

**The
Uttar Pradesh
APARTMENT (Promotion
of Construction Ownership
and Maintenance)
(AMENDMENT) ACT, 2016**

(Diglot Edition)

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Dated Lucknow, September 19, 2016

In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Apartment (Nirman, Swamitwa Aur Anurakshan Ka Samvardhan) (Sanshodhan) Adhiniyam, 2016 (Uttar Pradesh Adhiniyam Sankhua 30 of 2016) as passed by the Uttar Pradesh Legislature and assented to by the Governor on September 16, 2016.

**The
Uttar Pradesh
APARTMENT (Promotion of
Construction Ownership and
Maintenance) (AMENDMENT) ACT,
2016¹
(U.P. Act No. 30 of 2016)**

As passed by the Uttar Pradesh Legislature to amend the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010.

1. Short title and commencement.- (1) This Act may be called the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) (Amendment) Act, 2016.

(2) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

2. Amendment of Section 2 of U.P. Act no. 16 of 2010.- For Section 2 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, hereinafter referred to as the principal Act, the following section shall be substituted, namely :-

"2-The provisions of this Act shall apply to all buildings having four or more apartments in any building constructed or converted into apartment and land attached to the apartment, whether freehold or held on lease excluding shopping malls, multiplexes and commercial complexes which are maintained as single unit by the promoter or the maintenance agency."

1. Published in U.P. Gazette, Part-1 Clause (a) dated 19.09.2016.

3. Amendment of Section 3.- In Section-3 of the Principal Act,-

(a) for clause (b) the following clause shall be substituted, namely :-

"(b) 'Apartment' means a part of any property, intended for any type of independent use, including enclosed spaces located on one or more floors or any part of parts thereof, in a building to be used for residential or official purposes or for the purpose of practicing any profession, or for carrying on any occupation, trade or business (excluding shopping malls, multiplexes and commercial complexes which are maintained as single unit by the promoter or the maintenance agency) or for such other use as may be prescribed, and with a direct exit to a public street, road or to a common area leading to such street, road and includes any parking space or room (whether or not adjacent to the building in which such apartment is located) provided by the promoter for use by the owner of such apartment for parking or, as the case may be, for the residence of any domestic aide employed in such apartment."

(b) In clause (i).

(i) for sub-clause (ii) the following sub-clause shall be substituted, namely :-

"(ii) the foundations columns, girders, beams, supports, main walls, roofs/terraces and halls of common use, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;"

(ii) for sub-clause (iii) the following sub-clause shall be substituted, namely :-

"(iii) the basements (areas of common use only), cellars, yards, parks, gardens, community centers and common parking areas; "

(iii) for sub-clause (vii) the following sub-clause shall be substituted, namely :-

"(vii) such other common areas and community facilities as may be specified in the bye-laws; and"

(c) after clause (t) the following clause shall be inserted, namely :-

"(tt) 'Multiplex' means a movie theater complex with multiple screens, shopping area, food court and ancillary services within a single building constructed on a land area admeasuring 4000 sqm. or more."

(d) after clause (x) the following clause shall be inserted, namely :-

"(y) 'Shopping Mall' means a large enclosed shopping area or complex constructed on a land area admeasuring 4000 sqm. or more having independent retail stores, food court and ancillary services."

4. Amendment of Section 4.- In Section 4 of the principal Act,

S.5] U.P. Apartment (Promotion....Maintenance) (Amendment) Act, 2016 3

(a) in sub-section (1) after clause (d) the following clause shall be inserted, namely:-

"(dd) build-up area and common area of an apartment."

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

"(4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the purchaser to whom allotment letter in respect of an apartment is issued, the promoter may make such additions or alterations except any change in the location and character of parks and green areas earmarked in the originally approved plan as may be necessary due to architectural and structural reasons duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the said purchaser :

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without obtaining the permission of the prescribed sanctioning authority :

Provided further that after completion fully or partially of a project or of a particular phase of a project, the promoter shall not make any alterations in any building or common areas and facilities in respect of which completion certificate has been issued."

(c) in sub-section (5) for the words "within the period of two years from the date of sale agreement" the words "within the period specified for completion of the project in the development permit or the building permit as the case may be" shall be substituted.

(d) in sub-section (6) for the existing proviso the following proviso shall be substituted, namely :-

"Provided that handing over of physical possession of the common areas and facilities under this sub-section shall be completed within a period of one year from the date of issue of completion certificate or the date by which sixty percent of the apartments have been handed over to the owners, whichever is earlier, subject to the condition that the promoter shall be responsible for the sale and transfer of the balance apartment."

5. Amendment of Section 7.- In Section-7 of the principal Act, for the proviso the following proviso shall be substituted, namely :-

"Provided that where the allotment, sale or other transfer of any apartment has been made by any group housing co-operative society or association in favour of any member thereof, the transferability of such apartment and all other matters shall be regulated by the law, which may provide a transfer fee at a maximum rate of one percent in any case of the sale value, applicable to such group housing co-operative society or association whosoever maintains the common areas and facilities. The transfer fee shall not be leviable in case of heritability."

6. Amendment of Section 12.- In Section 12 of the principal Act, in

S.8] U.P. Apartment (Promotion....Maintenance) (Amendment) Act, 2016 4
sub-section (1) the following provisos shall be inserted after clause (h), namely:-

"Provided that such declaration shall not be required for the buildings completed prior to commencement of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) (Amendment) Act, 2016.

Provided further that the amended declaration shall not be required to be filed every time whenever a plan is amended or revised after obtaining the permission of the prescribed sanctioning authority but, the final declaration shall be filed at the time of applying for completion fully or partially of the project as the case may be."

7- Amendment of Section 13.- For Section 13 of the principal Act the following Section shall be substituted, namely :-

"13- No promoter or apartment owner shall transfer or hand over the possession of any apartment constructed after the commencement of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 without executing an appropriate transfer deed and also getting it registered under the provisions of the Registration Act, 1908."

8. Amendment of Section 14.- In Section 14 of the principal Act,

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

"(2) It shall be the joint responsibility of the promoter and the apartment owners to form an Association. the promoter shall get the Association registered when such numbers of apartments have been handed over to the owners which are necessary to form an association or sixty percent of apartments, whichever is more, by way of sale, transfer or possession provided the building has been completed along with all infrastructure services and completion certificate obtained from the concerned local authority :

Provided that in case of an independent area or an independent commercial area the promoter may form a separate Association for its management, if required."

(b) In sub-section (5) after the existing proviso the following proviso shall be inserted, namely :-

"Provided further that the amount collected by the promoter towards interest-free maintenance security shall also be transferred to the Association at the time of handing over of the common areas and facilities."

STATEMENT OF OBJECTS AND REASONS

With a view to removing difficulties being faced by the promoters and the apartment owners, it has been decided to amend the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 mainly to provide for :-

- (a) defining the expressions "multiplex" and "shopping mall" ;
- (b) clarifying the distinction among "common areas and facilities", "limited common areas and facilities" and "independent areas" especially with reference to garage, parking space, basements, roofs/terraces and halls ;
- (c) removing ambiguity in the connotation of "intending purchaser", "allotee" and the "apartment owner" ;
- (d) removing the difficulties arising on account of rights and obligations of the promoter to revise or amend the plans ;
- (e) prescribing minimum numbers of apart owners to form the association ;
- (f) prescribing timelines for handing over of possession of common areas and facilities to the association by the promoter ;
- (g) resolving the ambiguity in filing of declaration for the buildings completed prior to commencement of this Act and enabling filing of declaration at the time of part or full completion of the project ;
- (h) regulating the transfer fee of an apartment in case of transferability of such apartment ;
- (i) making it compulsory to transfer the amount collected by the promoter towards interest free maintenance security to the Association at the time of handing over of the common areas and facilities.

The Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) (Amendment) Bill, 2016 is introduced accordingly.

By order,
Rang Nath Pandey,
Pramukh Sachiv.

PERSONAL NOTES
