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## GOVERNMENT OF WEST BENGAL

### LEGISLATIVE DEPARTMENT

## West Bengal Act XL of 1974

### THE WEST BENGAL APARTMENT OWNERSHIP (AMENDMENT) ACT, 1974.

*[Passed by the West Bengal Legislature.]*

*[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 1st October, 1974.]*

[1st October, 1974.]

*An Act to amend the West Bengal Apartment Ownership Act, 1972.*

West Ben. Act  
XVI of 1972.

WHEREAS it is expedient to amend the West Bengal Apartment Ownership Act, 1972, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Twenty-fifth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

|   |  |
|---|--|
| 1. This Act may be called the West Bengal Apartment Ownership (Amendment) Act, 1974.  | Short title.   |
| 2. In section 2 of the West Bengal Apartment Ownership Act, 1972 (hereinafter referred to as the said Act), in the proviso, for the word "actually", the word "mainly" shall be substituted.  | Amendment of section 2 of West Ben. Act XVI of 1972. |
| 3. In section 3 of the said Act,—   | Amendment of section 3.                              |
| (1) in clause (c), after the words "four or more apartments", the words "or more than one building each containing four or more apartments comprised in the same property" shall be added,  |  |
| (2) in sub-clause (3) of clause (d), after the words "gardens, parking areas", the words ", shopping centres, schools, garages" shall be inserted, and  |  |
| (3) after clause (i), the following clause shall be inserted, namely:—  |  |
| '(ia) "owner", in relation to a property or part thereof or an apartment, includes, for the purposes of this Act excepting the provisions of sub-section (1) of section 4 thereof, a lessee of such property or part or of such apartment, where the lease is for a period of thirty years or more; |  |

(Sections 4-6.)

Insertion of  
new section  
3A.

4. After section 3 of the said Act, the following section shall be inserted, namely:—

“Member of a Co-operative Society, where such society is the owner of a property, to be the owner of the apartment of such property in his possession for a limited purpose.

3A. Where a Co-Operative Society is the owner in respect of a property or part thereof, a member of such society in legal occupation of an apartment comprised in such property or such part shall be deemed to be the owner of such apartment within the meaning of the provisions of this Act excepting those of sub-section (I) of section 4 thereof.”.

Amendment of  
section 4

5. After sub-section (2) of section 4 of the said Act, the following sub-section shall be inserted, namely:—

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

- (a) acquiring by purchase, or
- (b) taking lease of, for a period of thirty years or more, an apartment comprised in a property submitted to the provisions of this Act, shall,—
  - (i) in respect of the said apartment, be subject to the provisions of this Act, and
  - (ii) execute and register an instrument in such form, in such manner and within such period as may be prescribed, undertaking to comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration.”.

Insertion of  
new section  
4A.

6. After section 4 of the said Act, the following section shall be inserted, namely:—

“*Benamdar* of an apartment to be deemed to be the real owner thereof.

4A. Where an apartment is transferred to one person for a consideration paid or provided by another person for his own benefit, the transferee shall, notwithstanding anything in the Transfer of Property Act, 1882, or in the Indian Trusts Act, 1882, or in any other law for the time being in force, be deemed to be the real owner of such apartment, and no Court shall entertain any claim of the person, paying or providing the consideration, for title in such apartment on the ground that he did not intend to pay or provide such consideration for the benefit of the transferee and that the transferee is his *benamdar*, or on any other ground.”.

4 of 1882.

2 of 1882.

*(Sections 7, 8.)*

**7.** After section 10 of the said Act, the following section shall be inserted, namely:—

“A Declaration or an instrument to be submitted before the competent authority and to be dealt with by him.

**10A. (I)** Any Declaration referred to in section 2 or any amendment thereto or any instrument referred to in sub-section (3) of section 4, shall, in the first instance, be submitted, in duplicate, within fifteen days from the date of its execution, to the competent authority along with copies of site plans, building plans and relevant title deeds.

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

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

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

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

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

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

(3) Any person, being aggrieved by an order of rejection, may, within thirty days from the date of such order or within such further period as the appellate authority may allow on sufficient grounds being shown, appeal to the State Government whose order on the appeal shall be final.

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

**8.** In sub-section (1) of section 12 of the said Act, after the words “referred to in section 11”, the words “or the instrument referred to in sub-section (3) of section 4” shall be inserted.

Insertion of new section 10A.

Amendment of section 12.

*(Sections 9, 10.)*

Substitution of  
new section  
for section 14.

**9.** For section 14 of the said Act, the following section shall be substituted, namely:—

“Separate assessment. (14) Notwithstanding anything to the contrary in any other law for the time being in force, each apartment (of a property including its percentage of undivided interest in the common areas and facilities thereof) the owner of which does not own any other apartment in such property, shall be deemed to be a separate unit for the purpose of assessment of Municipal rates and taxes.

Insertion of  
new section  
16A.

**10.** After section 16 of the said Act, the following section shall be inserted, namely:—

“Penalty. 16A. (1) If the owner of any apartment subject to the provisions of this Act, contravenes—  
(a) any of the provisions of section 7 or section 8,  
(b) any bye-law that may be framed by the competent authority, or  
(c) any covenant, condition or restriction set forth in the Declaration to which he is subject or a party, he shall, at the instance of the Manager or the Board of Managers on behalf of the Association of the Apartment Owners, an aggrieved apartment owner or, in a proper case, the competent authority, on conviction before a Magistrate, be liable to a fine which may extend to rupees one thousand or to a term of imprisonment which may extend to six months or to both, and in case of continuing contravention, to additional fine which may extend to rupees fifty for everyday during which such contravention continues after conviction for the first such contravention.

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

(3) The provisions of this section shall apply without prejudice to those of section 6, section 15 and section 16.”.