The Tamil Nadu Apartment Ownership Act, 2022.

ACT No. 44 OF 2022.

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The Tamil Nadu Apartment Ownership Act, 2022.

ACT No. 44 OF 2022.

[15th December 2022]

An Act to repeal and re-enact the Tamil Nadu Apartment Ownership Act, 1994.

Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Seventy-third Year of the Republic of India as follows:—

CHAPTER-I.

PRELIMINARY.

1. Short title, extent and commencement. - (1) This Act may be called the Tamil Nadu Apartment Ownership Act, 2022.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different areas.

2. Definitions. - In this Act, unless the context otherwise requires,—

(a) "apartment" means a separate and self-contained part of any property, including one or more rooms or enclosed spaces, located in one or more floors or any part thereof in a building, used or intended to be used for residential or any commercial purpose, whether called block, chamber, dwelling unit, flat, office, showroom, shop, premises, suite, tenement, unit or by any other name;

(b) "apartment number" means the number, letter, or combination thereof designating an apartment;

(c) "apartment owner" means the person owning an apartment and includes a person who has taken an apartment on lease for a period of not less than thirty years;

(d) "appropriate authority" means the local authority or any authority created or established under any law for the time being in force by the Central or State Government, for sanction of plan or issue of completion certificate for building;

(e) "association" means the association of apartment owners, competent to contract in its own name and formed in accordance with the bye-laws;

(f) "building" means a building containing four or more apartments comprised in a property;

(g) "bye-laws" means the bye-laws of an association made as per section 6;

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(h) “carpet area” means the net usable floor area of an apartment excluding the area covered by the external walls, areas under services shafts, verandah area and open terrace area, but includes the area covered by the internal partition walls of the apartment;

(i) “common areas and facilities” include,—

(i) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of the project;

(ii) the common basements, stilt, terraces, parks, play areas, open parking areas and common storage spaces;

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

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

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

(vi) all community facilities developed in the property;

(vii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use including limited common areas and facilities;

(j) “common expenses” means and includes,—

(i) all sums assessed against the apartment owners by the association;

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

(iii) legal expenses as may be incurred by the association for the enforcement of the claims of the society or apartment owners;

(iv) expenses resolved as common expenses by the association; and

(v) expenses declared as common expenses under this Act or the bye-laws;

(k) “common profit” means the balance of all income, rents and other revenue from the common areas and facilities remaining, after deduction of the common expenses;

(l) “competent authority” means an officer or authority notified by the Government as 'competent authority' for the purpose of this Act and may notify as many competent authorities, as they deem fit;

(m) “declaration” means a declaration made under section 4;

(n) “development” with all its grammatical variations and cognate expressions, means the development of immovable property, carrying out engineering or other operations in, on, over or

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under the land or the making of any material change in any immovable property or land and includes re-development;

(o) “federation” means the body formed by two or more societies or associations as per bye-laws;

(p) ”Form” means a Form appended to the Rule;

(q) ”Government” means the State Government;

(r) “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 owners to the exclusion of others, which may include car park space, balcony, verandah area, and open terrace area appertaining to the apartment;

(s) “local authority” means,-

(i) any municipal corporation established under any law for the time being in force; or

(ii) a municipal council constituted under the Tamil Nadu District Municipalities Act, 1920[Tamil Nadu Act V of 1920] ; or

(iii) a village panchayat constituted under the Tamil Nadu Panchayats Act, 1994 [Tamil Nadu Act 21 of 1994]:

(t) “plan” means the plan for development of any project sanctioned by the appropriate authority.

(u) “prescribed” means prescribed by rules made under this Act;

(v) “project” means the development of a building or an existing building or a part thereof;

(w) “promoter” means,-

(i) a person who builds, constructs, develops or causes to build, construct or develop a building or an existing building or a part thereof; or

(ii) a development authority or any other public body in respect of a building developed by such authority or body, on lands owned by it or placed at its disposal by the Government; or

(iii) a housing society which develops buildings for its members or in respect of the allottees of such buildings.

Explanation.— For the purposes of this clause, in cases where the person who develops a building or an existing building into an apartment and the person who sells the apartment are different persons, both of them shall be deemed to be promoters;

(x) “property” means any site area wherein projects are developed in one or multiple phases;

(y) “site area” means the area of the entire parcel of land covered under the plan;

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(z) “society” means any association existing on the date of coming into force of this Act, representing the majority of apartment owners in a property registered under the Tamil Nadu Co-operative Societies Act, 1983[Tamil Nadu Act 30 of 1983] or the Tamil Nadu Societies Registration Act, 1975[Tamil Nadu Act 27 of 1975];

(aa) “subsequent apartment owner” means any person acquiring an apartment by way of purchase or by way of lease for a period of not less than thirty years or by inheritance from an apartment owner.

3. Apartment to be heritable and transferable. - (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 a heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that no apartment or its undivided interest in the common areas and facilities shall be partitioned or sub-divided for any purpose whatsoever.

4. Declaration. - (1) The promoter or majority of apartment owners of a building, as the case may be, shall submit a declaration in such Form, as may be prescribed, in duplicate, accompanied with such fees and in such manner as may be prescribed, to the competent authority within ninety days from the date of issue of the completion certificate of the building by the appropriate authority: Provided that in respect of every building in existence on the date of commencement of this Act, the Form shall be submitted within one hundred and eighty days from that date.

(2) On receipt of a declaration under sub-section (1), the competent authority may hold such inquiry, as deemed necessary, to ascertain whether —

(i) the property comes within the purview of the Act; and

(ii) the declaration, is in order.

(3) The competent authority, on being satisfied that the declaration is in order, shall make an endorsement on the body of the declaration, testifying the fact of acceptance of the declaration, put its dated signature, and set its seal and return it back to the declarant and retain a copy of the same for record.

(4) If the competent authority were to find on examination that the declaration does not conform to the requirements of this Act or the rules made thereunder, it shall return the

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declaration, indicating the defects to be rectified, with direction to resubmit the same within a period of thirty days.

5. Amendment of declaration. - (1) The declaration as accepted under sub-section (3) of section 4 or under sub-section (1) of section 10 shall be amended,— Amendment of declaration.

(i) if there is any bona fide mistake in the declaration; or

(ii) subsequent to the acceptance of the declaration, if there is any alteration in the description or nature of the property or any part thereof to which such declaration relates; or

(iii) consequent on re-development of the project under section 13.

(2) An application for amendment of declaration shall, be submitted within such time, in such Form and manner, together with such fee as may be prescribed, to the competent authority. The provisions of sub-sections (2), (3) and (4) of section 4 shall apply to such application.

6. Bye-laws. - (1) Every project shall be administered and governed in accordance with the bye-laws of the association. Bye-laws.

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

(i) the manner in which the association is to be formed, the election of a board of managers from among the apartment owners, the number of persons constituting the board, the number of members of the 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;

(ii) meetings of the apartment owners and the number to constitute quorum;

(iii) election of a president who shall preside over the meetings of the board and of the association;

(iv) maintenance of the common areas and repair and replacement of the common facilities and payment thereof;

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

(vi) the manner in which a federation is to be formed, in cases, where its formation is necessary; or

(vii) any other matter necessary for the administration of the property.

(3) As soon as may be, after the acceptance of the declaration under sub-section (3) of section 4, the majority of apartment owners shall make the bye-laws as per sub-section (2) and submit the same to the competent authority, who shall register it.

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7. Formation of association of apartment owners. – On registration of the bye-laws with the competent authority, the apartment owners shall form an association of the apartment owners for a building as per the bye laws:

Provided that in respect of buildings in existence on the date of commencement of this Act, wherein there is a single association for a building, such association shall be deemed to be the association of that building under this Act.

8. Common areas and facilities. – (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in proportion to the carpet area of his apartment to that of the total carpet area of the project. The undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, or partitioned or divided under any circumstance and shall be deemed to be conveyed or encumbered with the apartment.

(2) Each apartment owner shall use the common areas and facilities for the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other apartment owners.

(3) 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 bye-laws.

9. Compliance with bye-laws. – (1) Each apartment owner shall comply with the conditions and restrictions set forth in the bye-laws.

(2) Where any apartment owner fails to comply with any of the bye-laws referred to in sub-section (1), such failure shall be a ground for an action against such apartment owner, to recover sums due, for damages or injunctive relief or both, maintainable by the association or by the aggrieved apartment owner.

(3) Notwithstanding anything contained in the Transfer of Property Act, 1882[Central Act IV of 1882], or in any other law for the time being in force, a subsequent apartment owner shall be bound by the declaration and the bye-laws.

10. Formation of federation. – (1) In the case of a property, comprising of more than one project, having two or more societies or associations, such societies and associations shall form a federation for the purpose of maintaining and managing the common areas and facilities

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which are commonly enjoyed and availed by all the apartment owners in that property as per the bye-laws. The common areas and facilities declared by each such society or association shall be deemed to be the collective common areas and facilities of the federation and the federation shall submit a declaration to the competent authority in such Form, as may be prescribed, in duplicate, accompanied by such fees and in such manner as may be prescribed.

(2) On receipt of a declaration under sub-section (1), the competent authority may hold such inquiry, as deemed necessary to ascertain whether the declaration of the federation has been made as per the bye-laws and is in order.

(3) The competent authority, on being satisfied that the declaration is in order, shall make an endorsement on the body of the declaration of the federation, testifying the fact of acceptance of the declaration, put its signature and set its seal and return it back to the Federation and retain a copy of the same for record.

(4) If the competent authority were to find on examination that the declaration of the federation, does not conform to the requirements of the Act or the rules made thereunder, or not formed as per the bye-laws, it shall return the declaration indicating the defects to be rectified, with directions to resubmit the same within a period of thirty days.

11. Appeal. – An appeal against an order of the competent authority under sub-section (4) of section 4, sub-section (2) of section 5 and sub-section (4) of section 10, shall lie to such appellate authority, as the Government may, by notification appoint, within a period of thirty days from the date of receipt of the order. The Government may appoint as many appellate authorities as they deem fit:

Provided that the appellate authority may admit an appeal preferred after the said period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

12. Collective common areas and facilities of Federation. – Collective common areas and facilities of a Federation shall remain undivided and be available for the common use of the members of all the societies or associations concerned.

13. Re-development. – Notwithstanding anything contained in this Act, re-development of a project may be carried out on such terms and conditions, as may be prescribed,-

(a) with the consent of not less than two-thirds of the apartment owners of the project; or

(b) if the appropriate authority has certified that the building is in ruinous condition, or in a such a state that it may endanger the lives of the occupants or any other person.

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14. Insurance. – Without prejudice to the right of each apartment owner to insure his apartment, the association shall, if so required by a majority of apartment owners, insure the building against fire, flood, cyclone or such other hazards, under such terms and for such amounts as may be required. The policy of the insurance of the property shall be written in the name of the association, as trustee for each of the apartment owner in the percentage specified in the declaration and the premium payable under such policy of insurance shall be a common expense.

15. Disposition of property on destruction or damage. – If, within sixty days from the date of damage or destruction to all or any part of a property, it is not determined by the association to repair, reconstruct or rebuild, 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, shall appertain to each apartment owner in the percentage of the undivided interest previously owned by such owner in the common areas and facilities ; and

(c) 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. Action by association on behalf of apartment owners. – Without limiting the rights of any apartment owner, action may be brought by the association on behalf of any apartment owner as his respective interest may appear, with respect to any cause of action relating to the common areas and facilities.

17. Right of association to maintain, repair and replace common areas and facilities, etc. – The association shall have right of 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.

18. Common profits and expenses. – (1) The common profits of a 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.

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(2) Every apartment owner shall, notwithstanding his waiver of the use or enjoyment of any of the common areas and facilities, be liable to be charged to the common expenses under sub-section (1).

(3) Where the apartment owner is not in occupation of the apartment owned by him, the common expenses payable by such apartment owner may be recovered from the person in the occupation of the apartment.

(4) The apartment owner shall be liable to pay interest, at such rate as may be prescribed for the delay in payment of charges under sub-section (1).

19. Common expenses to be charged on property. – All sums assessed by the association as the share of the common expenses chargeable to any apartment shall, constitute a charge on such apartment, subject to the prior claim, if any,-

(i) of the Government in respect of land revenue or any money recoverable as land revenue;

(ii) of any local authority in respect of tax or other assessment; and

(iii) of the mortgage, in respect of all sums unpaid.

20. Separate assessment. – Notwithstanding anything to the contrary contained in any law for the time being in force,-

(a) each apartment and its percentage of undivided interest in the common areas and facilities shall be deemed to be a separate property for the purpose of assessment of tax on land and building leviable under such law and shall be assessed and taxed accordingly; and

(b) the building, or the property or any of the common areas and facilities thereto, shall not be assessed to any such tax separately.

21. Accounts. – (1) Every association or federation, as the case may be, shall keep proper books of accounts and prepare a receipts and expenditure account and a balance-sheet at the end of every financial year and shall cause them to be audited within three months therefrom, by an auditor to be appointed by the association or federation, as the case may be, in the manner as may be prescribed. Accounts.

(2) Every association or federation, as the case may be, shall within such period as may be prescribed, file with the competent authority—

(i) an authenticated copy of such receipts and expenditure account, balance sheet and the auditor's report thereon; and

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(ii) a statement of the names, addresses and occupations of the members of the association or federation, as the case may be, during the relevant financial year.

(3) The competent authority shall have the power to issue directions to the association or federation, from time to time, with reference to the accounts and the auditor's report, so filed and such direction shall be binding upon the association or federation, as the case may be.

22. Joint and several liability of vendor, etc., for unpaid common expenses. – Where any apartment has been sold or otherwise transferred, the purchaser or the transferee, as the case may be, of the apartment shall be jointly and severally liable with the vendor or the transferor for all unpaid assessments against the latter towards his share of the common expenses upto the time of sale or transfer without prejudice to the purchaser's or transferee's right to recover from the vendor or transferor, the amount, if any paid by the purchaser or transferee therefor. Any such purchaser or transferee shall be entitled to a statement from the association setting forth the amount of the unpaid assessment against the vendor or transferor and such purchaser or transferee shall not be liable for, nor shall the apartment sold or transferred, be subject to a charge for any unpaid share of common expenses against such apartment accrued prior to such sale or transfer in excess of the amount setforth in such statement.

23. Act to be binding on apartment owners, tenants, etc. – (1) All apartment owners, tenant of such owners, employees of apartment owners or tenants or any other person who may, in any manner, use the property or any part thereof to which this Act applies, shall be subject to the provisions of this Act, the bye-laws and the rules made thereunder.

(2) All agreements, decisions and determinations made by the society or the association, as the case may be, in accordance with the provisions of this Act or the bye-laws shall be deemed to be binding on all apartment owners.

24. Penalty. – (1) Whoever contravenes, any of the provisions of this Act, rules, orders or directions issued thereunder or bye-laws shall, at the instance of the association or an apartment owner or any person or the competent authority, on conviction 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.

(2) The provisions of this section shall apply without prejudice to the provisions contained in sections 9, 19 and 22.

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25. Control and supersession. – (1) If the board of managers of an association fail to perform their functions under this Act or the bye-laws, on receipt of a complaint from the association, or an apartment owner, in such manner, as may be prescribed, the competent authority may give such direction, as it deems fit.

(2) If the competent authority is of the opinion that the functioning of any manager or the board of managers of any association is detrimental to the interest of the association or of the apartment owners or is against the public interest, the competent authority may give a notice to the manager or the board of managers, to show cause, as to why he should not be removed or, the board not be superseded, as the case may be. If the reply of the manager or the board of managers is not considered satisfactory, the competent authority may, by order remove the manager or supersede the board of managers, as the case may be, and appoint any member from amongst the members of that association or any other person as administrator to perform the functions of the board of managers, for a period not exceeding six months:

Provided that the competent authority may, if it considers necessary so as to do, by order extend the said period for a further period, not exceeding six months at a time, so, however, that the aggregate period shall not exceed three years.

26. Act to override other laws. – (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority.

(2) Save as otherwise provided in sub-section (1), the provisions of this Act, shall be in addition to, and not in derogation of, any other law for the time being in force.

27. Removal of doubts. – For the removal of doubts it is hereby declared that the provisions of the Transfer of Property Act, 1882[Central Act IV of 1882] shall, in so far as they are not inconsistent with the provisions of this Act, apply to every apartment together with its undivided interest in the common areas and facilities of such apartment as those provisions apply in relation to any immovable property and the provisions of this Act shall take effect notwithstanding anything to the contrary contained in any contract.

28. Power to remove difficulties. – If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette,

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make such provisions not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

29. Power to exempt. – The Government, may, by order, exempt any building or class of buildings from all or any of the provisions of this Act or from any rules made thereunder, subject to such conditions, as may be prescribed.

30. Power to make rules. – (1) The Government may make rules for carrying out the purposes of this Act. Power to make rules.

(2) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette, and, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are so published.

(3) Every rule made or notification or order issued under this Act shall, as soon as possible, after it is made or issued, be placed on the table of the Legislative Assembly, and if, before the expiry of the session in which it is so placed or the next session, the Assembly makes any modification in any such rule or notification or order, or the Assembly decides that the rule or notification or order should not be made or issued, the rule or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

31. Repeal and savings. – (1) The Tamil Nadu Apartment Ownership Act, 1994 (hereinafter referred to in this section as the said Act) is hereby repealed.

(2) Notwithstanding such repeal, any act or anything done under the said Act shall be deemed to have been done under this Act and may be continued and completed under the corresponding provisions of this Act.

(3) Notwithstanding anything contained in this Act, rules, orders, notifications, bye-laws or any other order made or issued before the commencement of this Act and in force on the date of such commencement providing for or relating to any of the matters for the furtherance of which this Act is enacted shall continue to be in force and effective as if they are made under

the corresponding provisions of this Act unless and until superseded by anything done or any action taken under this Act.

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