



The Gujarat Ownership Flats Act, 1973

Act 13 of 1973

Keyword(s):

Flat, Promoter, Builder

DISCLAIMER: This document is being furnished to you for your information by PRS Legislative Research (PRS). The contents of this document have been obtained from sources PRS believes to be reliable. These contents have not been independently verified, and PRS makes no representation or warranty as to the accuracy, completeness or correctness. In some cases the Principal Act and/or Amendment Act may not be available. Principal Acts may or may not include subsequent amendments. For authoritative text, please contact the relevant state department concerned or refer to the latest government publication or the gazette notification. Any person using this material should take their own professional and legal advice before acting on any information contained in this document. PRS or any persons connected with it do not accept any liability arising from the use of this document. PRS or any persons connected with it shall not be in any way responsible for any loss, damage, or distress to any person on account of any action taken or not taken on the basis of this document.



The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XIV]

THURSDAY, JUNE 28, 1973/ASADHA 7, 1895

Separate paging is given to this Part in order that it may
be filed as a separate compilation.

PART IV

Acts of the Gujarat Legislature and Ordinances promulgated and Regulations made by the Governor.

The following Act of the Gujarat Legislature, having been assented to by the President on the 22nd June, 1973 is hereby published for general information.

S. S. SHAH,

Secretary to the Government of Gujarat,
Legal Department.

GUJARAT ACT NO. 13 OF 1973.

(First published, after having received the assent of the President in the '*Gujarat Government Gazette*' on the 28th June, 1973).

An Act to regulate promotion of the construction of, and the sale, management and transfer of, flats on ownership basis and to provide for the ownership of an individual apartment and to make such apartment heritable and transferable.

It is hereby enacted in the Twenty-third Year of the Republic of India as follows, namely :—

1. (1) This Act may be called the Gujarat Ownership Flats Act, 1973.
- (2) It extends to the whole of the State of Gujarat.
- (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.

Short title,
extent and
commence-
ment.

PART I.

REGULATION OF PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT
AND TRANSFER OF OWNERSHIP FLATS.

Definitions.

2. In this Part and in Part III, unless the context otherwise requires—

(a) "flat" means a separate and self-contained set of premises forming part of a building and used or intended to be used for residence, or office, or show-room, or shop or godown or garage; and includes an apartment.

Explanation.—Each set of premises shall be deemed to be separate and self-contained notwithstanding that common provision is made for sanitary, washing, bathing or other conveniences in respect of two or more sets of premises;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "promoter" means a person who constructs or causes to be constructed, a block or building of flats for the purpose of selling on ownership basis some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who constructs or causes to be constructed and the person who sells are different persons, the term includes both;

(d) "Registrar" means the Registrar as defined in the Gujarat Co-operative Societies Act, 1961, or, as the case may be, in the Companies Act, 1956; Guj. X
of
1962.
1 of
1956.

(e) conversion of a building or part thereof, into flats or apartments shall be construed as construction of a block or building of flats or, as the case may be, apartments;

(f) the expressions "apartment" and "apartment owner" shall have the meanings respectively assigned to them in Part II of this Act.

General
liabilities
of promoter.

3. (1) Notwithstanding anything contained in any other law for the time being in force, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis shall, in all transactions with persons intending to take or taking one or more flats on ownership basis, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned.

(2) A promoter, who constructs or intends to construct such block or building of flats, shall—

- (a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed, such title to the land as aforesaid having been duly certified by an attorney-at-law, or by an advocate of not less than three years standing;
- (b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any person in or over such land;
- (c) give inspection in seven days' notice or demand of the plans and specifications of the building built or to be built on the land, such plans and specifications having been approved by the competent local authority as may be required under the law for the time being in force;
- (d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided;
- (e) disclose on reasonable notice or demand, if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the building, and if the promoter is not himself the builder, disclose on such notice or demand, all agreements (and where there is no written agreement, the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the building;
- (f) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly);
- (g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken;
- (h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats;
- (i) not allow persons to enter into possession until a completion certificate, where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority);
- (j) make a full and true disclosure of all outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any);
- (k) make a full and true disclosure of such other information and documents in such manner as may be prescribed; and give on demand true

copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor.

Promoter before accepting advance payment or deposit, to enter into agreement and agreement to be registered.

4. Notwithstanding anything contained in any other law for the time being in force, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price, enter into a written agreement for sale with each of such persons who are to take or who have taken such flats, and the agreement shall be registered under the Registration Act, 1908 and such agreement shall contain the prescribed particulars; and to such agreement there shall be attached such documents or copies thereof, in respect of such matters, as may be prescribed. ^{XVI of 1908.}

Promoter to maintain separate account of sums taken as advance or deposit and to be trustee therefor and disburse them for purposes for which given.

5. The promoter shall maintain a separate account in any bank of sums taken by him, from persons intending to take or who have taken flats, as advance or deposit, including any sums so taken towards the share capital for the formation of a co-operative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes, and shall on demand in writing by an officer appointed by general or special order by the State Government for the purpose, make full and true disclosure of all transactions in respect of that account.

Responsibilities for payment of outgoings till property is transferred.

6. A promoter shall, while he is in possession, and where he collects from persons who have taken over flats or are to take over flats sums for the payment of outgoings even thereafter, pay all outgoings (including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any), until he transfers the property to the persons taking over the flats, or to the organisation of any such persons.

After plans and specifications are disclosed no alterations or additions to be made without consent of persons who have agreed to take the flats; and defects noticed within a year to be rectified.

7. (1) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make —

(i) any alterations in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person; or

(ii) any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats.

(2) Subject to sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid; and if any defect in the building or material used, or if any unauthorised change in the construction, is brought to the notice of the promoter within a period of one

year from the date of handing over possession, it shall wherever possible be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such persons shall be entitled to receive reasonable compensation for such defect or change. Where there is a dispute as regards any defect in the building or materials used, or any unauthorised change in the construction, the matter shall, within a period of two years from the date of handing over possession and on payment of such fee as may be prescribed, be referred for decision to the Housing Commissioner or to any officer not lower in rank than that of a Superintending Engineer as the State Government may by general or special order specify in this behalf. The Housing Commissioner or such officer shall after inquiry record his decision, which shall be final.

Explanation.—In this section “Housing Commissioner” means the Housing Commissioner appointed under the Gujarat Housing Board Act, 1961 or, as the case may be, the Rural Housing Commissioner appointed under the Gujarat Rural Housing Board, Act, 1972 having jurisdiction in the area in which the building is constructed.

Guj.
XX-
VIII of
1961.
Guj.
22 of
1972.

8. If—

(a) the promoter fails to give possession, in accordance with the terms of his agreement, of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or

(b) the promoter for reasons beyond his control and of his agents is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist,

Refund of amount paid with interest for failure to give possession within specified time or further time allowed.

then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies which may be available against him) to refund the amounts already received by him in respect of the flat (with simple interest at nine per cent. per annum from the date he received the sums till the date the amounts and interest thereon are refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances.

9. No promoter shall, after he executes an agreement to sell any flat, mortgage or create a charge on the flat or the land, without the previous consent of the persons who take or agree to take the flats, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 4 is registered, it shall not affect the rights and interests of such persons.

No mortgage etc. to be created without consent of parties after execution of agreement for sale.

10. (1) As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats, as a co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats

Promoter to take steps for formation of co-operative society or company.

which have not been taken, in such application for membership of a co-operative society or, as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

(2) If any property consisting of building or buildings is constructed or to be constructed and the apartment takers propose to submit the apartments to the provisions of Part II by executing Declarations and Deeds of Apartments as required by that Part, then the promoter shall inform the Registrar accordingly, and in such cases it shall not be lawful to form any co-operative society or company and each apartment owner shall be entitled to the exclusive ownership and possession of his apartment as provided in Part II.

Promoter to convey title, etc., and execute documents according to agreement.

11. A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat-takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if on period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

General liabilities of flat-taker.

12. (1) Every person who has executed an agreement to take a flat shall pay at the proper time and place the price, his proportionate share of the municipal taxes, water and electricity charges, ground rent (if any) and other public charges in accordance with his agreement with the promoter; and where a co-operative society or a company of persons taking the flats is to be constituted, co-operate in the formation of such society or company, as the case may be.

(2) Any person who has executed an agreement to take a flat and who, without reasonable excuse, fails to comply with or contravenes the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to two thousand rupees.

Manager not to cut off, withhold, curtail or reduce essential supply or service.

13. (1) No person, who is a promoter, or who is in charge of management or connected with the management of a block or building of flats whether as member of a managing committee, director, secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person cut off, withhold or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat or by any person in occupation thereof through or under him) in respect of the flat taken, or agreed to be taken, by him.

(2) The person who has taken or agreed to take the flat or the occupier may, if the manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.

(3) If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service, and that it was cut off or withheld or curtailed or reduced by the manager without just and sufficient cause, the Court shall make an order directing the manager to restore such supply or service before a date to be specified in the order.

(4) The manager who fails to restore the supply or service before the date so specified shall for each day during which the default continues thereafter, be liable upon a further direction by the Court to that effect to fine which may extend to one hundred rupees.

(5) Notwithstanding anything contained in any law for the time being in force—

(a) in the City of Ahmedabad, the Court of Small Causes of Ahmedabad,

IX of
1887.

(b) in any other area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, such Court, and

(c) elsewhere, the Court of the Civil Judge (Senior Division),

Guj.
XIX
of
1961.

shall have jurisdiction to decide any application made under sub-section (2) and no other Court shall have jurisdiction to entertain such application. No appeal shall lie from any order made on such application; but in the City of Ahmedabad, the Ahmedabad City Civil Court established under the Ahmedabad City Courts Act, 1961 and elsewhere the District Court may, for the purpose of satisfying itself that the order made was according to law, call for the case in which such order was made and the Court aforesaid or the Judge of the City Court or, as the case may be, the District Judge or any Judge to whom the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit.

(6) Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

(7) The offence under sub-section (6) shall be cognizable and shall not be triable by any Court inferior to that of a Magistrate for the City of Ahmedabad or a Magistrate of the First Class.

Explanation I.—In this section, essential supply or service includes the supply of water, electricity lights in passages and on stair-cases, and lifts and conservancy or sanitary service.

Explanation II.—For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority.

Part to be in addition to Transfer of Property Act and to over-ride contract to the contrary.

14. The provisions of this Part, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882 and shall take effect notwithstanding anything to the contrary contained in any contract.

Application of certain provisions to flats already in existence.

15. As respects flats which on the commencement of this Part have already been constructed, or converted, the provisions of sections 2, 6, 8, 9, 10, 11, 12, 13, 42, 43 and 44 shall apply subject to the following modifications, that is to say—

(a) in section 2, in clause (c), the words “who constructs or causes to be constructed” occurring at both the places shall be read as if the words “who has constructed or caused to be constructed” had been substituted;

(b) in section 8, if the date specified or agreed to has already passed at the commencement of Part I, then the promoter shall give possession within three months from such commencement; and if for any reasons beyond his control and of his agent, the promoter has been unable to give possession of the flat within three months from such commencement, he shall give possession thereof within a further period of three months if those reasons still exist; and thereafter the promoter shall be liable on demand to refund the amounts on the terms and conditions provided in the said section;

(c) in section 9, the words and figure “after the agreement referred to in section 4 is registered” shall be read as if the words “after the commencement of Part I” had been substituted;

(d) in section 10, the words “As soon as a minimum number of persons required to form a co-operative society or a company have taken flats the promoter shall within the prescribed period” shall be read as if the words “Where the minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within three months from the commencement of Part I” had been substituted;

(e) in section 11, the words and figure “in accordance with the agreement executed under section 4” shall be read as if the words “in accordance

with any agreement made in respect thereof" had been substituted, and the words "within prescribed period" shall be read as if the words "within three months from the commencement of this Part" had been substituted.

Guj. XXV-III of 1961. 16. Nothing in this Part shall apply to the Gujarat Housing Board constituted under the Gujarat Housing Board Act, 1961. Part not to apply to Gujarat Housing Board.

PART II.

PROVISIONS FOR OWNERSHIP OF APARTMENTS.

17. This Part applies only to property, the sole owner or all of the owners of which submit the same to the provisions of this Part by duly executing and registering a Declaration as hereinafter provided : Application of Part.

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

18. In this Part, unless the context otherwise requires,— Definitions.

(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 residential purposes and with a direct exit 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) "apartment number" means the number, letter, or combination thereof designating the apartment in the Declaration;

(d) "association of apartment owners" means all of the apartment owners acting as group in accordance with the bye-laws and the Declaration;

(e) "building" means a building containing five or more apartments, or two or more buildings, each containing two or more apartments, with a total of five or more apartments for all such buildings, and comprising a part of the property;

(f) "common areas and facilities" unless otherwise provided in the Declaration or lawful amendments thereto, means—

(1) the land on which the building is located;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exits of the building;

(3) the basements, cellars, yards, gardens, parking areas and storage spaces;

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

(5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigerations, air-conditioning and incinerating;

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

(7) such community and commercial facilities as may be provided for in the Declaration; and

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

(g) "common expenses" means,—

(1) all sums lawfully assessed against the apartment owners by the association of apartment owners;

(2) expenses of administration, maintenance, repair or replacement of the common areas and facilities;

(3) expenses agreed upon as common expenses by the association of apartment owners;

(4) expenses declared as common expenses by the provisions of this Part or by the Declaration or the bye-laws;

(h) "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;

(i) "competent authority" means in relation to a building constructed or to be constructed by a Housing Board, the Housing Commissioner; and in any other case, the Registrar of Co-operative Societies as defined in the Gujarat Co-operative Societies Act, 1961; Guj.
X of
1962.

(j) "Declaration" means the instrument by which the property is submitted to the provisions of this Part as hereinafter provided, and such Declaration as from time to time may be lawfully amended;

(k) "Housing Board" means the Housing Board constituted under the Gujarat Housing Board Act, 1961; Guj.
XXV
III
of
1961.

(l) "Housing Commissioner" means the Housing Commissioner appointed as such under the Gujarat Housing Board Act, 1961;

(m) "joint family" means an undivided Hindu family and in the case of other persons, a group or unit, the members of which are by custom joint in possession or residence; Guj.
XXV-
III of
1961.

(f) "limited common areas and facilities" means those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;

(o) "majority or majority of apartment owners" means the apartment owners with 51 per cent. or more of the votes in accordance with the percentages assigned in the Declaration to the apartments for voting purposes;

(p) "manager or Board of managers" means the manager or Board of managers of an association of apartment owners;

(q) "person" includes a joint family;

(r) "prescribed" means prescribed by rules made under this Act;

(s) "property" means the land, the building, all improvements and structures thereon, all owned in freehold or held on lease or as occupant under any law relating to land revenue and all easements, rights and appurtenances belonging 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 Part.

19. Each apartment, together with the undivided interest in the common areas and facilities, appurtenant to such apartment, shall, for all purposes, constitute heritable and transferable immoveable property within the meaning of any law for the time being in force in the State;

and accordingly, an 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 immoveable property, or make a bequest of the same under the laws applicable to the transfer and succession of immoveable property.

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

(2) Each apartment owner shall execute a Declaration that he submits his apartment to the provisions of this Part and a Deed of Apartment in relation to his apartment in the manner prescribed for the purpose.

21. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property: and such percentage shall reflect the limited common areas and facilities.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall have a permanent character, and shall not be altered without the consent of all of the apartment owners expressed in an amended Declaration duly executed and registered as provided in this Part. 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 any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this Part as provided in sections 29 and 37. Any covenant to the contrary shall be null and void.

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

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided herein and in the bye-laws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by its manager or Board of managers, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

Compliance with covenants, bye-laws and administrative provisions.

22. Each apartment owner shall comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed of Apartment in respect of his apartment. Failure to comply with any of the same shall be a ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the manager or Board of managers on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner.

Certain work prohibited.

23. No apartment owner shall do any work which is likely to jeopardise the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament nor shall any apartment owner add any material structure or excavate any additional basement or cellar without in every such case the unanimous consent of all the other apartment owners being first obtained.

24. (1) Subsequent to recording the Declaration as provided in this Part and while the property remains subject to this Part, no encumbrance of any nature shall thereafter arise or be created or be effective against the property. During such period encumbrances may arise or 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 and under the same conditions in every respect as encumbrances may arise or be created upon or against any other separate parcel of property subject to individual ownership :

Encumbrances against apartments; removal from encumbrances, effect of part payment.

Provided that, if during the period any encumbrance has arisen or been created against such apartment and the percentage of undivided interest in the common areas and facilities, appurtenant to such apartment, no apartment and such percentage of undivided interest shall be partitioned or sub-divided in interest :

Provided further that, no labour performed or materials furnished with the consent or at the request of an apartment owner or his agent or his contractor or sub-contractor shall be the basis for a charge or any encumbrance under the provisions of the Transfer of Property Act, 1882, against the apartment or any other property of any other apartment owner not expressly consenting to or requesting for the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. Labour performed and materials furnished for the common areas and facilities, if duly authorised by the association of apartment owners, the manager or Board of managers in accordance with this Act, the Declaration or bye-laws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for a charge or encumbrances under the Act aforesaid against each of the apartments and shall be subject to the provisions of sub-section (2).

IV of
1882.

(2) In the event of a charge or any encumbrance against two or more apartments becoming effective, the apartment owners of the separate apartments may remove their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments from the charge of encumbrance by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the percentages appearing in the Declaration. Subsequent to any such payment, discharge or other satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the charge or encumbrance so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the person having a charge or any other encumbrance from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto in respect of the charge or encumbrance not so paid, satisfied or discharged.

25. 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.

Common profits and expenses.

Contents of
Declaration.

26. (1) The Declaration shall contain the following particulars, namely :—

(a) Description of the land on which the building and improvements are or are to be located; and whether the land is freehold or leasehold.

(b) Description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed.

(c) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification.

(d) Description of the common areas and facilities.

(e) Description of the limited common areas and facilities, if any, stating to which apartments their use is reserved.

(f) 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 purposes including voting, and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the Declaration.

(g) Statement of the purposes for which the building and each of the apartments are intended and restricted as to use.

(h) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located.

(i) Provisions as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property.

(j) Any other details in connection with the property which the person executing the Declaration may deem desirable to set forth consistent with this Part.

(k) The method by which the Declaration may be amended, consistent with the provisions of this Part.

(2) A true copy of each of the Declaration and bye-laws and all amendments to the Declaration or the bye-laws shall be filed in the office of the competent authority.

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

Contents of
Deeds of
Apartments.

XVI
of
1908.

(a) Description of the land as provided in section 26 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 number under the Registration Act, 1908 and the date and other reference, if any, of its filing with the competent authority.

(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.

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

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

XVI of
1908.

28. (1) The Declaration and all amendments thereto and the Deed of Apartment in respect of each apartment and the floor plans of the buildings referred to in sub-section (2) shall all be registered under the Registration Act, 1908.

Declarations,
Deeds of
Apartments
and copies
of floor
plans to be
registered.

(2) Simultaneously with the registration of the Declaration there shall be filed along with it a set of the floor plans of the building showing the lay out, location, apartment numbers and dimensions of the apartments, 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 filed 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 filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment number and dimensions of the apartment as built.

Guj. 13
of
1973.

(3) In all registration offices a book called "Register of Declarations and Deeds of Apartments under the Gujarat Ownership Flats Act, 1973" and index relating thereto shall be kept. The book and the index shall be kept in such form and shall contain such particulars as the State Government may prescribe.

(4) It shall be the duty of every manager or Board of managers to send to the Sub-Registrar of the sub-district in which the property containing the apartment is situate, or if there is no Sub-Registrar for the area, to the Registrar of the district in which such property is situate, a certified copy of the Declaration and Deed of Apartment made in respect of every apartment contained in the building forming part of the property together with a memorandum containing such particulars as the State Government may prescribe.

(5) The Sub-Registrar or, as the case may be, the Registrar shall register the Declaration along with floor plans of the building and the Deed of Apartment in the "Register of Declarations and Deeds of Apartments under the Gujarat Ownership Flats Act, 1973" and shall also enter particulars in the index kept under sub-section (3). Any person acquiring any apartment of any apartment owner shall be deemed to have notice of the Declaration and of the Deed of Apartment as from the date of its registration under this section.

(6) Except as provided in this section, the provisions of the Registration Act, 1908, shall *mutatis mutandis* apply to the registration of such Declarations and Deeds of Apartments, and the words and expressions used in this section but not defined in this Act shall have the meanings assigned to them in the Registration Act, 1908.

Removal
from
provisions
of Part.

29. (1) All the apartment owners may remove a property from the provisions of this Part by an instrument to that effect duly executed, if the holders of all charges and other encumbrances affecting any of the apartments consent thereto or agree, in either case by instruments duly executed, that their charges or encumbrances be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

(2) Upon removal of the property from the provisions of this Part the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

Removal no
bar to sub-
sequent
resubmission
of property
to Part.

30. The removal provided for in section 29 shall in no way bar the subsequent resubmission of the property to the provisions of this Part.

Bye-laws.

31. (1) The administration of every property shall be governed by bye-laws a true copy of which shall be annexed to the Declaration. No modification of or amendment to the bye-laws shall be valid, unless it is set forth in an amendment to the Declaration, and such amendment is duly recorded, and a copy thereof is duly filed with the competent authority.

(2) The bye-laws shall provide for the following matters, namely :—

(a) The election from among the apartment owners of a Board of managers, the number of persons constituting the same, and that the terms of at least one-third of the members of such Board shall expire annually, the powers and duties of the Board; the compensation, if any, of the members of the Board; the method of removal from office of members of the Board; and whether or not the Board may engage the services of a secretary, a manager or managing agent, and specifying which of the powers and duties granted to the Board by this Part or otherwise may be delegated by the Board to either or both of them.

(b) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, shall constitute a quorum.

(c) Election of a president from among the members of the Board of managers who shall preside over the meetings of such Board and of the association of apartment owners.

(d) Election of a secretary who shall keep a minute book wherein resolutions shall be recorded.

(e) Election of a treasurer who shall keep the financial records and books of accounts.

(f) Maintenance, repair and replacement of the common areas and facilities and payments therefor.

(g) Manner of collecting from the apartment owners their share of the common expenses.

(h) Designation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities.

(i) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.

(j) Such restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners.

(k) The percentage of the votes required to amend the bye-laws.

(3) The bye-laws may also provide for the following matters, namely :—

(a) Subject to the provisions of this Part, provision for regulating transfer or partition of any apartment and percentage of undivided interest in the common areas and facilities appurtenant to such apartment, subject to such terms and conditions as may be specified in the bye-laws.

(b) Provisions enabling the Board of managers to retain certain areas of the building and lease such areas to non-residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or application thereof in reduction of their common charges for maintaining the building.

(c) Any other provisions, not inconsistent with the provisions of this Part, relating to the audit and account and administration of the property and annual and special general meetings, annual report and the like.

Waiver of use of common areas and facilities; abandonment of apartment.

32. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities, or by abandonment of his apartment.

Separate assessment.

33. Notwithstanding anything to the contrary contained in any law relating to local authorities, each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment (being an apartment submitted to the provisions of this Part) shall be deemed to be separate property for the purpose of assessment to tax on lands and buildings leviable under such law and shall be assessed and taxed accordingly; and for this purpose, a local authority shall make all suitable rules to carry out the provisions of this section. Neither the building, the property nor any of the common areas and facilities shall be deemed to be separate property for the purposes of the levy of such tax.

Charge for property of common expenses.

34. All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment prior to all other charges, except only (i) charge, if any, on the apartment for payment of Government and Municipal taxes, and (ii) all sums unpaid on a first mortgage of the apartment.

Joint and several liability of vendor, etc. for unpaid common expenses.

35. Upon the sale of an apartment, the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessment against the latter for his share of the common expenses upto the time of the sale without prejudice to the purchaser's or grantee's right to recover from the vendor the amount paid by the purchaser or grantee therefor. Any such purchaser shall be entitled to a statement from the secretary or Board of managers, setting forth the amount of the unpaid assessment against the vendor and such purchaser or grantee shall not be liable for, nor shall the apartment sold be subject to a charge for any unpaid share of common expenses against such apartment accrued prior to such sale or bequest in excess of the amount therein set forth.

36. The manager or Board of managers, if required by the Declaration or the Insurance, 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 obtain, 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.

37. 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, reconstruct or rebuild the property, then and in that event,— Disposition of property; destruction or damage.

(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 herein;

(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.

38. Without limiting the rights of any apartment owner actions may be brought by the manager or Board of managers, in either case in the discretion of the Board of managers, on behalf of two or more of the apartment owners as their respective interest may appear with respect to any cause of action relating to the common areas and facilities of more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the Declaration to receive service of process. Action.

Part to the
binding on
apartment
owners
tenants, etc.

39. (1) All apartment owners, tenants of such owners, employees of owners and tenants, or any other person that may in any manner use property or any part thereof submitted to the provisions of this Part shall be subject to this Part and to the Declaration and the bye-laws of the association of apartment owners adopted pursuant to the provisions of this Part.

(2) All agreements, decisions and determinations lawfully made by the association of apartment owners in accordance with the voting percentages established under this Part, Declaration or bye-laws, shall be deemed to be binding on all apartment owners.

Removal of
doubt.

40. For the removal of doubt it is hereby declared that the provisions of the Transfer of Property Act, 1882 shall, in so far as they are not inconsistent with the provisions of this Part, apply to every apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment as the aforesaid provisions apply in relation to any immovable property, and the provisions of this Part shall take effect notwithstanding anything to the contrary contained in any contract.

Amendments
to Guj.
XXVIII
of 1961.

41. The Gujarat Housing Board Act, 1961 shall be amended in the manner and to the extent specified in the Schedule.

Guj.
XXV
III of
1952.

PART III.

GENERAL.

Offences by
promoter.

42. Any promoter who, without reasonable excuse, fails to comply with or contravenes any provision of Part I or of any rule made under this Part shall, where no other penalty is expressly provided for, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both; and a promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section 5 shall, on conviction, be punished with imprisonment for a term which may extend to four years, or with fine, or with both.

Offences by
companies.

43. (1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business by 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 such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section—

(a) “company” means a 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.

44. (1) The State Government may, subject to the condition of previous publication, by notification in the *Official Gazette*, make rules for carrying into effect the provisions of this Act. Power to make rules.

(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) under section 3, the particulars as respects the design and the materials to be used in the construction of the building and the other information and documents to be disclosed, the manner in which disclosure shall be made and the documents of which true copies shall be given by the promoter;

(b) under section 4, the particulars to be contained in the agreement for sale and the documents or copies thereof to be attached to such agreement;

(c) under section 10, the period within which the promoter shall submit an application for registration of a co-operative society or a company;

(d) under section 11, the period within which the promoter shall execute the conveyance;

(e) any other matter which has to be, or may be, prescribed by rules.

(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(4) Any rescission or modifications so made by the State Legislature shall be published in the *Official Gazette* and shall thereupon take effect.

SCHEDULE

(See section 41)

Extent of amendment

(1) In section 2—

(a) after clause (J), the following shall be inserted, namely :—

“(1A) ‘apartment’ means an apartment within the meaning of the Gujarat Ownership Flats Act, 1973;”

Guj 13
of
1973.

(b) after clause (5), the following new clause shall be inserted, namely:—

“(5A) ‘building’ includes a building within the meaning of the Gujarat Ownership Flats Act, 1973;”

Guj 13
of
1973.

(c) in clause (14), after the words “part of a building” the words “including any apartment therein” shall be inserted.

(2) In section 25, after clause (g), the following clause shall be inserted, namely :—

“(gg) the sale of apartment in any building or buildings constructed by the Board on such terms and conditions as the Board may determine;”

(3) In section 49—

(a) for the words “Subject to any rules made by the State Government, under this Act, the Board” the words “The Board” shall be substituted;

(b) after the words “any land, building” the words “or any apartment therein” shall be inserted.

(4) In section 56, in sub-section (7), in clause (a), after item (ii), the following item shall be inserted, namely :—

“(ii-a) committed any act contrary to the provisions of the Gujarat Ownership Flats Act, 1973, or of any Declaration, Deed of Apartment or of the bye-laws made under that Act or of any rules or regulations made under such bye-laws or;”

Guj 13
of
1973.

(5) In section 74, after clause (b), the following new clause shall be inserted, namely :—

“(b-1) for the sale, lease, exchange or disposal otherwise of any land, building or any apartment therein or other property belonging to or vesting in the Board, subject to such terms and conditions and to restrictions as the Board may from time to time provide in the regulations;”