may be, as per the declaration given by the promoter under sub-clause (c) of clause (i) of sub-section (3) of section 3.

(4) The allottee shall be entitled to claim the refund of amount paid, from the promoter, if the promoter fails to comply or is unable to give possession of the plot or building, as the case may be, in accordance with the terms of the agreement or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Ordinance or the rules and regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the plot or building, as the case may be, to the allottee by the promoter.

(6) Every allottee, who has entered into an agreement of sale to take a plot or building, as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement and shall pay at the proper time and place, the proportionate share of the registration charges, taxes payable, water and electricity charges, maintainance charges, ground rent and other charges, if any, in accordance with such agreement.

(7) The allottee shall be liable to pay interest for any delay in payment towards any amount or charges to be paid under sub-section (6).

(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.

(9) Every allottee after taking possession of the plot or building, as the case may be, shall participate towards the formation of an association.

CHAPTER V

THE REAL ESTATE REGULATORY AUTHORITY

20. *Establishment of Real Estate Regulatory Authority.*—(1) The Government shall, within a period of one year from the date of coming into force of this Ordinance, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Ordinance.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The Headquarters of the Regulatory Authority shall be at Thiruvananthapuram.

21. *Composition of Authority.*—The Authority shall consist of a Chairperson and not less than two whole-time Members to be appointed by the Government, from among persons having special knowledge or professional experience in the field of Public Administration, Urban Development, Finance, Law or Management.

22. *Qualifications of Chairperson and Members of Authority.*—The Chairperson and other Members of the Authority shall be appointed by the Government, from among persons having adequate knowledge and professional experience of at least twenty years in the case of the Chairperson and fifteen years in the case of the Members in Urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:

Provided that a person who is, or has been, in the service of the Government shall not be appointed as a Chairperson unless such person is holding or has held the post of the Head of the Department in the Government or any equivalent post.

23. *Term of the office of Chairperson and Members.*—(1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier.

(2) Before appointing any person as a Chairperson or Member, the Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

24. *Salary and allowances payable to Chairperson and Members.*—(1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 23, the Chairperson or a Member, as the case may be, may,—

(a) relinquish his office by giving in writing, to the Government, notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 26 of this Ordinance.

(3) Any vacancy in the office of the Chairperson or any other Member shall be filled-up within a period of six months from the date on which such vacancy occurs.

25. *Administrative powers of the Chairperson.*—The Chairperson shall have powers of general superintendence in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

26. *Removal of Chairperson and Members.*—(1) The Government may, by order, remove from office, the Chairperson or other Members, if the Chairperson or such other member, as the case may be,—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, involving moral turpitude; or

(c) has been physically or mentally, incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to public interest.

(2) No such Chairperson or Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

(3) The Chairperson or a Member may resign his office at any time by sending a resignation letter addressed to the Government with a notice of not less than three months.

27. *Restriction on employment after cessation of office.*—The Chairperson or a Member, ceasing to hold office as such, shall not,—

(a) accept any employment in, or connected with, the management or administration of, any person or organization which has been associated with any work under the Ordinance, from the date on which he ceases to hold office:

Provided that nothing contained in this clause shall apply to any employment under the Government or a Local Self Government Institution or in any statutory authority or any corporation established by or under any Central or State Act or a Government Company, as defined in section 45 of the Companies Act, 2013 (Central Act 8 of 2013);

(b) act, for or on behalf of any person or organization in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for, or provided advice to, the Authority;

(c) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

28. *Officers and other employess of Authority.*—(1) The Government may, in consultation with the Authority, appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Ordinance who would discharge their functions under the general superintendence of the Chairperson.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.

29. *Meetings of Authority*.—(1) 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), as may be specified, by the regulations made by the Authority.

(2) If the Chairperson is for any reason, unable to attend a meeting of the Authority, any other Member chosen by the Members present among themselves at the meeting, shall preside at the meeting.

(3) 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:

Provided that any decision relating to revocation of registration under section 6 shall be decided in a meeting attended by all the members.

30. *Vacancies etc. not to invalidate proceeding of Authority*.—No act or proceeding of the Authority shall be invalid merely by reason of,—

- (a) any vacancy in, or any defect in the constitution of, the Authority; or
- (b) any defect in the appointment of a person acting as a Member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

31. *Functions of the Authority*.—(1) The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the Government or the competent authority, as the case may be, on,—

- (a) protection of interest of the allottees and promoter;
- (b) measures to improve the processes and procedures for clearance and sanction of plans and development of projects;
- (c) Measures to encourage construction of environmentally sustainable and affordable housing, promote standardisation, including grading and use of appropriate construction materials, fixtures, fittings and construction techniques;

(d) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums;

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

(2) The Authority shall, *inter alia*, have the following functions, namely:—

(a) to render advice to the Government in matters relating to the development of real estate sector;

(b) to publish and maintain a website of records 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, and enter the names of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under the Ordinance, with reasons therefor, for access to the general public;

(d) to maintain a database, on its website, and enter the names of real estate agents who have applied and registered under this Ordinance, 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 from the allottees by the promoter or the association, as the case may be;

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

(g) to ensure compliance of the regulations or orders or directions made in exercise of its powers under this Ordinance;

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

32. *Power of Authority to adjudicate compensation.*—(1) The Authority shall have the power to adjudicate compensation payable under sections 12, 14 and 17 by holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.

(2) The application for adjudging compensation under sub-section (1) shall be dealt with by the Authority as expeditiously as possible and dispose of the same within a period of ninety days from the date of receipt of such application:

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

(3) While holding an inquiry, the Authority shall have the 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 Authority, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, it is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), it may direct to pay such compensation or interest, as the case may be, as it thinks fit in accordance with the provisions of any of those sections.

(4) While adjudging the quantum of compensation or interest, as the case may be, under sections 12, 14 and 17, the Authority shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

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

(c) the repetitive nature of the default.

33. *Powers of Authority to call for information and conduct investigations.*—(1) Where the Authority considers it expedient to do so, on a complaint relating to the Ordinance or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, 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 (Central Act 5 of 1908) while trying a suit, in respect of the following matters, namely:—

(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 oath;

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

(iv) any other matter which may be prescribed.

34. *Powers of the Authority to issue directions.*— The Authority may, for the purpose of discharging its functions under the provisions of this Ordinance or the regulations made thereunder, issue such directions from time to time, to the promoters and allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

35. *Powers of Authority.*—(1) The Authority shall have the power 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 Ordinance or the rules and the regulations made thereunder.

(2) The authority shall be guided by the principles of natural justice and, subject to the other provisions of this Ordinance and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

36. *Recovery of interest or penalty or compensation.*—If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him under this Ordinance, it shall be recoverable from such promoter or allottee or real estate agent, as if it is an arrear of revenue due on land.

CHAPTER VI

37. *Establishment of Real Estate Appellate Tribunal.*—(1) The Government shall, within a period of six months from the date of coming into force of this Ordinance, by notification, establish an Appellate Tribunal to be known as the Real Estate Appellate Tribunal.

(2) Any person aggrieved by any direction or decision or order made by the Authority may prefer an appeal before the Appellate Tribunal.

38. *Application for settlement of disputes and appeals to Appellate Tribunal.*—(1) The Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Government or the competent authority or the aggrieved person and it shall be in such form, and accompanied by such fee, as may be prescribed:

Provided that 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.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority.

(5) 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 ninety days from the date of receipt of appeal:

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

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

39. *Composition of Appellate Tribunal.*—The Appellate Tribunal shall consist of a Chairperson and two other members to be appointed by the Government.

40. *Qualifications for appointment of Chairperson and Members.*—(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,—

(a) in the case of Chairperson, is or has been, a judge of the High Court; and

(b) in the case of a Member, has held the post of the Principal Secretary to the Government or any equivalent post under the Government of India, or a person who is well versed in the field of urban development, real estate, finance, law or management.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the Government in consultation with the Chief Justice of High Court or his nominee and the members shall be appointed by the Government.

41. *Term of office of Chairperson and Members.*—(1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for re-appointment:

Provided that in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty seven years:

Provided further that no Member of the Appellate Tribunal shall hold office after he has attained the age of sixty five years.

(2) Before appointing any person as Chairperson or Member, the Government shall satisfy itself that the person does not have any such financial or other interests, as is likely to affect prejudicially his functions as such Member.

42. *Salary and allowances payable to Chairperson and Members.*—
(1) The salary and allowances payable to and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 40, the Chairperson or a Member, as the case may be, may:—

(a) relinquish his office by giving in writing to the Government a notice of not less than three months;

(b) be removed from his office in accordance with the provisions of section 43.

(3) A vacancy in the office of the Chairperson or any other Member, as the case may be, shall be filled-up within a period of six months from the date on which such vacancy occurs.

43. *Removal of Chairperson or Member from office in certain circumstances.*—(1) The Government may, in consultation with the Chief Justice of the High Court, remove from office, the Chairperson or any Member of the Appellate Tribunal, who:—

- (a) has been adjudged as an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Government involves moral turpitude; or
- (c) has become physically or mentally incapable; or
- (d) has acquired such financial or other interests as is likely to affect prejudicially his functions; or
- (e) has so abused his position as to render his continuance in office prejudicial to public interest.

(2) The Chairperson or a Member shall not be removed from his office except by an order made by the Government after an inquiry made by a Judge of the High Court in which such Chairperson has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Government may suspend a person from the office of the Chairperson or Member, in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference.

(4) The Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

(5) A member may be removed from his office by an order of the Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the Government:

Provided that a Member shall not be removed from office unless he has been given an opportunity of being heard in the matter.

44. *Officers and other employees of Appellate Tribunal.*—(1) The Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

45. *Vacancies.*—If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Government shall appoint another person in accordance with the provisions of this Ordinance to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

46. *Powers of Appellate Tribunal.*—(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (Central Act 5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Ordinance, the Appellate Tribunal shall have the power to regulate its own procedure.

(3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872).

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Ordinance, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:—

- (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 examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or disposing it *ex parte*; and
- (g) any other matter which may be prescribed.

47. *Administrative powers of Chairperson of Appellate Tribunal.*—The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

48. *Right to legal representation.*— The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or advocates or any of its officers to present his or its case before the Appellate Tribunal.

Explanation.—For the purposes of this Section,—

(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 (Central Act 38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of 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 (Central Act 56 of 1980) 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 (Central Act 23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

49. *Orders passed by Appellate Tribunal to be executable as a decree.*—

(1) Every order made by the Appellate Tribunal under this Ordinance shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

50. *Appeal to High Court.*—(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court of Kerala within a period of ninety days from the date of communication of the decision or order of the Appellate Tribunal, to him, on anyone or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908):

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

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

CHAPTER VII

OFFENCES AND PENALTIES

51. *Punishment for offences under this Ordinance.*—(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten percent of the estimated cost of the real estate project, as determined by the Authority.

(2) 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 upto three years or with fine which may extend to a further ten percent of the estimated cost of the real estate project, or with both.

(3) If any promoter knowingly provides false information or contravenes the provisions of sub-sections (2) and (3) of section 3, he shall be liable to a penalty which may extend up to five percent of the estimated cost of the real estate project, as determined by the Authority.

(4) If any promoter contravenes any other provisions of this Ordinance, other than that provided under section 3, or the rules or the regulations made thereunder, he shall be liable to a penalty which may extend up to five percent of the estimated cost of the real estate project as determined by the Authority.

(5) If any real estate agent willfully fails to comply with or contravenes the provisions of section 8 or section 9, 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 percent of the cost of plot or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

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

(7) If any promoter, willfully fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, 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 ten percent of the estimated cost of the real estate project as determined by the Appellate Tribunal.

(8) If any allottee, willfully fails to comply with, or contravenes any of the orders, decisions or directions of the Authority or the Appellate Tribunal or fails to comply with the provisions of the agreement for sale executed by him for purchase of a unit including non payment of any amount or charges in respect thereof, he shall, upon the order of the Authority in that regard, be liable to pay the penalty which may extend up to ten thousand rupees or one percent of the sale price of the property, specified in such agreement whichever is higher.

52. *Offences by companies.*—(1) Where an offence under this Ordinance has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of 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 any punishment under this Ordinance if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributed to, any neglect on the part of any director, manager, secretary or other officer, he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

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

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

53. *Compounding of offences.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under section 51 of this Ordinance may, either before or after the institution of the prosecution, be compounded by the Court on such terms and conditions and on payment of such sums as may be prescribed:

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

54. *Complaints pending before authorities under the Consumer Protection Act.*—Any person whose complaint in respect of matters covered in this Ordinance 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 (Central Act 68 of 1986), on or before the commencement of this Ordinance, 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 Authority under this Ordinance.

CHAPTER VIII

FINANCE, ACCOUNTS, AUDITS AND REPORTS

55. *Grants and loans.*—The Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the Government may think fit for being utilised for the purpose of this Ordinance.

56. *Constitution of Fund.*—(1) The Government shall constitute a Fund to be called the “Real Estate Fund” and there shall be credited thereto,—

- (a) all Government grants received by the Authority;
- (b) the fees received under this Ordinance;
- (c) the interest accrued on the amounts referred to in clauses (a) to (b).

(2) The Fund shall be applied for meeting.—

(a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal;

(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Ordinance.

(3) The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

(4) The Committee appointed under sub-section (3) shall spend money out of the Fund for carrying out the objects for which the Fund has been constituted.

57. Crediting sums realised by way of penalties to Consolidated Fund.— All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, shall be credited to the Consolidated Fund of the State.

58. Budget, accounts and audit.—(1) The Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Government in consultation with the Comptroller and Auditor General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor General.

(3) The Accounts of the Authority, as certified by the Comptroller and Auditor General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Government by the Authority and the Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

59. *Annual report.*—(1) The Authority shall prepare once in every year, in such form and at such time as may be prescribed by the Government,—

(a) a description of all the activities of the Authority for the previous year;

(b) the annual accounts for the previous year; and

(c) the programmes of work for the coming year.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER IX

MISCELLANEOUS

60. *Civil Court not to have jurisdiction.*—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Appellate Tribunal is empowered by or under this Ordinance to determine.

61. *Delegation.*—The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the power to make regulations under section 64) as it may deem necessary.

62. *Power of Government to supersede Authority.*—(1) If, at any time, the Government is of the opinion,—

(a) that, on account of the circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Ordinance; or

(b) that the Authority has persistently defaulted in complying with direction given by the Government under this Ordinance or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Ordinance and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the Government may direct to exercise the powers and discharge functions under this Ordinance:

Provided that before issuing any such notification, the Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Ordinance, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the Legislative Assembly.

63. *Powers of Government to issue directions to Authority and obtain reports and returns.*—(1) Without prejudice to the foregoing provisions of this Ordinance, the Authority shall, in exercise of its powers and the performance of its functions under this Ordinance, be bound by such directions on questions of policy, as the Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) If any dispute arises between the Government and the Authority as to whether a question is or is not a question of policy, the decision of the Government thereon shall be final.

(3) The Authority shall furnish to the Government such returns or other information with respect to its activities as the Government may, from time to time require.

64. *Power of Government to make rules.*—(1) The Government may, by notification, make rules for carrying out the provisions of this Ordinance.

(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) the information and documents for application to Authority for registration under items (E) and (F) of sub-section (3) of section 3;

(b) the conditions under which registration of a promoter may be extended under section 5;

(c) the form of application for forming an association and an apex association and the manner in which they are to be constituted;

(d) the form and manner of making an application, fee and documents to be accompanied with such application under sub-section (2) of section 8;

- (e) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 8;
- (f) the validity of the period of registration and the manner of renewal and fee for renewal under sub-section (6) of section 8;
- (g) the maintenance and preservation of books of account, records and documents under clause (b) of section 9;
- (h) other functions to be discharged by the real estate agent under clause (e) of section 9;
- (i) the manner in which association and apex associations shall be formed under sub-section (1) of section 10;
- (j) the form of application for registration and the documents to accompany an application for registration of association;
- (k) the rights and duties of associations under sub-section (3) of section 10;
- (l) the rate of interest payable under section 12;
- (m) the form and particulars of agreement under sub-section (2) of section 13;
- (n) the rate of interest payable under clause (b) of section 17;
- (o) the procedure for holding inquiry to adjudicate compensation payable under sections 12, 14 and 17;
- (p) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 24;
- (q) the administrative powers of the Chairperson under section 25;

(r) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority under sub-section (2) of section 28;

(s) the details to be published and maintained on the website as under clause (b) and under clause (d) of sub-section (2) of section 31;

(t) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 32;

(u) the manner of recovery of interest, penalty and compensation under section 35;

(v) the form and manner and fee for filing of appeal under sub-section (2) of section 37;

(w) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 42;

(x) the procedure for inquiry of the charges against the Chairperson or Member of the Tribunal under sub-section (4) of section 43;

(y) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 44;

(z) any other powers of the Tribunal under clause (g) of sub-section (4) of section 46;

(za) the powers of the Chairperson of the Appellate Tribunal under section 47;

(zb) the terms and conditions and the payment of such sum of compounding of the offences under section 53;

(zc) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 58;

(zd) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 59;

(ze) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

65. *Power to make regulations.*—(1) The Authority may, by notification, make regulations, with the approval of the Government, consistent with this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

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

(a) the form and manner of making application and fee payable therewith under sub-section (1) of section 4;

(b) the fee for extension of registration under section 5;

(c) such other information and documents required under clause (d) of sub-section (1) of section 11;

(e) preparation and maintenance of other details under sub-section (6) of section 11;

(f) time, places and the procedure in regard to transaction of business at the meetings of the Authority, under sub-section (1) of section 29;

(g) standard fees to be levied by the promoter from the allottees or the association of allottees under clause (c) of sub-section (2) of section 31;

(h) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by the regulations.

66. *Laying of rules.*—Every rule made by the Government, every regulation made by the Authority and every notification issued under this Ordinance shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session, for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following the Legislative Assembly makes any modification in the rule or regulation or in the notification, as the case may be, or decides that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

67. *Members etc. to be public servants.*—The Chairperson, Members and other officers and employees of the Authority and the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of Indian Penal Code (Central Act 45 of 1860).

68. *Applications of other laws not barred.*—The provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

69. *Ordinance to have overriding effect.*—The provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

70. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Government or the Authority or any officer of the Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

71. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

P. SATHASIVAM,
GOVERNOR.