

THE ODISHA APARTMENT OWNERSHIP (AMENDMENT)

BILL, 2015

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FURTHER TO AMEND THE ODISHA APARTMENT OWNERSHIP ACT,

1982

BE it enacted by the Legislature of the State of Odisha in the Sixty-sixth Year of the Republic of India, as follows: —

Short title.

1. This Act may be called the Odisha Apartment Ownership (Amendment) Act, 2015.

Amendment of section 2.

2. In section 2 of the Odisha Apartment Ownership Act, 1982 (hereinafter referred to as the principal Act), for the words 'buildings' and 'building' the words 'apartments and properties' and 'apartment and property' shall, respectively, be substituted.

Odisha Act
1 of 1984.

Amendment
of section 3.

3. In the principal Act, in section 3, —

(a) in clause (e), the words “multi-storied” shall be omitted;
and

(b) for clause (i), the following clause shall be substituted,
namely: —

“(i) ‘Competent Authority’ means any officer or officers not below the rank of Deputy Collector as may be appointed by the State Government for the purpose of this Act;”.

(c) after clause(p), the following clause shall be inserted,
namely: —

“(q) ‘sole owner’ or ‘all owners’ in relation to property intended to be submitted to the provisions of this Act, means who owns the land or building or both and includes successors, assignees or person, (whether designated as builder, contractor, promoter, developer or by any other name) or person acting as the holder of a power-of-attorney, who has been authorised by such owner to construct apartment or to construct or convert a building to apartment and sell all or some of the apartments to other persons;”.

Amendment
of section 5.

4. In the principal Act, in section 5, —

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2-a) Each apartment owner shall execute a deed of transfer of apartment in relation to his apartment in the manner and with such particular as may be prescribed for the purpose:

Provided that in case of first deed of transfer of apartment, the sole owner or all owners of the property, as the case may be, shall attach Occupancy Certificate as may be issued by the local authority where such certificate is required under any law for the time being in force and other documents as required under this Act and the rules made thereunder.

Explanation I.— The expression “apartment owners” includes the persons who are owners of apartment before the date of commencement of the Odisha Apartment Ownership (Amendment) Act, 2014.

Explanation II.— For the purpose of this section “Occupancy Certificate” means certificate given under the relevant law, for the time being in force, that the building is fit for occupation”.

(b) in sub-section (3), for item (ii), the following item shall be substituted, namely: —

“(ii) execute and register an instrument in such form, in such manner and within such period as may be prescribed, undertaking to become a member of the Association of Apartment Owners and to comply with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration and in the deed of apartment.”.

Insertion of
new section
5A.

5. In the principal Act, after section 5, the following section shall be inserted, namely: —

“Contents
of the deed
of transfer
of
apartment”.

5-A. (1) Every deed of transfer of apartment shall include the following particulars, namely: —

(a) description of the land as provided in section 12, the post office address of the property including page and date of executing the Declaration, the date and serial number of its registration under the Registration Act, 1908 and the date and other reference, if any, of its filing with the Competent Authority;

16 of 1908.

(b) the apartment number of the apartment in the Declaration and any other data necessary for its proper identification;

(c) statement of the use for which the apartment is intended and restrictions on its use, if any;

- (d) the percentage of undivided interest appertaining to the apartment in the common areas and facilities; and
- (e) any further details which the parties to the deed may deem desirable to set forth consistent with the Declaration and required under this Act and the rules.

(2) A true copy of every deed of transfer of apartment shall be filed in the office of the Competent Authority”.

Amendment
of section 7.

6. In the principal Act, in sub-section (3) of section 7, the comma and words, “unless the property has been withdrawn from the provisions of this Act” shall be omitted.

Amendment
of section 8.

7. In the principal Act, in section 8, after the words “the Declaration” and before the words “and failure to”, the words “or in the deed of transfer of apartment” shall be inserted.

Amendment of
section 12.

8. In the principal Act, in section 12, in sub-section (1),—

(i) for clause (a), the following clause shall be substituted, namely: —

“(a) details of the land including the right, title and interest thereon on which building are constructed or to be constructed and encumbrances, if any, over such land and whether the land is free hold or lease hold; and

(ii) after clause (j), the following clause shall be inserted, namely: —

“(j-a) an undertaking in such form as may be prescribed, for taking steps for formation of Association of Apartment Owners and transfer of his or their right, title and interest in the property within such period as specified in such undertaking ;”.

Amendment
of section 13.

9. In the principal Act, in section 13, —

(a) in sub-section(1), after the words “amendments thereto” and before the words “and all instruments”, the comma and words, “all deeds of transfer of apartment” shall be inserted and following proviso shall be inserted, namely: —

“Provided that the Competent Authority may allow such further time not exceeding one month.”.

(b) for sub-section (2), the following sub-section shall be substituted, namely: —

“(2) The Competent Authority shall, on receipt of the Declaration or an amendment thereto or a deed of transfer of apartment or an instrument referred to in sub-section(1), after holding such inquiry as he may consider necessary, examine the same to ascertain whether, —

- (a) the concerned property is governed by this Act;
- (b) the Declaration, the amendment thereto, the deed of transfer of apartment or instrument is in order;
- (c) the sole owner or all owners and the purchaser of the apartment have complied with the provisions of this Act, rules and all the requirements prescribed under the relevant laws for the time being in force,

and within thirty days from the date of receipt of the same by an order in writing giving the reasons therefor, accept or reject the Declaration, the amendment thereto, the deed of transfer of apartment or the instrument.”.

(c) in sub-section(3),—

- (i) after the words “the amendment or” and before the words “the instrument” the words “deed of transfer of apartment or” shall be inserted; and
- (ii) after the words “he shall” and before the words “return the same”, the words and comma “ with an endorsement thereon in the manner as prescribed,” shall be inserted.

(d) for sub-section (4), the following sub-section shall be substituted, namely: —

“(4) Any person aggrieved by an order of rejection may prefer an appeal, before the State Government or an officer appointed by the State Government in this behalf, within thirty days from the date of such order or within such further period

as may be allowed by the appellate authority on sufficient grounds being shown and the order of the appellate authority shall be final”.

Amendment
of section 14.

10. In the principal Act, for section 14 including the marginal heading, the following section shall be substituted, namely: —

“Powers and
functions
of the
Competent
Authority .

14.(1) Without prejudice to the powers and functions conferred under the other provisions of this Act, the Competent Authority shall have the following powers and functions, namely: —

- (a) to direct the Association of Apartment Owners to repair or replace damage property within such period as may be specified in such direction failing which the Competent Authority may undertake the said work and expenses incurred for undertaking such work shall be recovered from the Association of Apartment Owners;**
- (b) to take such action as he may deem necessary including imposition of fine not exceeding one lakh rupees in case of failure by sole owner or all owners of a property to submit Declaration or amendment thereto or deed of transfer of apartment or instruments referred to in sub-section(1) of section 13 or in case of failure by the apartment owner to comply with the bye-laws including payment of regular dues and with the covenant, condition and restriction set forth in the Declaration and the deed of transfer of apartment:**

Provided that no order shall be passed under this sub-section without giving the parties concerned reasonable opportunity of being heard; and

- (c) to exercise such other powers and functions as may be prescribed.**

(2) Any person aggrieved by an order of the Competent Authority under sub-section (1), may prefer an appeal, before the State Government or an officer appointed by the State Government in this behalf, within thirty days from the date of such order or within such further period as may be allowed by the appellate authority on sufficient grounds being shown and the order of the appellate authority shall be final.”.

Amendment
of section 15.

11. In the principal Act, in section 15, —

- (a) in sub-section (1), for the words “or to the withdrawal of the property from the provisions of the Act under section 14”, the words “or the deed of transfer of apartment” shall be substituted; and
- (b) after sub-section(2), the following sub-section shall be inserted, namely: —

“(3) The Registering Officer appointed under the Registration Act, 1908 shall refuse to register the instruments referred to in sub-section(1), if the instrument does not contain the certificate of endorsement of the Competent Authority on the body of the instrument referred to in sub-section (3) of section 13.”.

16 of 1908.

Amendment
of section 19.

12. In the principal Act, section 19 shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely: —

“(2) A sole owner or all owners, as the case may be, shall pay all taxes to the local authority on each of the apartment and the property until such owners transfer the property in accordance with the provisions of this Act and rules to the purchaser of the apartment or the Association of Apartment Owners.”.

Amendment
of section 23.

13. In the principal Act, in section 23, for sub-section (1), the following sub-sections shall be substituted, namely: —

“(1) Whoever contravenes, any of the provisions of this Act or rules or order or direction issued thereunder or any bye-law that may be framed or any covenant, condition or restriction set forth in the Declaration to which he is subject or is a party, shall, at the instance of the Manager or the Board of Managers on behalf of the Association of the Apartment Owners, or an aggrieved apartment owner or any person or in a proper case the Competent Authority, on conviction before the Judicial Magistrate First Class, be liable to a fine which may extend to one lakh rupees and in case of continuing contravention, to an additional fine which may extend to five hundred rupees for every day during which such contravention continues after the conviction.

(1-a) Chapters XII and XV of the Code of Criminal Procedure, 1973 shall, in so far as necessary, be applicable 2 of 1974. relating to the offences under this Act.”

STATEMENT OF OBJECTS AND REASONS

The Odisha Apartment, Ownership Act, 1982 (Odisha Act 1 of 1984) has been enacted with a view to making provision for ownership of an individual apartment and the matter incidental thereto since there is marked increase in number of Housing Schemes in the State. In course of administrations of the provisions of the Act over the years, it has been experienced that the provisions of the Act has not proved effective enough in safeguarding the interest of the apartment owners as well as improving administration of the apartments.

With a view to efficient management and control of apartment system, to safeguard the interest of the apartment owners, as also revenue of the Acts, it is proposed to amend the Odisha Apartment Ownership Act, 1982 to provide *interalia* that—

- (a) the competent authorities will have also control over building constructed by any organisation, individuals, company or any other entities and to see whether sole owner or all owners and the purchaser of apartment have also complied with the requirement prescribed under the relevant laws in force, before making and endorsement on the instruments referred to in sub-section (1) of section 13 of the Act for registration and shall have power for ensuring proper maintenance of the apartments by the Association of apartment owners and also to impose fine not exceeding one lakh rupees in case of failure by sole owner or all owners of a property to submit Declaration or amendment thereto or deed of apartment or failure of apartment owner to comply with the bye-laws etc;
- (b) the aggrieved person shall have opportunity to prefer appeal to the State Government or an officer appointed by the State Government;
- (c) definition of 'sole owner or all owners' as used in the Act shall include successor, assignees and also the builder, contractor, promoter, developer with any other name, so as not to escape from liability or responsibility imposed under the Act. Declaration furnished by the sole owner or all owners, as the case may be, shall contain details about the land including right, title, interest thereon and also relating to encumbrances, if any and it is also proposed that the sole owner or all owners, of the property shall pay all taxes to the local authority on each of the apartment and the property until such owner transfers the property to the purchaser or apartment or Association of apartment owners in order to protect revenue of the State;

- (d) execution of deed of apartment and furnishing Occupancy Certificate granted under relevant law certifying the building fit for occupation which will be submitted to the competent authority for its examination;
- (e) all apartment owners should furnish undertaking to become the members of the Association of Apartment Owners so as to compel them to comply with the bye-laws and conditions restriction set forth in the Declaration as also in the deed of apartment;
- (f) the registering officer shall have power to refuse to register the instrument unless such instrument contains a certificate of endorsement of the competent authority;
- (g) enhanced penalties be imposed for contravention of any of the provisions of the Act, rules, orders, directions or any bye-law made thereunder from "five thousand rupees" to "one lakh rupees" and in case of continuing contravention, additional fine which may extend to "five hundred rupees" every day instead of "fifty rupees" every day so as to make the provisions stringent.

The Bill seeks to achieve the above objectives

PUSPENDRA SINGH DEO

Member-in-Charge

ANNEXURE

[Extract from the Odisha Apartment of Ownership Act, 1982

(Odisha Act 1 of 1984)]

Application of the Act.	2. All buildings mainly used or proposed to be used for residence, office, practice of any profession or for carrying on any occupation, trade or business or for any other type of independent use shall be governed by the provisions of this Act and the sole owner or all the owners of such building shall duly execute and register a declaration setting out the particulars referred to in section 12:	
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	** ** ** **	
Definitions.	3. In this Act, unless the context otherwise requires,— (e) “building” means a multi-storied containing two or more apartments;	
	** ** ** **	
	** ** ** **	
	(f) “common areas and facilities” unless otherwise provided in the Declaration or in lawful amendments thereto, includes—	
	(i) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building.	
	** ** ** **	
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	(p) “property” means the land, the building, all improvements and structures thereon and the common areas and facilities and all easements, rights and appurtenances belong thereto and all articles of personal property intended for use in connection therewith which have been or are intended to be submitted to the provisions of this Act.	
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An apartment to be transferable and heritable.	5. (1) ** ** ** ** ** ** ** **	
	(2) An apartment, together with its undivided interest in the common areas and facilities appurtenant to such apartment shall constitute heritable and transferable immovable property within	

	<p>the meaning of any law for the time being in force and accordingly and apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings, remedies and to penalty, forfeiture and punishment as any other immovable property or may make a bequest of the same under the laws applicable to the transfer and succession of immovable property</p> <p>Provided that no apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be partitioned or subdivided for any purpose whatsoever;</p> <p>(3) Notwithstanding contained in the Transfer of Property Act, 1882 or in any other law for the time being in force, but subject to provisions of section 14 of this Act, any person,</p> <p>(a) acquiring by purchase, or</p> <p>(b) taking lease of, for a period of thirty years or more, an apartment comprised in a property shall—</p> <p>(i) in respect of the said apartment, be subject to the provision of this Act, and</p> <p>(ii) execute and register an instrument in such form, in such manner and within such period as may be prescribed, undertaking to comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration.</p>	4 of 1982.
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Common areas and facilitation.	<p>7 (1)</p> <p style="text-align: center;">** ** ** **</p> <p style="text-align: center;">** ** ** **</p> <p>(3) The common areas and facilities shall remain undivided and no apartment owner or other persons shall bring any action for partition or division of any part thereof, unless the property has been withdrawn from the provisions of this Act. Any covenant to the contrary shall be null and void.</p>	
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<p>Compliance with bye-laws covenants etc.</p>	<p>8. Each apartment owner shall strictly comply with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration and failure to comply with any of the same shall be a ground for an action to recover damages or for other relief or reliefs at the instance of the Manager or the Board of the Managers on behalf of the Association of Apartment owners of the Competent Authority, or in a proper case, by an aggrieved apartment owner.</p> <p style="text-align: center;">** ** ** **</p> <p style="text-align: center;">** ** ** **</p>	
<p>Contents of Declaration.</p>	<p>12. (1) The Declaration referred to in Section 2 shall be submitted in such form and in such manner and within such period as may be prescribed and shall contain the following particulars namely:—</p> <p style="padding-left: 40px;">(a) description of the land on which the building and the improvements are or are to be located and whether the land is free-hold or lease-hold;</p> <p style="text-align: center;">** ** ** **</p> <p style="text-align: center;">** ** ** **</p> <p style="padding-left: 40px;">(j) the method by which the Declaration may be amended consistent with the provision of this Act.</p>	
<p>A declaration of an instrument to be submitted before the Competent Authority and to be dealt with by him.</p>	<p>13. (1) All Declarations, all amendments thereto and all instruments referred to in sub-section (3) of section 5 shall in the first instance, be submitted in duplicate within fifteen days from the date of their execution to the Competent Authority alongwith copies of site plans and building plans with relevant title deeds.</p> <p style="padding-left: 40px;">(2) On receipt of the Declaration or an amendment thereto or an instrument referred to in sub-section (1) the Competent Authority shall, after holding such inquiry as he may consider necessary for the purpose, examine the Declaration, the amendment or the instrument, as the case may be, to ascertain whether—</p> <p style="padding-left: 40px;">(i) the concerned property is governed by this Act; and</p> <p style="padding-left: 40px;">(ii) the Declaration, the amendment or the instrument is in order and by an order in writing giving reasons therefor, accept or reject the Declaration, the amendment or the instrument.</p> <p style="padding-left: 40px;">(3) Where the declaration, the amendment or the instrument is accepted by the Competent Authority, he shall return the same along with all the enclosure to the owner or owners, as the case may be, for registration within fifteen days of the date of re turn.</p> <p style="padding-left: 40px;">(4) Any person who is a grieved by an order of rejection, may, within thirty days from the date of such order or within such further period as the appellate authority may allow on sufficient grounds being shown, prefer an appeal before the State Government whose order thereon shall be final.</p>	

	<p>(5) No order referred to in sub-section (3) or in sub-section (4) shall be called in question in any court of law.</p> <p style="text-align: center;">** ** ** **</p> <p style="text-align: center;">** ** ** **</p>	
<p>Suo motu action by the competent authority.</p>	<p>14. (1) Where the sole owners of a property fail to submit the declaration or the bye-laws, the competent authority shall, in the prescribed manner, take such actions he may deem necessary for submission of declaration and bye-laws by the owner or owners of the peroperty:</p> <p> Provided that no order shall be passed under this sub-section without giving the parties concerned, the reasonable opportunity of being heard.</p> <p style="text-align: center;">** ** ** **</p> <p style="text-align: center;">** ** ** **</p>	
<p>Declaration etc. to be compulsorily registrable.</p>	<p>15. (1) All instrument relating to the Declaration or any amendment thereto or to the withdrawal of the property from the provisions of this Act under section 14 and instrument referred to in sub-section (3) of section 5 and the floor plans of the building shall be deemed to be instruments compulsorily registrable within the meaning of clause (b) of sub-section (1) of section 17 of the Registration Act, 1908.</p> <p>(2) Simultaneously with the registration of the Declaration there shall be filed along with it a s et of the floor plans or the building showing the layout, location, apartment numbers and dimensions of the apartment, stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the building as field with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout, location, apartment, numbers and dimensions of the apartments as built, there shall be recorded prior to the first conveyance of any apartment, an amendment to the Declaration to which shall be attached a verified statement of an architect certifying that the plans thereto fore field, or being field simultaneously with such amendment, fully and accurately depict the layout location, apartment number and dimension of the apartment as built.</p>	<p>16 of 1908.</p>

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Separate assessment.	<p>19. Notwithstanding anything to the contrary in any other law for the time being in force, each apartment of a property (including its percentage of undivided interest in the common areas and facilities appurtenant to such apartment) shall be deemed to be a separate unit for the purpose of assessment of tax on land, Municipal rate and taxes, and for this purpose, a local authority shall make all suitable rules to carry out the provisions of this section.</p> <p style="text-align: center;">** ** ** **</p> <p style="text-align: center;">** ** ** **</p>	
Penalties.	<p>23. (1) If the owner of any apartment which is subject to the provisions of this Act, contravenes—</p> <p style="padding-left: 40px;">(a) any of provisions of section 9 or section 10;</p> <p style="padding-left: 40px;">(b) any bye-law that may be framed;</p> <p style="padding-left: 40px;">(c) any covenant, condition or restriction set forth in the Declaration to which he is subject or is a party;</p> <p>he shall, at the instance of the Manager or the Board of Managers on behalf of the Association of the Apartment owners, or an aggrieved apartment owner or in a proper case of the competent Authority, on Conviction before a Magistrate, be liable to a fine which may extend to five thousand rupees and in case of continuing contravention, to an additional fine which may extend to rupees fifty for every day during which such contravention continues after the conviction.</p>	