

State Legislative Brief

MAHARASHTRA

The Maharashtra Apartment Ownership (Amendment) Ordinance, 2023

Key Features

- The Ordinance adds that once redevelopment plans have been approved, all apartment owners must vacate their apartments.
- Refusal to vacate the apartment will result in eviction upon the request of the association of apartment owners.
- During the redevelopment process, the developer or association of apartment owners must provide for alternate temporary accommodation or rent.

Key Issues and Analysis

- The Ordinance requires consent from a majority of owners to redevelop a building. Other jurisdictions have a higher threshold for requiring redevelopment.
- If a building has been declared unsafe, the need to obtain consent of apartment owners for redevelopment is unclear.
- The definition of apartment includes shops and other commercial establishments. Temporary eviction for redevelopment may cause financial losses to business.

The Maharashtra Apartment Ownership (Amendment) Ordinance, 2023 amends the Maharashtra Apartment Ownership Act, 1970. The Ordinance was promulgated on October 23, 2023.

PART A: HIGHLIGHTS OF THE ORDINANCE

Context

Regulation of land-use and construction of buildings is in the Twelfth Schedule of the Constitution. This implies that the state may, by law, empower urban local bodies to implement matters related to land-use and building construction. These subjects are broadly regulated under state town and country planning laws or apartment ownership laws. The town and country planning laws typically regulate land-use and development.^{1,2} Apartment ownership laws regulate individual and shared ownership in buildings with multiple apartments (for both residential and commercial use).^{3,4} Ownership of apartments is also regulated through the state cooperative societies laws when ownership is structured as a cooperative. Approvals for construction projects are primarily given at the local and state level through development control laws, and the construction is regulated as per the building bye-laws.

Over the last few years, various states such as Gujarat, Tamil Nadu have amended their apartment ownership laws to allow for redevelopment of apartment buildings.^{3,5} Redevelopment has been necessitated primarily due to ageing buildings becoming unsafe for human habitation. Redevelopment helps improve the housing stock, and allows for use of better construction techniques leading to more efficient buildings. In some cases, the local development/ planning authority also provides for additional floor space index (FSI) which helps generate revenue from such redevelopment, therefore bringing in more incentives to redevelopment. In case of public housing or slum redevelopment projects, the local planning authority can redevelop the apartment units if they have become unsafe for habitation.

The Maharashtra Apartment Ownership Act, 1970 provides for ownership rights of apartment buildings in the state (other than co-operative housing societies). The Maharashtra Apartment Ownership (Amendment) Ordinance, 2023 was promulgated on October 23, 2023. It amends the 1970 Act to provide for eviction of apartment owners of a building that has been approved for redevelopment.

Key Features

- **Vacating apartments for redevelopment projects:** Under the Act, consent of majority of the apartment owners is required to submit a redevelopment proposal to the Town Planning Authority. The Ordinance adds that upon the approval from the Authority, all apartment owners must vacate their apartments.
- **Alternate temporary accommodation or rent:** The Association of Apartment Owners or the developer responsible for the redevelopment project must provide alternate accommodation or rent in lieu of accommodation.
- **Refusal to vacate may lead to eviction:** If an apartment owner refuses to vacate his apartment, the Association may request the Town Planning Authority to evict such apartment owner. An eviction notice must be affixed on any part of the concerned apartment/building and shall be considered sufficient intimation. The Ordinance also empowers the police to use reasonable force to enter the building/apartment to evict the apartment owner.

PART B: KEY ISSUES AND ANALYSIS

Eviction of property owners for redevelopment

The 1970 Act was amended in 2018 to provide that an apartment building can be redeveloped if a majority of apartment owners agree to it. Earlier, consent of all apartment owners was required for redeveloping a building. Redevelopment can be carried out if the building is at least 30 years old, or the Planning Authority has declared it to be in a ruinous condition or likely to fall. The Ordinance adds that once a redevelopment proposal has been approved by the Planning Authority, all apartment owners must vacate the building. They will be provided with alternate accommodation or rent in lieu of vacating their apartment. Persons refusing to vacate their apartments will be evicted by the Planning Authority, on request of the association of apartment owners or the developer. This raises a few questions.

Ordinance:
Clause 2

Appropriate threshold to allow for redevelopment and subsequent eviction

Redevelopment of a building would affect all apartment owners of that project. If consent of each owner is required, even one owner can veto redevelopment. In order to balance the rights of those who want redevelopment and those who do not, various jurisdictions require a supermajority to provide consent for redevelopment. This Ordinance requires a simple majority.

In Gujarat, consent of 75% of apartment owners is required for redevelopment, while in Tamil Nadu, consent of two-third apartment owners is required.^{3,5} Some other countries also have similar laws. For example, in Singapore, under the Land Titles (Strata) Act, 1967, for buildings less than 10 years old, proprietors owning at least 90% of the total area of all the lots must agree to the sale; for others, proprietors owning at least 80% of the lots must agree to the sale.

Need for consent if building is unsafe for human habitation

Another issue is if the building is unsafe for human habitation, why is the consent of apartment owners needed for eviction and redevelopment. In Tamil Nadu, consent of apartment owners is not needed if the building is unsafe for human habitation. Development Control Regulations in Maharashtra require that unsafe buildings will be considered a danger to public safety and must be repaired or demolished.⁶ The Tamil Nadu Apartment Ownership Act, 2022 does not require consent of apartment owners for redevelopment if the building is declared to be unsafe.

Temporary eviction may cause financial losses to commercial establishments

An apartment building could be mixed-use, that is, the same building has residential as well as commercial spaces. The Ordinance provides that apartment owners will be given either alternate temporary accommodation or rent in lieu of such accommodation when they vacate their premises. While alternate accommodation or rent could be sufficient for someone vacating their residence, it may not be sufficient for someone running a commercial establishment. Shifting a shop's locations temporarily could lead to financial losses for such establishments.

1. [The Maharashtra Regional and Town Planning Act, 1966.](#)

2. [The Karnataka Town and Country Planning Act, 1961.](#)

3. [The Gujarat Ownership Flats Act, 1973.](#)

4. [The Kerala Apartment Ownership Act, 1983.](#)

5. [Tamil Nadu Apartment Ownership Act, 2022.](#)

6. Regulation 9, [Standardised Development Control and Promotion Regulations for Municipal Councils and Nagar Panchayats in Maharashtra.](#)

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