

Tripura Apartment Ownership Act, 1986

TRIPURA



GAZETTE

Published by Authority
EXTRAORDINARY ISSUE

Agartala, Monday, June 12, 1989 A. D.

Jyaistha 22, 1911 S. E.

PART—III—Acts of the Tripura Legislature.

Government of Tripura
Law Department

No.F.1(1)-LAW/LEG/88

Dated, Agartala, the 1989.

The following Act of the Tripura Legislative Assembly received assent of the President on 9.1.1989 and is hereby published for general information.

B. B. Senapati
Joint Secretary, Law

THE TRIPURA APARTMENT OWNERSHIP ACT, 1986

An
Act

to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property.

Whereas it is expedient to provide for the Ownership of an individual apartment and to make such apartment heritable and transferable property and to provide for matters connected therewith.

It is hereby enacted in the thirty seventh year of the Republic of India by the Legislature of Tripura as follows :

Short title ex-
tent and com-
mencement.

1. (1) This Act may be called Tripura Apartment Ownership Act, 1986.

(2) It extends to the whole of Tripura.

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

Application of
the Act.

2. This Act applies only to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to in section 12.

Provided that no property shall be submitted to the provisions of this Act, unless it is used or is proposed to be used for residential purposes.

Definitions.

3. In this Act, unless the context otherwise requires :

(a) "apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended 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 and with a direct exits to a public street, road or highway or to a common area leading to such street, road or highway ;

(b) "apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration.

(c) "Association of Apartment Owners" means the association formed in accordance with the provisions made in the bye-laws ;

(d) "Building" means a building containing four or more apartments or more than one building each containing four or more apartments comprised in the same property ;

(e) Common areas and facilities include—

(1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building.

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fireescapes and entrances and exits of the building.

(3) the basements, cellars, yards, gardens, parking areas, shopping centres, schools, garages and storage spaces.

(4) the premises for the lodging of janitors or persons employed for the management of the property.

(5) installations of common services, such as powers, lights, gas, hot and cold water, heating, refrigeration, air conditioning and sewerage.

(6) the elevators, tanks, pumps, motors, fans, compressors, pipes and ducts and in general all apparatus and installations existing for common use.

(7) such other common facilities as may be specially provided for in the Declaration.

(8) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use ;

(f) "Common expenses" means expenses of administration, maintenance, repair or replacement of the common areas and facilities and all other sums assessed against the apartment owners by Association of the Apartment owners ;

(g) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses ;

(h) "Competent authority" means such officer not below the rank of a Deputy Collector, as may be appointed by the State Government by notification in the Official Gazette.

(i) "Declaration" means the instrument by which the property is submitted to the provisions of this Act as hereinafter provided ;

(j) "Limited common areas and facilities" means those common areas and facilities which may be designated in the declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments ;

(k) "Prescribed" means prescribed by rules made under this Act.

(l) "Property" comprises the land, the building and the common areas and facilities.

4. Where a cooperative society is the owner in respect of a property or part thereof, a member of such society in legal occupation of an apartment comprised in such property or such part shall be deemed to be the owner of such apartment within the meaning of the provisions of this Act excepting those of sub-section (1) of section 5 thereof.

Members of a cooperative society where such society is the owner of a property to be the owner of the apartment of such property in his possession for a limited purpose.

An apartment to be transferable and heritable property.

5. (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

(2) An apartment together with its undivided interest in the common areas and facilities shall constitute heritable and transferable immovable property within the meaning of any Law for the time being in force ;

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.

(3) Notwithstanding anything contained in the Transfer of Property Act (4 of 1882) or in any other law for the time being in force, but subject to the provisions of section 11 of this Act, any person,

(a) acquiring by purchase or

(b) taking lease of for a period of thirty years or more, an apartment comprised in a property submitted to the provisions of this Act, shall.

(i) in respect of the said apartment, be subject to the provisions of this Act, and

(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.

Benamder of an apartment to be deemed to be the real owner there of.

6. Where an apartment is transferred to one person for a consideration paid or provided by another person for his own benefit, the transferee shall notwithstanding anything in the Transfer of property Act 1882 or in the Indian Trusts Act, 1882 or in any other law for the time being in force be deemed to be the real owner of such apartment and no court shall entertain any claim of the person, paying or providing the consideration, for title in such apartment on the ground that he did not intend to pay or provide such consideration for the benefit of the transferee and that the transferee is his benamder or on any other ground.

Common areas and facilities.

7. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered without the consent of all the apartment owners expressed in the amended declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.

(3) The common areas and facilities shall remain undivided, and no apartment owner or other person shall bring any action for partition or division of any part thereof, unless the property has been withdrawn from the provisions of this Act.

(4) Each apartment owner may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(5) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the provisions of this Act and the bye-laws thereunder.

(6) The Association of Apartment Owners shall have irrevocable right, to be exercised by the Manager of the Board of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers as the case may be, considers necessary, to have access to each apartment from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other apartments.

Compliance with bye-laws, covenants etc.

8. Each apartment owner shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration. 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 Managers on behalf of the Association of Apartment Owners, or in a proper case by an aggrieved apartment owner.

Certain work prohibited.

9. No apartment owner shall do any work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement for hereditament or shall add any material structure or excavate any additional basement or cellar.

Encumbrance against apartment,

10. During the period the property remains subject to this Act, no encumbrance of any nature shall be created against the property. During such period an encumbrance may, however, be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, in the same manner as in relation to any other separate parcel of property subject to individual ownership.

Common profits and expenses.

11. The common profits of the property shall be distributed among, and the common expenses shall be charged to the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

Contents of declaration.

12. (1) The declaration referred to in section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely :

- (a) description of the Property ;
- (b) nature of interest of the owner or owners in the property ;
- (c) existing encumbrance, if any, affecting the property ;

(d) Description of each apartment containing its location approximate areas, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification ;

(e) description of the common areas and facilities ;

(f) description of the limited common areas and facilities, if any, stating to which apartment their use is reserved ;

(g) value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purpose, including voting ;

(h) such other particulars as may be prescribed.

(2) The declaration referred to in sub-section (1) may be amended under such circumstances and in such manner as may be prescribed.

Contents of deeds of Apartments.

13. (1) Deeds of Apartments shall include the following particulars, namely :

(a) Description of the land as provided in section 12 of this Act or the post office address of the property, including in either case the liber, page and date of executing the declaration, the date and serial number of its registration under the Indian Registration Act, 1908, and the date and other reference, if any, of its filing with the competent authority.

(b) The apartment number of 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.

(e) Any further details which the parties to the Deed may deem desirable to set forth consistent with the Declaration and this Act.

(2) A true copy of every deed of Apartment shall be filed in the office of the competent authority.

A declaration or any instrument to be submitted before the competent authority and to be dealt with by him,

14. (1) Any declaration referred to in section 2 or any amendment thereto or any instrument 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 its execution, to the competent Authority along with copies of site plans, building plans with relevant title deeds.

(2) On receipt of a declaration or an amendment thereto or an instrument referred to in sub-section (1), the competent authority shall,

(a) after holding such inquiry, if any, as it may consider necessary for the purpose, examine the declaration, the amendment or the instrument as the case may be, to ascertain whether,

(i) the property concerned comes within the purview of this Act and

(ii) the Declaration, the amendment or the instrument is in order.

(b) by an order in writing reasons therefor, accept or reject the declaration, the amendment or the instrument, and

(c) in case of acceptance, immediately return the declaration, the amendment or the instrument along with all the enclosures to the owner, or, owners, as the case may be, for registration within fifteen days of the date of return.

(3) Any person, being aggrieved 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, appeal to the State Government whose order on the appeal shall be final.

(4) Any order referred to in clause (b) of sub-section (2) or in sub-section (3) shall not be called into question in any court of law.

Withdrawal from the provisions of this Act.

15. (1) All the apartment owners may withdraw a property from the provisions of this Act by an instrument executed to that effect.

(2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the apartment owners and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

(3) Any encumbrance affecting any of the apartment shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided herein.

16. (1) All instruments relating to the declaration or any amendment thereto referred to in section 12 or the withdrawal of a property from the provisions of this Act referred to in section 15 or the instrument referred to in sub-section (3) of section 5 shall be deemed to be instruments compulsorily registrable within the meaning of clause (b) of the sub-section (1) of section 17 of the Registration Act 1908 (16 of 1908).

(2) The withdrawal provided for in section 15 shall in no way bar the subsequent re-submission of the property to the provisions of this Act.

17. (1) Every property shall be administered in accordance with such bye-laws as may be framed by the competent authority with the prior approval of the State Government.

(2) The bye-laws shall provide for the following amongst other matters namely :

(a) the manner in which the Association of Apartment Owners is to be formed, the election of a Board of Managers from amongst the Apartment owners, the number of persons constituting the Board, the number of members of such Board to retire annually, the powers and duties of the Board, the honorarium if any, of the members of the Board, the method of removal from office of members of the Board the powers of the Board to engage the services of a Secretary or Manager, delegation of powers and duties to such Secretary or Manager ;

(b) method of calling meetings of the apartment owners and the number to constitute a quorum ;

(c) election of a President who shall preside over the meetings of the Board and the Association of Apartment owners ;

(d) maintenance, repair and replacement of the common areas and facilities and payments therefor ;

(e) manner of collecting share of the common expenses from the apartment owners ;

(f) any other matter considered to be necessary for the administration of the property.

18. Notwithstanding anything to the contrary contained 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 thereof) the owner of which does not own any other apartment in such property, shall be deemed to be a separate unit for the purpose of assessment of municipal rates and taxes.

19. All sums assessed by the Association of Apartment owners for the share of the common expenses chargeable to any partment shall constitute a charge on such apartment prior to all other charges, except charge, if any, on the apartment for payment of municipal rates and taxes.

Instruments of
declaration etc.
compulsorily
registrable.

Bye-laws.

Seperate
assessment.

Charge for
property of com-
mon expen-
ses.

Liability for
unpaid common
expenses.

20. Upon the sale of an apartment, the purchaser of the apartment shall be jointly and severally liable to the vendor for all unpaid assessments against the latter for his share of the common expenses up to the time of the sale.

21. (1) If the owner of any apartment subject to the provisions of this Act contravenes—

(a) any of the provisions of section 9 or section 10.

(b) any bye-laws that may be framed by the competent authority, or

(c) any covenant, condition or restriction set forth in the declaration to which he is subject or a party.

He shall, at the instance of the Manager or the Board of Managers on behalf of the Association of the Apartment Owners an aggrieved apartment owner or in a proper case, the competent authority, on conviction before a magistrate, be liable to a fine which may extend to rupees one thousand or to a term of imprisonment which may extend to rupees fifty for every day during which such contravention continues after conviction for the first such contravention.

(2) Any contravention punishable under sub-section (1) may where prosecution lies or is instituted at the instance of, or by, the Manager or the Board of Managers on behalf of the Association of the Apartment Owners, be compounded by such Association, either before or after the institution of the prosecution, on payment of for credit to its fund, such sum as it may think fit.

(3) The provisions of this section shall apply without prejudice to those of section 8, section 19, and section 20.

Insurance.

22. The Manager or Board Managers, if required by the declaration or the bye-laws or by a majority of the apartment owners, or at the request of a mortgagee having a first mortgage covering an apartment, shall have the authority to and shall obtain insurance for the property against loss or damage by fire, and such other hazards under such terms and for such amounts as shall be required, or requested. Such insurance coverage shall be written on the property in the name of such Manager or of the Board of Managers of the Association of the Apartment Owners as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provisions for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

Disposition of
property, destr-
uction or
damage.

23. If within sixty days of the date of damage or destruction to all or part of the property it is not determined by the Association of Apartment Owners to repair, re-construct or rebuild, then and in that event,

(a) the property shall be deemed to be owned in common by the apartment owners ;

(b) the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities.

(c) any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided therein,

(d) the property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out, all the respective shares of the apartment owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

Power to make
rules.

24. (1) The State Government may make rules for carrying out the purpose of this Act.

(2) Every rule made under this Act 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 not less than fourteen days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the successive session aforesaid the Legislative Assembly agree in making any modification in the rule or the Legislative Assembly agrees that the rule should not be made, the rule 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.

removal of
doubts.

25. For the removal of doubts it is hereby, declared that the provisions of Section 4 of the Transfer of Property Act, 1882 shall, in so far as they are not inconsistent with the provisions of the Act, apply to every apartment together with its undivided interest in the common areas and facilities as those provisions apply in relation to any other immovable property.

Note: "Transfer of Property" defined—"Transfer of Property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons; and "to transfer Property" is to perform such act.