

Government of West Bengal

LAW DEPARTMENT

Legislative

West Bengal Act XX of 1993

**The West Bengal Building (Regulation of Promotion
of Construction and Transfer by Promoters)
Act, 1993.**

As modified up to the 15th November, 1995.

STATEMENT OF REPEALS AND AMENDMENTS

REPEALED

Nil.

AMENDED

West Ben. Act XLVIII of 1994.

In reprinting this Act—

- (1) amendment has been incorporated in their proper places with explanatory foot-notes, and
- (2) some foot-notes have been added for convenience of reference.

GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT
Legislative

West Bengal Act XX of 1993¹

**THE WEST BENGAL BUILDING (REGULATION
OF PROMOTION OF CONSTRUCTION AND
TRANSFER BY PROMOTERS) ACT, 1993.²**

[9th March, 1994.]

An Act to provide for the regulation of promotion of construction and transfer of building by promoters in West Bengal.

WHEREAS it is expedient in the public interest to provide for the regulation of promotion of construction and transfer of building by promoters in West Bengal;

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

1. (1) This Act may be called the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.

(2) It extends to the whole of West Bengal.

(3) It shall come into force in such areas, and on such date or 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.

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

(a) "apartment" means an apartment as defined in the West Bengal Apartment Ownership Act, 1972;

(b) "block" means a block of flats;

(c) "building" includes a flat or block;

(d) "contractor" means any person who undertakes a contract for construction of any building;

(e) "flat" means a separate residential unit, whether self-contained or not, used or intended to be used for any of the purposes referred to in sub-clauses (a) to (i) of clauses (2) of section 390 of the Calcutta Municipal Corporation Act, 1980, and includes an apartment;

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

Definitions.

West Ben.
Act XVI of
1972.

West Ben.
Act LIX of
1980.

¹ For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 11th June, 1992, Part IV/92/SAR-13; the Bill was referred to the Select Committee on the 25th June, 1992 and the report of the Select Committee was presented to the Assembly on the 27th November, 1992; for the proceedings of the Assembly, see the proceedings of the meeting of the Assembly held on the 15th March, 1993.

² This Act was brought into force with effect from the 9th August, 1995, vide notification No. 322-HIV/IR-2/93, dated the 9th August, 1995, published in the *Calcutta Gazette, Extraordinary*, Part I/95/SAR-320 of the 9th August, 1995.

(Section 3.)

- (g) "promoter" means a person who constructs or causes to be constructed a building on a plot of land for the purpose of transfer of such building by sale, gift or otherwise to any other person or to a company, co-operative society or association of persons, and includes—
- (i) his assignee, if any,
 - (ii) the person who constructs, and the person who transfers by sale, gift or otherwise, the building, if the two are different persons,
- [* * * * *]
- (v) any board, company, corporation, firm, or other association of persons, established by or under any law for the time being in force;
- (h) "purchase" means any person who, under section 7, enters into an agreement with the promoter for the purchase of a flat;
- (i) "Registrar" means the Registrar as defined in the West Bengal Co-operative Societies Act, 1980;
- (j) the expression "to construct a building" with its grammatical variation means—
- (i) to construct a new building, or
 - (ii) to re-construct a building, or
 - (iii) to convert a building, or any part of a building, not being a flat or block, into a flat or block.

West Ben.
Act XLV of
1983.

Registration
and
permission
for
construction.

3. (1) Every promoter who constructs or intends to construct in any area in which this Act comes into force a building for the purpose of transfer of such building by sale, gift or otherwise, shall at least ninety days before the commencement of the construction of such building in such area, make an application to such officer of the State Government (hereinafter referred to as the authorised officer) as the State Government may appoint, for registration of his name and for permission for construction of such building. The application shall be in such form, and shall be accompanied by such fee, as may be prescribed:

Provided that notwithstanding anything contained in this Act or in any other law for the time being in force, in the case of any building under construction on the date immediately before the date of coming into force of this Act by any promoter, such officer of the State Government, not below the rank of Executive Engineer, as the State Government may appoint, shall have access to the site of such building at any time of the

² Sub-clauses (iii) and (iv) were omitted by s. 2(1) and s. 2(2) respectively of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 1994 (West Ben. Act XLVIII of 1994), w.e.f. 9.8.95.

XX of 1993.]

(Section 3.)

day without prior intimation to the promoter for investigation of any complaint from any purchaser with regard to unlawful or defective construction or use of sub-standard materials, and such officer may, at the conclusion of such investigation, bring to the notice of the promoter the defects of construction, if any, for rectification within such period as may be specified by him. If the promoter fails to rectify the defects within the period as aforesaid, such officer may declare such building to be unsafe or dangerous for human habitation, if the construction of such building so warrants.

(2) Every such application shall be accompanied by a statement containing the following particulars and documentary evidences where necessary:—

- (a) detailed description of land with site plan;
- (b) the nature of the promoters' title to the land (copy of title deed to be annexed);
- (c) details of the agreement between the owner of the land and the promoter authorising the latter to undertake the construction of building (copy of registered agreement to be annexed);
- (d) the nature of encumbrances on the land, including the right, title, interest or claim of any other person in or over such land;
- (e) the total covered floor area, the number of flats proposed to be constructed, the approximate size of each flat and the facilities including common facilities likely to be made available to the purchasers by the promoter;
- (f) sanctioned plan for the construction of building under any law for the time being in force or where the plan is not sanctioned at the time of making the application under sub-section (1), an undertaking by the applicant to the effect that the plan will be submitted by him as soon as it is sanctioned;

Provided that the name of the applicant shall not be registered, and the applicant shall not be granted permission to construct the building, under sub-section (5) until the sanctioned plan is submitted;

- (g) detailed specifications of the construction of building as approved by any competent authority under any law for the time being in force;
- (h) the estimated expenditure for the construction of building and the source from which the expenditure shall be financed;
- (i) details of financial agreement made with any bank or other financial institution, and of legal safeguards taken, if any, for the construction of building, or the transfer of building by sale, gift or otherwise;

(Section 3.)

- (j) details of advance payment or deposit to be taken by the promoter from the purchaser;

Provided that no advance payment or deposit shall be taken by any promoter before his name is registered under sub-section (5);

- (k) the period within which or the date on which the possession of flats is proposed to be made over to the purchasers;
- (l) copies of agreements entered into or proposed to be entered into with the purchasers;
- (m) the name of architect or engineer or any other person authorised to submit plan under any law for the time being in force, or the name of firm or company competent to submit plan, who has prepared the plan and the estimates of the proposed construction of building together with address;
- (n) the name and address of the contractor or contractors proposed to be engaged for the construction of building;

Provided that if and when there is any change of contractor proposed to be engaged or actually engaged before or after the commencement of the construction of any building, as the case may be, the promoter shall forthwith inform the authorised officer of the name and address of such contractor;

- (o) such other particulars as may be prescribed.

- (3) Every promoter shall make a separate application for the construction of building on separate plot of land or for the construction of separate building;

Provided that no such application shall be entertained where the promoter has no title to the land unless the agreement between the owner of the land and the promoter, authorising the promoter to undertake the construction of building, is duly registered;

Provided further that no such application shall be refused without giving the promoter a reasonable opportunity of being heard.

- (4) The name of a promoter shall not be registered if—

- (a) he is of unsound mind and stands so declared by a competent authority; or
- (b) he is an undischarged insolvent; or
- (c) he, being a discharged insolvent, has not obtained from the court having jurisdiction a certificate that his insolvency was caused by misfortune without any misconduct on his part; or
- (d) he has been convicted of an offence of criminal breach of trust; or

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(Section 4.)

- (e) he is otherwise incompetent to make any contract under any law for the time being in force; or
- (f) the certificate of registration granted to him previously for construction of any other building was cancelled under section 4 of this Act.

(5) The authorised officer shall, on receipt of an application under sub-section (1), scrutinize the application and the accompanying documents and, on being satisfied that the application complies with the provisions of this Act and the rules made thereunder, register the name of the applicant and, by an order, grant him permission to construct the building or may, for reasons to be recorded in writing, by an order refuse to register the name of the applicant and to grant him permission to construct the building:

Provided that no order refusing to register the name of an applicant and to grant him permission to undertake the construction of building shall be made without giving the applicant a reasonable opportunity of being heard:

Provided further that every application under sub-section (1) shall be disposed of by the authorised officer within a period of three months from the date of receipt of such application.

(6) The name of every promoter registered under sub-section (5) shall be entered in a register to be maintained by the authorised officer in such form as may be prescribed.

(7) The promoter, whose name has been registered under sub-section (5), shall be granted a certificate of registration in such form as may be prescribed; and the permission to undertake the construction of building under that sub-section shall be in conformity with the sanctioned plan for the construction of building.

(8) A copy of the order granting permission under sub-section (5) shall be sent by the authorised officer to the authority who has sanctioned the plan for construction of building or, as the case may be, for conversion of building or any part of building under any law for the time being in force.

4. (1) The certificate of registration or the permission for construction of building granted to a promoter under section 3 shall, subject to the provisions of sub-section (2) of this section, remain valid for a period of three years from the date of issue of such certificate or grant of such permission, as the case may be:

Period of validity of certificate of registration and cancellation thereof.

Provided that the authorised officer may, from time to time, extend the period of validity of the certificate of registration or the permission for construction of building; so, however, that the total period of such extension shall not, in either case, exceed two years:

(Sections 5, 6.)

Provided further that, if the promoter cannot complete the construction of such building within the total period of five years for circumstances beyond his control, he may make an application to the State Government for extending the period of validity of the certificate of registration for construction of such building, and the State Government may, on receipt of such application, extend the said period of five years by such further period as it thinks fit.

(2) Notwithstanding anything contained in sub-section (1), a certificate of registration may be cancelled by the authorised officer by an order in writing if—

- (a) the statement or any part thereof furnished by the promoter under sub-section (2) of section 3 is subsequently found to be false or incorrect; or
- (b) the promoter becomes subject to any of the disqualifications mentioned in sub-section (4) of section 3;
- (c) the promoter, in course of the construction of any building, uses sub-standard materials or violates any rules or established practices regulating the construction of building.

Provided that no certificate of registration shall be cancelled without giving the promoter an opportunity of being heard.

Appeal.

5. (1) Any promoter aggrieved by an order of the authorised officer under sub-section (5) of section 3 or sub-section (2) of section 4 may, within thirty days from the date of the service of the order, prefer an appeal to such authority as may be prescribed.

(2) The manner in which an appeal shall be filed and the manner of deciding the appeal shall be such as may be prescribed.

Adjudication of disputes.

6. Any purchaser may, if he has any dispute regarding the purchase of any flat, make an application in such form as may be prescribed to such officer as the State Government may appoint for adjudication of the dispute in such manner as may be prescribed.

Revision.

6A. The State Government may, either *suo motu* or on an application by any party aggrieved by order under this Act within sixty days from the date of such order, call for, and examine, the records of any proceedings disposed of by the authorised officer or by the authority referred to in sub-section (1) of section 5 or by the officer referred to in section 6, as the case may be, for the purpose of satisfying itself as to the correctness, legality or propriety of any such proceedings and of any order passed therein, and may pass such order in relation thereto as it may deem fit.

¹ Section 6A was inserted by s. 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 1994 (West Ben. Act XLVIII of 1994), w.e.f. 9.8.95.

*The West Bengal Building (Regulation of Promotion of Construction
and Transfer by Promoters) Act, 1993.*

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(Sections 7, 8.)

Provided that no order adverse to any person shall be passed without giving him an opportunity to show cause against the proposed order:

Provided further that no application for revision under this section shall be entertained where an appeal has been or could have been preferred under section 5 or where an application for adjudication has been or could have been made under section 6.

16 of 1908.

7. Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, a promoter shall, before he takes any advance payment or deposit, which shall not be more than forty per cent of the sale price of a flat, enter into a written agreement for sale with each person who intends to purchase, such flat and the agreement shall be registered under the Registration Act, 1908, and such agreement shall contain such particulars, and shall be accompanied by such documents or copies thereof, as may be prescribed:

Agreement
and
registration
thereof.

Provided that no such agreement shall be registered before the promoter is granted permission to construct building under sub-section (5) of section 3.

8. (1) No promoter shall, after he has been granted under sub-section (5) of section 3 permission to construct a building and after an agreement under section 7 has been entered into by him with any person who intends to purchase a flat, make, without prior consent of such person,—

Alteration or
addition
without
consent of
transferee
and
rectification
of defect.

- (i) any alteration in the structure of such flat; or
- (ii) make any alteration in the structure of a building or construct any additional structure:

Provided that every alteration in the structure of such flat or building or every construction of such additional structure shall be done with the prior permission of the authority which sanctioned the original plan of such flat or building and with due regard to the detailed specifications of the construction of building as approved by the competent authority under any law for the time being in force.

(2) Subject to the provisions of sub-section (1), a building shall be constructed and completed in accordance with the plan referred to in clause (f), and the specifications referred to in clause (g), of sub-section (2) of section 3. If any defect in the construction of the building or in the material used or if any unauthorised change in the construction of the building is brought to the notice of the promoter by the person or persons taking possession of the building within a period of one year from the date

of taking such possession, it shall either be rectified, wherever possible, by the promoter without charge to the person or persons who agreed to purchase any flat or flats or such person or persons shall be paid a reasonable compensation for such defect or change.

(3) Where there is a dispute as respects any defect in the construction of the building or in the material used or any unauthorised change in the construction of the building or the amount of reasonable compensation payable in respect of such defect or change which is not rectified by the promoter or is incapable of being rectified, or where there is a dispute as to whether it is reasonably possible for the promoter to rectify such defect or change, the matter shall, on payment of such fee by the purchaser in such manner as may be prescribed, be referred for a decision to the Chief Engineer in the Housing Directorate under the Housing Department of the State Government or to such other officer of the State Government, not below the rank of Executive Engineer, as the State Government may appoint within a period of two years from the date of taking possession of the building.

(4) The Chief Engineer, either himself or through his nominee, not below the rank of Executive Engineer, or the officer appointed under sub-section (3), as the case may be, shall, after such enquiry as may be deemed necessary, record his decision within one year from the date of payment of the fee referred to in sub-section (3) and inform the parties to the dispute forthwith, and his decision shall be final.

(5) The Chief Engineer or his nominee, not below the rank of Executive Engineer, or the officer appointed under sub-section (3), as the case may be, shall have access to the site of any building under construction by any promoter, whose name has been registered under sub-section (5) of section 3, at any time of the day without prior intimation to him for inspection of the work of construction or for investigation of any complaint from any purchaser or other person or from any other source with regard to unlawful or defective construction or use of sub-standard materials, and the decision of the Chief Engineer or his nominee or the officer as aforesaid shall be final and binding on the promoter.

Provided that any purchaser or other person making the complaint shall deposit such fee in such manner as may be prescribed:

Provided further that the fee shall be refunded to the purchaser or other person, as the case may be, if the complaint is found correct:

Provided also that the cost of inspection or investigation, as the case may be, shall be borne by the promoter if the complaint is found correct.

XX of 1993.]

(Section 9.)

9. (1) No promoter shall, after he enters into an agreement under section 7, mortgage or create a charge on the flat or the land on which such flat is constructed without prior consent of the person or persons with whom such agreement is entered into.

Bar to execution of mortgage etc. and refund of money, if such mortgage is executed, or for failure to give possession.

(2) If any promoter—

- (a) executes such mortgage or creates such charge without the prior consent of the person or persons as aforesaid after the agreement is registered under section 7, or
- (b) fails to give possession of a flat, duly completed, by the date specified in the agreement or by the further date agreed to by the parties, or
- (c) is unable, for reasons beyond his control or beyond the control of his agent, to give possession of the flat by the date specified in the agreement under section 7 or by the further date agreed to by the parties, and a period of three months thereafter, or a further period of three months if such reasons still exist, has elapsed,

the promoter shall, without prejudice to any other remedies to which he may be liable under this Act or any other law for the time being in force, be liable on demand to refund the amount already received by him in respect of such flat with simple interest at the current bank rate from the date of receipt of such amount till the date on which the amount and the interest thereon is refunded, and the amount and the interest shall, subject to any prior encumbrance, be a charge on the land and the building thereon, if any, to the extent of the amount due:

Provided that—

- (a) if the promoter wilfully delays the construction of the flat and does not complete the construction thereof within the period specified in the agreement under section 7 (hereinafter referred to as the specified period), and gives possession of the flat to the party after the expiry of the specified period, he shall pay compensation at the rate of twelve per cent of the advance payment or deposit to the party for the period commencing from the date following the date of expiry of the specified period to the date of giving possession of the flat, and such compensation shall be adjusted against the price of the flat in such manner as may be prescribed, or
- (b) if the promoter delays the construction of the flat beyond the specified period without any *prima facie* reason therefor, and the party expresses its unwillingness to take possession

of the flat as and when completed and claims refund of the advance payment or deposit, the promoter shall refund the advance payment or deposit and shall pay compensation at the rate of twenty-five per cent of such advance payment or deposit.

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

10. If a minimum number of persons required to form a co-operative society have formed an organization and have taken flats, the promoter shall, within a period of two months from the date of taking flat by the last member of such organization, submit an application to the Registrar for registration of such organization as a co-operative society (by whatever name called) and shall join, in respect of the flats which have not been taken, in such application for membership of the co-operative society.

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

11. Every promoter shall take all necessary steps to complete his title and convey to the organization of persons taking flats, which is registered as a co-operative society his right, title and interest in the land and the building, and shall execute all relevant documents therefor in accordance with the agreement under section 7, and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and shall deliver all documents of title relating to the property which may be in his possession or power.

Insurance against loss or death.

12. (1) A promoter shall insure with any general insurance company and obtain an insurance policy or policies covering the liability of any loss or death caused by any defect in land or building, and shall keep the authorised officer informed of payment of premia from time to time against such insurance policy or policies.

(2) The policy or policies as aforesaid shall cover the risks extending not less than ninety per cent of the value or estimated value of building.

(3) The insurance risks shall cover for a period of not less than five years from the date of making over of possession of the last saleable flat.

(4) The liability of the insurance company shall extend up to the value of life and property lost or bodily injuries suffered but shall not exceed the insured sum.

(5) For determining the quantum of value of life and property lost or bodily injuries suffered, the State Government may, by order, constitute a Tribunal headed by a Judicial Officer having experience of not less than seven years in judicial service and may also, by such order or subsequent order, provide for assessors, not less than two in number, for assisting the Tribunal in such determination.

The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.

XX of 1993.]

(Sections 13, 14.)

Explanation I.—For the purposes of this section,—

- (a) "loss" shall include damages of a building or part thereof or any other properties lawfully stored therein or bodily injuries suffered by any person, whether a resident of such building or an outsider; and
- (b) "death" shall include death to any person, whether a resident of a building or an outsider, caused by any defect in land or such building.

Explanation II.—For death or bodily injuries, the value of loss for the purposes of compensation shall be determined in accordance with the provisions of the Motor Vehicles Act, 1988.

59 of 1988.

12A. (1) No civil court shall have any jurisdiction to entertain or decide any question relating to matters arising under any provision of this Act or the rules made thereunder.

Bar on jurisdiction of court.

(2) Every order passed by the authorised officer which is subject to appeal or revision, every order passed by the authority referred to in sub-section (1) of section 5, and every order passed by the officer referred to in section 6, which is subject to revision, and every order passed by the State Government in revision, shall be final and shall not be questioned in any court of law.

13. Any promotor who fails to comply with, or contravenes, any of the provisions of this Act or the rules made thereunder, shall, on conviction, be punished with imprisonment for a term, not being less than three months, which may extend to three years or with fine which may extend to five thousand rupees or with both, and a promotor who commits a criminal breach of trust in respect of any sum of money as advance payment or deposit, referred to in section 7, shall, on conviction, be punished with imprisonment for a term, not being less than six months, which may extend to four years or with fine which may extend to ³[ten thousand rupees or the amount in respect of which the offence has been committed, whichever is greater,] or with both.

Penalties.

14. (1) Where an offence under this Act has been committed by 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 the business of 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:

Offences by companies.

³Section 12A was inserted by s. 4 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 1994 (West Ben. Act XLVIII of 1994), w.e.f. 9.8.95.

⁴The words within square brackets were substituted for the words "ten thousand rupees" by s. 5, *ibid*.

(Section 15.)

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purpose of this section,—

- (a) "company" means any 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.

Power to
make rules.

15. (1) The State Government may, after previous publication, make rules for carrying out the purposes of this Act.

(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) the form of the application referred to in sub-section (1) of section 3, the particulars to be mentioned therein and the fee to be paid therefor;
- (b) the form of register to be maintained under sub-section (6) of section 3;
- (c) the form of the certificate of registration referred to in sub-section (7) of section 3;
- (d) the manner of the service of an order of the authorised officer;
- (e) the authority to which, and the manner in which, an appeal under section 5 shall be filed and the manner of deciding the appeal;
- (f) the particulars and the documents to be attached with the agreement referred to in section 7;
- (g) the period within which a conveyance shall be executed under section 11;
- (h) any other matter which may be or is required to be prescribed.

The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.

XX of 1993.]

(Sections 16, 17.)

16. Notwithstanding anything contained elsewhere in this Act, the State Government may, if it is of the opinion that the operation of any of the provisions of this Act causes undue hardship or circumstances exist which render it expedient to do so, exempt, by a general or special order, any class of persons or areas from all or any of the provisions of this Act, subject to such terms and conditions as it may deem fit to impose. Exemption.

West Ben.
Act XVII of
1972.

17. (1) The West Bengal Apartment (Regulation of Construction and Transfer) Act, 1972, is hereby repealed. Repeal and saving.

(2) Unless a different intention appears, such repeal shall not—

- (a) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or
- (b) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or
- (c) affect any investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

¹Section 16 was substituted for the original section by s. 6 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 1994 (West Ben. Act XLVIII of 1994), w.e.f. 9.8.95.

The

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TUESDAY, JANUARY 17, 1995

[SAKA 1916

PART III—Acts of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 83-L.—17th January, 1995.—The following Act of the West Bengal Legislature, having been assented to by the President of India, is hereby published for general information:—

West Bengal Act XLVIII of 1994

**THE WEST BENGAL BUILDING (REGULATION OF PROMOTION
OF CONSTRUCTION AND TRANSFER BY PROMOTERS)
(AMENDMENT) ACT, 1994.**

[Passed by the West Bengal Legislature.]

*[Assent of the President of India was first published in the Calcutta
Gazette, Extraordinary, of the 17th January, 1995.]*

*An Act to amend the West Bengal Building (Regulation of Promotion of Construction and
Transfer by Promoters) Act, 1993.*

WHEREAS it is expedient to amend the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, for the purposes and in the manner hereinafter appearing;

West Ben.
Act XX of 1993.

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

1. (1) This Act may be called the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 1994.

*The West Bengal Building (Regulation of Promotion of Construction
and Transfer by Promoters) (Amendment) Act, 1994.*

(Sections 2-6.)

(2) It shall come into force in such area or areas, and on such date or dates, as the State Government may, by notification in the *Official Gazette*, appoint; and different dates may be appointed for different areas.

Amendment of
section 2 of
West Ben. Act
XX of 1993.

2. In section 2 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (hereinafter referred to as the principal Act), in clause (g),—

- (1) sub-clause (iii) shall be omitted, and
- (2) sub-clause (iv) shall be omitted.

Insertion of
new section 6A.

3. After section 6 of the principal Act, the following section shall be inserted:—

"Revision. 6A. The State Government may, either *suo motu* or on an application by any party aggrieved by any order under this Act within sixty days from the date of such order, call for, and examine, the records of any proceedings disposed of by the authorised officer or by the authority referred to in sub-section (1) of section 5 or by the officer referred to in section 6, as the case may be, for the purpose of satisfying itself as to the correctness, legality or propriety of any such proceedings and of any order passed therein, and may pass such order in relation thereto as it may deem fit:

Provided that no order adverse to any person shall be passed without giving him an opportunity to show cause against the proposed order:

Provided further that no application for revision under this section shall be entertained where an appeal has been or could have been preferred under section 5 or where an application for adjudication has been or could have been made under section 6."

Insertion of new
section 12A.

4. After section 12 of the principal Act, the following section shall be inserted:—

"Bar on jurisdiction of court. 12A. (1) No civil court shall have any jurisdiction to entertain or decide any question relating to matters arising under any provision of this Act or the rules made thereunder.

(2) Every order passed by the authorised officer which is subject to appeal or revision, every order passed by the authority referred to in sub-section (1) of section 5, and every order passed by the officer referred to in section 6, which is subject to revision, and every order passed by the State Government in revision, shall be final and shall not be questioned in any court of law."

Amendment of
section 13.

5. In section 13 of the principal Act, for the words "fifty thousand rupees", the words "ten thousand rupees or the amount in respect of which the offence has been committed, whichever is greater," shall be substituted.

Substitution of
new section for
section 16.

6. For section 16 of the principal Act, the following section shall be substituted:—

"Exemption. 16. Notwithstanding anything contained elsewhere in this Act, the State Government may, if it is of the opinion that the operation of any of the provisions of this Act causes undue hardship or circumstances exist which render it expedient to do so, exempt, by a general or special order, any class of persons or areas from all or any of the provisions of this Act, subject to such terms and conditions as it may deem fit to impose."

By order of the Governor,

S. MAITRA,
Special Officer & ex officio
Jt. Secy. to the Govt. of West Bengal.

The

Calcutta Gazette
 सत्यमेव जयते

Extraordinary
 Published by Authority

ASADHA 8]

THURSDAY, JUNE 29, 1995

[SAKA 1917

PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL

HOUSING DEPARTMENT

NOTIFICATION

No. 244-HIV/IR-4/93 Pt.

Calcutta, the 29th June, 1995.

In exercise of the power conferred by section 15 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Ben. Act XX of 1993), the Governor is pleased hereby to make, after previous publication as required by sub-section (1) of section 15 of the said Act, the following rules:—

Rules

1. **Short title and commencement.**—(1) These rules may be called the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Rules, 1995.

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

2. **Definitions.**—(1) In these rules, unless the context otherwise requires,—

- (a) "the Act" means the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Ben. Act XX of 1993);
- (b) "appellate authority" means an officer superior in rank to the authorised officer as may be appointed by the State Government under sub-section (1) of section 5 of the Act;
- (c) "authorised officer" means an officer not below the rank of Deputy Magistrate and Deputy Collector, or any other officer, as may be appointed by the State Government by notification in the *Official Gazette*;
- (d) "Form" means a form appended to these rules;
- (e) "State Government" means the Government of West Bengal in the Department of Housing.

(2) Words and expressions used in these rules but not defined shall have the same meaning as are respectively assigned to them in the Act.

3. Form, particulars and fee for registration.—(1) The form for application for registration under section 3 of the Act shall be in Form 'A' and shall be accompanied by a fee of Rs. 500 for each application payable in cash or by bank draft in favour of the authorised officer under the Act.

(2) Particulars of such application with subsequent additions and alterations shall be maintained in a register in Form 'B'.

(3) The registration certificate shall be issued in Form 'C'.

4. Permission for construction.—(1) An application for permission to construct any block or building or flat or to convert a building into flats shall be in Form 'D'.

(2) The application shall be accompanied by a copy of registration certificate issued in terms of sub-rule (1) of rule 3 and a fee of Rs. 2,000 where the estimated expenditure for construction to be undertaken does not exceed Rs. 20 lakhs or Rs. 4,000 where such expenditure exceeds Rs. 20 lakhs but does not exceed Rs. 50 lakhs or Rs. 5,000 where such expenditure exceeds Rs. 50 lakhs, payable in cash or by bank draft in favour of the authorised officer under the Act.

(3) Such permission for construction shall be given in Form 'E'.

5. Service of process.—Service of all processes shall be delivered by hand or by registered post.

6. Appeal.—(1) The memorandum of appeal under section 5 of the Act shall be preferred before the appellate authority in Form 'F' together with a copy for service on the concerned authorised officer.

(2) The memorandum of appeal shall contain a copy of the order of the authorised officer.

(3) On receipt of the memorandum of appeal, the appellate authority shall call for the relevant records within 30 days from the concerned authorised officer and shall fix a date and time for hearing and shall notify the same to the appellant who may represent himself personally or by an authorised representative.

(4) After hearing the appellant or his authorised representative, the appellate authority shall pass an order in writing, and shall cause service of copies thereof free of cost on the appellant within a fortnight from the date of final order.

(5) After disposal of appeal, the appellate authority shall forthwith return the records along with the copy of the order to the concerned authorised officer.

(6) The absence of the appellant or his authorised representative shall not be a ground for adjournment of hearing but the appellate authority may adjourn the hearing for sufficient reasons or consider the materials on record and dispose of the appeal.

(7) When the appeal is allowed by the appellate authority, the authorised officer, on getting back the records along with a copy of that order, shall comply with the same.

7. Procedure for adjudication of disputes.—(1) The application for adjudication of dispute under section 6 of the Act shall be preferred in Form G before the authorised officer.

(2) On receipt of such application, the authorised officer shall furnish the promoter with a copy of such application fixing a date for a written reply, if any.

(3) The authorised officer shall thereafter fix a date of hearing and shall notify the same to the applicant and the promoter who may represent himself personally or by an authorised representative.

(4) The authorised officer, after hearing the parties, shall come to a decision which shall be binding on both parties.

8. Particulars to be incorporated in, and the documents (or copies) to be attached to, the deed of agreement under section 7 of the Act.—The following particulars shall be incorporated in, and documents (or copies) shall be attached to, the deed of agreement between the promoter and the purchaser:—

- (i) particulars of land (e.g. location, measurement, ownership, promoter's interest in the land, encumbrances, if any);
- (ii) location of the flat sufficient for identification;
- (iii) total covered area, carpet area, height, description with measurement of each room, bath and verandah, constructional particulars (e.g., mortar, mosaic, colour, etc.) and other necessary details;
- (iv) particulars of electrical and sanitary arrangements;
- (v) particulars of items of common use (i.e., stairs, lift, garden, play-ground, recreation hall, caretaker's room, pump, central air-conditioning, parking space, and fire fighting arrangement);
- (vi) total price payable for the flat;
- (vii) (a) amount of advance to be paid,
(b) dates and amount of each instalment for payment of such advance,
(c) particulars of interest payable in default of any instalment of such advance, and
(d) provision for refund of the amount advanced on the purchaser's refusal in writing to take the flat;
- (viii) date and particulars of payment of the balance amount of price;
- (ix) particulars of site plan and building plan duly approved by the appropriate authority;
- (x) particulars of permission for construction under section 3 of the Act;
- (xi) proposed date of execution of the conveyance of the flat by the promoter to the purchaser;
- (xii) proposed date of making over of possession of the flat by the promoter.

9. Fee payable for inquiry by the Chief Engineer in the Housing Directorate under the Department of Housing under sub-section (3) of section 8.—The fee payable to the Chief Engineer in the Housing Directorate under the Department of Housing of the State Government or such other officer, not below the rank of Executive Engineer, as may be appointed by the State Government under sub-section (3) of section 8 of this Act shall be Rs. 50 per flat. No complaint shall be entertained without the requisite fee payable in cash or by bank draft in favour of the Chief Engineer as aforesaid.

10. Procedure for compensation to the purchaser.—(1) The application for compensation in terms of section 8 of the Act shall be made by the purchaser to the authorised officer.

(2) The authorised officer, in the manner laid down in rule 7, shall give his decision on the said application and such decision shall be binding on both parties.

11. Procedure for compensation in case of failure of the promoter to give possession.—The extent of compensation to be claimed by the applicant shall be as per section 9 of the Act and he shall apply to the authorised officer by an application containing all particulars and papers in respect of advance paid to the promoter with date and the terms of agreement and the period of blocking. The amount of compensation as claimed by the applicant shall be examined by the authorised officer. On his being satisfied, an order shall be issued to the promoter concerned for adjustment of the said amount against the value of the respective flat for the purchase of which the applicant entered into an agreement with the promoter. The order shall be binding on the promoter and, in the case of defiance, it shall be an offence punishable under section 13 of the Act.

12. Period within which a conveyance is to be executed under section 11.—In the absence of any agreement fixing the last date for conveying the right, title and interest in the land and building between the promoter and the purchaser, the promoter shall convey his right, title and interest in the land and building and execute all relevant documents therefor and also deliver all documents of title relating to the property, which may be in his possession or power, within three months from the date of registration of the organisation of persons taking flats as a co-operative society.

13. Insurance.—As soon as the building is constructed, the promoter shall insure the building along with the land with any general insurance company and obtain an insurance policy covering the liability of any loss or death that may be caused due to defect of land and construction of the building and submit a copy of such policy to the concerned authorised officer.

FORM 'A'

[See rule 3(1)]

Application form by the Promoter for registration under section 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Bengal Act XX of 1993)

From:
Address:

To
The Authorised Officer,

Sir,

I/We being the sole proprietor/promoter intend to construct a block/building containingflats for the purpose of transfer by sale, gift or otherwise do hereby apply for registration of my name/our names under sub-section (1) of section 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.

2. An attested copy of receipt No.dated.....showing the payment of prescribed fee of Rs. 500 (Rupees five hundred) only is enclosed herewith.

3. A duly signed statement showing the sources of fund for such construction is enclosed.

4. Registration number, if any, under any other Act (name of the Act to be specified and attested photo-copy of such registration is to be furnished).

5. Particulars of land, if already acquired, on which construction is proposed.

6. The manner in which the above land has been acquired (if purchased, the cost of the land to be mentioned).

7. Extent of applicant's interest in the land.

8. It is hereby declared that none of the applicants—

(a) is of unsound mind or stands so declared by a competent court, or

(b) is an undischarged insolvent, or

(c) being a discharged insolvent has not obtained from the Court having jurisdiction, a certificate that his insolvency was caused by misfortune without any misconduct on his part, or

(d) has been convicted of an offence of criminal breach of trust, or

(e) is otherwise incompetent to make any contract under any law for the time being in force, or

(f) the certificate of registration granted previously for construction of any other building was cancelled under section 4 of this Act.

Yours faithfully,

(Signature of applicant with Seal, wherever applicable.)

FORM 'B'

[See rule 3(2)]

Register for Promoters under sub-section (6) of section (3) of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (To be Maintained by the Authorised Officer)

1. Name of the Promoter :
2. Fathers'/Husband's name :
3. Address (with Telephone Nos.):
Office :
Permanent :
4. Registration No., if any, under any other Act (name of the Act to be specified and an attested photo-copy of such registration is to be furnished) :
5. Particulars of land, if already acquired, on which construction is proposed :
6. The manner in which the above land has been acquired (if purchased, the cost of the land to be mentioned) :
7. Extent of applicant's interest in the land :
8. Comments of the Inquiring Officer (refer the File No.) :
9. Order of the Authorised Officer :
10. Number and date of Registration Certificate, if granted :
11. Renewal of Registration with particulars :
12. Extract of the Order, if any, of the Authorised Officer, cancelling the Registration Certificate :
13. Particulars of Permission for construction under section 5 of the Act :
14. Particulars of corresponding Building Plan sanctioned [vide section 3(2)] :
15. Revocation of Permission for construction [vide section 4(2)] :
16. Order of A.A. :
17. Details of Insurance :
18. Estimated expenditure (approx.) :

(i) One page should be earmarked for one Promoter.

(ii) Surname of the Promoter should be written first to be followed by his first name and middle name, if any.

(iii) In case of a Company or any registered body, trust etc. the particulars of all the directors/executive members (in whatever designation may be called) trustees etc. and the Principal Officers, through whom such Company, body or trust etc. are represented, are to be written.

FORM 'C'

[See rule 3(3)]

Form of Registration Certificate in terms of sub-section (7) of section 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Bengal Act XX of 1993)

Certified that Shri/Smt./M/s.
of (address) has/have duly
been registered under sub-section (5) of section 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 with effect from the day of
..... (month) (year), the Registration number being

Date: [Seal]

(Signature)
Authorised Officer.

Note : This certificate is valid for the period of 3 years from the date of issue.
Copy to the Authority sanctioning the plan.

FORM 'D'

[See rule 4(1)]

Application form for Permission under sub-section (1) of section 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Ben. Act XX of 1993)

To
The Authorised Officer,

.....

Sir,

In terms of sub-section (2) of section 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Ben. Act XX of 1993).

I/We do hereby apply for permission for construction of building containing flats under the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, for the purpose of (details, i.e., sale, gift or otherwise).

2. I have been registered as a promoter in terms of the Act (an attested copy of certificate of registration as promoter bearing Regd. No. dated is enclosed herewith).

3. Required particulars are furnished below:

- (a) Detailed description of the land with a site plan;
- (b) The nature of my/our title to the land (copy of title documents to be annexed);
- (c) Details of the agreement between the owner of the land and the promoter authorising the later to undertake construction (copy of registered agreement to be annexed);
- (d) The nature of encumbrances on such land including any right title or interest or claim of any party in or over such land;
- (e) The total covered floor areas, the number of flats proposed to be constructed and the approximate size of the flats and facilities including common area facilities;
- (f) Copy of the sanctioned plan;
- (g) Details of specifications of the construction of building as approved by any Competent Authority under any law for the time being in force;
- (h) The estimated expenditures for such construction and the sources from which the expenditure shall be financed;
- (i) Details of financial arrangements made with any Bank or financial institution, and of legal safeguards, if any, taken for such construction or transfer by sale, gift or otherwise;
- (j) Details of advance payment or deposits proposed to be taken from intending purchasers of flats;
- (k) The date within which possession of flats proposed to be handed over to the purchaser;
- (l) Copies of agreements entered into or proposed to be entered into with the purchasers of flats;
- (m) Name of Architect/Engineer/any other person authorised to submit such plan under any other law for the time being in force who have prepared/will prepare the plans and estimates of the proposed construction together with address;
- (n) Name and address of the Contractor/Contractors engaged or proposed to be engaged for the construction;
- (o) Certificate of up-to-date income tax/sales tax clearance of the applicant to be furnished.

4. I/We do hereby declare and affirm that the above particulars are true to the best of my/our knowledge and information and that nothing has been suppressed in this application. If any information is found to be incorrect or contrary to the provisions of the Act or any other law in force, if any, suppression of any material and relevant information is subsequently detected, I/we shall be liable to be proceeded against under the law. Any change in the above information at any stage shall be brought to your notice in writing by me/us within a week from the date of such change with reasons thereof. I/We do hereby also undertake that when completed, a completion certificate duly issued by the Competent Authority shall be sent to you within 15 (fifteen) days from the date of receipt.

Yours faithfully,

Dated,

(Signature and Seal, wherever applicable.)

FORM 'E'

[See rule 4(3)]

Form for according permission under sub-section (5) of section 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Ben. Act XX of 1993)

Permission is hereby granted to Shri/Smt./M/s.
 of (address) duly registered as promoter
 under sub-section (1) of section 3 of the West Bengal Building (Regulation of Promotion of Construction and Transfer
 by Promoters) Act, 1993, the registration number being
 dated valid up to for construction of building/buildings
 containing apartments at premises No.

This permission is subject to compliance of the provisions under section 12 of the Act.

Date,

[Seal]

(Signature)

Authorised Officer.

-
1. This permission shall remain valid for a period of three years from the date of issue vide sub-section (1) of section 4 of the Act.
 2. Regarding extension of validity of this permission, see provisions under sub-section (1) of section 4 of the Act.
 3. A copy of insurance policy to be furnished within one month after completion of construction.
 4. This permission may be revoked under sub-section (2) of section 4 of the Act and in the event of non-compliance of the provisions under section 12 of the Act.

Memorandum of appeal under section 5 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Ben. Act XX of 1993)

Before the Appellate Authority under section 5 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.

In the matter of appeal by
Shri/M/s.

-Vs.-

The Authorised Officer under the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993;

And

In the matter of order dated passed by the Authorised Officer,

The appellant most respectfully sheweth—

1. That the appellant made an application for
under section of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, on to the Authorised Officer

A copy of such application is annexed as Annexure I.

2. The appellant shall narrate his case paragraph-wise statement annexing the copy/copies of relevant document as referred. A copy of the order giving rise to the appeal shall also be annexed.
3. Grounds of appeal (The appellant shall state paragraph-wise the grounds for assailing the impugned order of the Authorised Officer.)
4. The appellant may like to add any other relevant point.
5. Prayers (The appellant shall state the prayer/prayers).

6. I/We
son of
residing at
in my capacity as
of the appellant(s) do hereby verify that the statements made in paragraph(s)
..... are matters of record and those of paragraph(s)
are my submissions and I do hereby verify this memorandum of appeal on this (month)
..... (year) at (place).

Signature.

FORM 'G'

[See rule 7(1)]

Form of application for adjudication of dispute regarding purchase of any flat in terms of section 6 of the
West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993
(West Ben. Act XX of 1993)

From:

To
The Authorised Officer,

Sir,
In terms of section 6 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters)
Act, 1993, I do hereby beg to inform you that I had entered into an agreement with.....(Promoter)
for purchase of a flat at.....

A copy of the Agreement made under section 7 of the Act and duly registered is enclosed for perusal.

Now I pray to you for adjudication of the following disputes (to be stated clearly).

- 1.
- 2.
- 3.

Dated

Full Address :

Yours faithfully,

By order of the Governor,

N. ROYCHAUDHURI
Secy. to the Govt. of West Bengal.

The

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SRAVANA 18]

WEDNESDAY, AUGUST 9, 1995

[SAKA 1917

PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL

DEPARTMENT OF HOUSING

Law Cell

No. 321-III V/IR-2/93

Calcutta, the 9th August, 1995.

NOTIFICATION

In exercise of the power conferred by sub-section (3) of section 1 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Bengal Act XX of 1993), the Governor is pleased hereby to appoint the 9th day of August, 1995 as the date on which the aforesaid Act shall come into force in the areas within the jurisdiction of Calcutta Municipal Corporation, West Bengal.

By order of the Governor,

N. ROYCHAUDHURI,
Secretary to the Government of West Bengal.

No. 322-III V/IR-2/93

Calcutta, the 9th August, 1995.

NOTIFICATION

In exercise of the power conferred by sub-section (2) of section 1 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 1994 (West Bengal Act XLVIII of 1994), the Governor is pleased hereby to appoint the 9th day of August, 1995 as the date on which the aforesaid Act shall come into force in the areas within the jurisdiction of Calcutta Municipal Corporation, West Bengal.

By order of the Governor,

N. ROYCHAUDHURI,
Secretary to the Government of West Bengal.

The

Kolkata Gazette
Extraordinary
Published by Authority

SRAVANA 8]

WEDNESDAY, JULY 30, 2003

[SAKA 1925

PART III—Acts of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL**LAW DEPARTMENT****Legislative****NOTIFICATION**

No. 1251-L.—30th July, 2003. —The following Act of the West Bengal Legislature, having been assented to by the President of India is hereby published for general information:—

West Bengal Act XXXV of 2002

THE WEST BENGAL BUILDING (REGULATION OF PROMOTION OF CONSTRUCTION AND TRANSFER BY PROMOTERS) (AMENDMENT) ACT, 2002

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the *Kolkata Gazette*,
Extraordinary, of the 30th July, 2003.]

*An Act to amend the West Bengal Building (Regulation of Promotion of Construction
and Transfer by Promoters) Act, 1993.*

WHEREAS it is expedient to amend the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, for the purposes and in the manner hereinafter appearing:

West Ben. Act
XX of 1993

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

Short title, extent
and commencement.

1. (1) This Act may be called the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 2002.

(2) It extends to the whole of West Bengal.

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

Amendment of
section 2 of West
Ben. Act XX of
1993.

2. In the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (hereinafter referred to as the principal Act), in section 2,—

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

“(dd) ‘Family’, in relation to a person, means the individual, the wife or husband, as the case may be, of such individual, his parents, sons, daughters, brothers, sisters;”;

(b) in clause (g), the following proviso shall be inserted:—

“Provided that notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, a person shall be deemed to be a promoter if he constructs or causes to be constructed, a building with a height of 9.5 metre or more and on

*The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters)
(Amendment) Act, 2002.*

(Sections 3, 4.)

a plot of land measuring three hundred square metres or above or if he constructs or causes to be constructed a building consisting of flats in excess of the requirements of the members of his family,"

(c) for clause (j), the following clause shall be substituted:—

'(j) the expression "to construct a building" with its grammatical variation means—

(i) to construct a new building, or

(ii) to re-construct a building, or

(iii) to convert a building, or any part of a building, not being a flat or block, into a flat or block,

in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980, or the Howrah Municipal Corporation Act, 1980, or the Siliguri Municipal Corporation Act, 1990, or the Asansol Municipal Corporation Act, 1990, or the Chandernagore Municipal Corporation Act, 1990, or the Durgapur Municipal Corporation Act, 1994, or the West Bengal Municipal Act, 1993, or the West Bengal Panchayat Act, 1973, or the West Bengal Town and Country (Planning and Development) Act, 1979, as the case may be, and the rules made thereunder.'

West Ben. Act
LIX of 1980.
West Ben. Act
LVIII of 1980.
West Ben. Act
XXX of 1990.
West Ben. Act
XXXI of 1990.
West Ben. Act
XXXII of 1990.
West Ben. Act
LIII of 1994.
West Ben. Act
XXII of 1993.
West Ben. Act
XLI of 1973.
West Ben. Act
XIII of 1979.

Amendment of
section 3.

3. In section 3 of the principal Act,—

(a) in sub-section (1), in the proviso,—

(i) for the words "such officer of the State Government, not below the rank of Executive Engineer, as the State Government may appoint," the words "such officer not below the rank of Assistant Engineer, specially authorised by the State Government," shall be substituted,

(ii) after the words "shall have access to the site of such building", the words "and have power to enter upon or take ingress to any flat of the building" shall be inserted;

(b) in sub-section (2),—

(i) in clause (b), the word "promoter's" shall be omitted,

(ii) in clause (c), the word "registered" shall be omitted;

(c) in sub-section (3),—

(i) the first proviso shall be omitted,

(ii) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted;

(d) in sub-section (5), in the second proviso, after the words, figure and brackets, "every application under sub-section (1)", the words, figure and brackets "accompanied by all relevant documents and particulars, referred to in sub-section (2)," shall be inserted.

Insertion of new
section 3A.

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

"Stopping
construction,
or demolition,
of unauthorised
building.

3A. (1) The authorised officer, if he is satisfied that a building is being constructed in violation of any provision of this Act, may direct the concerned local body or the District Magistrate or the Commissioner of Police or the Chief Engineer, Housing Directorate or any other authority as may be prescribed, without prejudice to

any other law for the time being in force, to stop construction of such building or to demolish such building after giving the promoter a notice and an opportunity of being heard in the manner as may be prescribed.

(2) The cost of demolition of such building shall be realised from the concerned promoter under the provisions of the Bengal Public Demands Recovery Act, 1913."

Ben. Act III of
1913.

The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 2002

(Sections 5-8.)

Amendment of
section 4

5. In section 4 of the principal Act,—

- (a) for sub-section (1), the following sub-section shall be substituted:—

“(1) The certificate of registration granted to a promoter under section 3 shall, subject to the provisions of sub-section (2) of this section, remain valid for a period of ten years from the date of issue of such certificate:

Provided that the authorised officer may, from time to time, renew the certificate of registration for a period not exceeding five years at a time:

Provided further that the application for renewal of the certificate of registration shall be in such form, and shall be accompanied by such fee, as may be prescribed.”;

- (b) in sub-section (2),—

- (i) for clause (c), the following clause shall be substituted:—

“(c) the promoter, in course of construction of any building, uses sub-standard materials or violates any rule or established practices regulating the construction of building; or

- (ii) after clause (c), the following clause shall be inserted:—

“(d) the promoter has been convicted by the competent court of law for violation of any provision of this Act.”.

Insertion of new
section 4A.

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

“Period of validity
of permission for
construction of a
building

4A. The permission for the construction of a building granted to a promoter under section 3, shall remain valid for a period of five years from the date of grant of such permission:

Provided that the authorised officer on an application by the promoter may, extend the period of validity of the permission for construction of building, howsoever that the total period of such extension shall not exceed two years:

Provided further that, if the promoter cannot complete the construction of such building within the total period of seven years for the circumstances beyond his control, he may make an application to the State Government for extending period of validity of permission for construction of such building, and the State Government may, on receipt of such application, extend the said period of seven years by such further period as it thinks fit.”.

Amendment of
section 7.

7. In section 7 of the principal Act,—

- (a) for the words “which shall not be more than forty per cent. of the sale price of a flat,” the words “as may be prescribed,” shall be substituted,
(b) the words and figures “and the agreement shall be registered under the Registration Act, 1908,” shall be omitted,
(c) the proviso shall be omitted.

16 of 1908.

Amendment of
section 8.

8. In section 8 of the principal Act,—

- (a) in sub-section (3), for the words “the matter shall, on payment of such fee by the purchaser in such manner as may be prescribed, be referred for a decision to the Chief Engineer in the Housing Directorate under the Housing Department of the State Government, not below the rank of Executive Engineer, as the State Government may appoint within a period of two years from the date of taking possession of the building”, the words “notwithstanding anything contained in any other Act, the matter shall, on payment of such fee by the purchaser in such manner as may be prescribed, be referred forthwith for an enquiry, to the Chief Engineer in the Housing Directorate under the Housing Department of the State Government or to such other officer of the State Government not below the rank of Executive Engineer, as the State Government may appoint or to the concerned local body or to any other experts as may be prescribed, who, after necessary investigation into the matter, shall submit a report with specific views to the authorised officer within a period of six months from the date of payment of the fee referred to above and the authorised officer shall, on the basis of the enquiry reports received from any of the authorities as aforesaid, dispose of such dispute within three months thereafter:

The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 2002

(Sections 9, 10.)

Provided that such dispute is to be brought to the notice of the authorised officer within a period of two years from the date of taking possession of the building, and the decision of the authorised officer thereof shall be final" shall be substituted;

(b) sub-section (4) shall be omitted;

(c) for sub-section (5), the following sub-section shall be substituted:—

"(5) The Chief Engineer or the officer appointed under sub-section (3) or the local body or the experts, as the case may be, entrusted for enquiry into the disputes referred to in sub-section (3), shall have access to the site of any building under construction by any promoter, whose name has been registered under sub-section (5) of section 3, at any time of the day without prior intimation to him for inspection of the work of construction or for investigation of any complaint from any purchaser or other person or from any other source with regard to unlawful or defective construction or use of sub-standard materials, as may be referred to him by the authorised officer."

Amendment of
section 9.

9. In section 9 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted:—

"(1a) A promoter who has already created a charge on the land and on the flat proposed to be constructed on such land by injecting Bank finance or finance from other sources, shall deliver possession of such flat with right, title and interest free from all encumbrances, on full and final settlement of the consideration money by such purchaser.";

(b) in sub-section (2),—

(i) after the words "be liable on demand to refund", the words "within a period of three months" shall be inserted;

(ii) in the proviso,—

(A) in clause (a), for the words "at the rate of twelve per cent. of the advance payment or deposit to the party for the period commencing from the date following the date of expiry of the specified period to the date of giving possession of the flat, and such compensation shall be adjusted against the price of the flat", the words "which shall be adjusted against the price of the flat as such rate and", shall be substituted,

(B) in clause (b), for the words "at the rate of twenty-five per cent. of such advance payment or deposit", the words "at the rate as may be prescribed, or" shall be substituted,

(C) after clause (b), the following clause shall be inserted:—

"(c) after completion of construction within the specified date, if any party is unable to pay consideration money to the promoter and does not take possession of the flat within a period of three months from the date of obtaining completion certificate from the authority who sanctioned the building plan, the promoter may demand compensation at such rate as may be prescribed."

Substitution of
new section for
section 10.

10. For section 10 of the principal Act, the following section shall be substituted:—

10. After obtaining occupancy certificate for the building and within two months after a minimum number of persons, required to form an apartment owners' association under the West Bengal Apartment Ownership Act, 1972, or a co-operative society under the West Bengal Co-operative Societies Act, 1983, have taken flats, the promoter shall take steps for the formation of an association of apartment owners or co-operative society, as the case may be, and the promoter shall join as member in respect of the flat or flats which has or have not been taken. 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."

West Ben. Act
XVI of 1972.
West Ben. Act
XIV of 1983.

The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 2002

(Sections 11-14.)

Amendment of
section 11.

11. In section 11 of the principal Act,—

- (a) after the word "promoter", the words "as well as the owner of the land" shall be inserted;
- (b) after the words "which is registered as a co-operative society", the words "or an apartment owners' association, as the case may be," shall be inserted.

Amendment of
section 12.

12. In section 12 of the principal Act,—

- (a) in sub-section (3), for the words "risks shall cover for a period of not less than five years from the date of making over of possession of the last saleable flat," the words "shall cover risks for a period of not less than five years from the date of receipt of completion certificate from the authority who sanctioned the building plan." shall be substituted;

- (b) after sub-section (5), the following sub-section shall be inserted:—

"(6) In the event of death of the insured promoter or wind up of the promoting company or in case of non-availability of promoter(s), the registered co-operative society or the apartment owners' association, formed by, and for, the benefit of the owners of the concerned buildings, may act on behalf of the insured promoter with the permission of the authorised officer for recovery of claim in case of any death or loss caused by any defect in land or building."

Omission of
section 13.

13. Section 13 of the principal Act shall be omitted.

Insertion of new
sections 13A and
13B.

14. After section 13 of the principal Act, the following sections shall be inserted:—

Offences. 13A. (1) Any offence committed by a promoter by violation of the provisions of sub-section (1) of section 3, section 7, sub-sections (1) and (2) of section 8, section 9, and section 11, of this Act shall be cognizable and non-bailable offence.

(2) Any offence committed by a promoter by violation of the provisions under section 10, and section 12, of this Act shall be non-cognizable and bailable offence.

Penalties. 13B. (1) Any promoter who fails to comply with the provisions under sub-section (1) of section 3 of this Act or the rules made thereunder, shall, on conviction, be punished with imprisonment of either description for a term not being less than six months which may extend to five years or with fine which may extend to fifty thousand rupees or with both:

Provided that the court may, for reasons to be recorded in the judgement, impose a fine exceeding fifty thousand rupees.

(2) Any promoter who fails to comply with, or contravenes, the provisions of section 7, sub-sections (1) and (2) of section 8, section 9, or section 11, of this Act, or the rules made thereunder, shall on conviction, be punished with imprisonment of either description for a term, not being less than three months which may extend to four years or with fine which may extend to twenty-five thousand rupees or with both:

Provided that the court may, for reasons to be recorded in the judgement, impose a fine exceeding twenty-five thousand rupees.

(3) Any promoter who fails to comply with, or contravenes, the provisions of section 10 or section 12 of this Act or the rules made thereunder, shall, on conviction, be punished with imprisonment of either description for a term, not being less than three months, which may extend to three years or with fine which may extend to ten thousand rupees or with both.

(4) Any person who violates the provisions of any other section of this Act shall, on conviction, be punished with imprisonment of either description for a term, not being less than one month, which may extend to two years, or with fine which may extend to five thousand rupees or with both."

*The West Bengal Building (Regulation of Promotion of Construction and Transfer
by Promoters) (Amendment) Act, 2002.*
(Section 15.)

Amendment of
section 16.

15. In section 16 of the principal Act,—

(a) after the words “by a general or special order,” the words “any person or” shall be inserted;

(b) for the words “as it may deem fit to impose”, the words “as may be prescribed” shall be substituted.

By order of the Governor,

A. K. BHATTACHARYA,
Principal Secy. to the Govt. of West Bengal
& Secy., Law Department.

The

Kolkata Gazette
सत्यमेव जयते

Extraordinary
Published by Authority

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WEDNESDAY, APRIL 21, 2004

[SAKA 1925

PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL

**DEPARTMENT OF HOUSING
LAW (PROMOTERS) SECTION**

New Secretariat Buildings (3rd Floor, 'C'-Block) 1, K. S. Roy Road, Kolkata-700 001

No. 220-HIV/3P-2/2000(Pt.)

Kolkata, the 15th April, 2004

NOTIFICATION

In exercise of the power conferred by section 15 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Ben. Act XX of 1993), the Governor is pleased hereby to make, after previous publication as required by sub-section (1) of section 15 of the said Act, the following amendments to the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Rules, 1995.

This shall come into force from the date of its publication in the *Official Gazette*.

Amendments

In the said rules,—

(1) after rule 3, insert the following rule:—

"3A. Form, particulars and fee for renewal of registration.—The form for application for renewal of registration under sub-section (1) of section 4 of the Act shall be in Form 'H' and shall be accompanied by a fee of Rs. 1,000/- which shall be deposited in Reserve Bank of India or in Government Treasury or in the State Bank of India through T. R. Form No. 7 under appropriate head of account."

(2) for rule 5, substitute the following rule:—

"5. Service of process.—Service of all processes including notices for hearing under relevant sections of the Act shall be delivered by hand or by registered post."

(3) after rule 5, insert the following rule:—

(a) "5A. Other Authorities.—The term any other authority under sub-section (1) of section 3A of the Act shall mean any such officer of the State Government as the State Government may appoint."

(b) "5B. Process of Hearing.—The hearing under sub-section (1) of section 3A of the Act shall be held in the office of the authorised officer on such date and at such time as shall be communicated through notice to the promoter.";

(4) after rule 8, insert the following rule:—

"8A. Advance payment or deposit under section 7.—The amount of advance payment or deposit under section 7 of the Act shall not be more than forty per cent of the total price payable for the flat as per written agreement under section 7 of the Act.";

(5) for rule 9, substitute the following rule:—

"9. Fee payable for inquiry by the Chief Engineer in the Housing Directorate under the Department of Housing or other authority under sub-section (3) of section 8.—The fee payable to the Chief Engineer in the Housing Directorate under the Department of Housing of the State Government or to such other officer of the State Government not below the rank of Executive Engineer, as the State Government may appoint or to the concerned local body or to the Architects approved by the Government of India or the Government of West Bengal or the local body or to the Valuers approved by the Government of India or the Government of West Bengal or the local body as the State Government may appoint under sub-section (3) of section 8 of the Act shall be Rs. 500/- per flat. No complaint shall be entertained without the requisite fee payable in cash or by Bank Draft in favour of the Chief Engineer or other authority as aforesaid.";

(6) for rule 11, substitute the following rule:—

"11. Procedure for payment of compensation under section 9.—The extent of compensation payable by the promoter to the purchaser as per clause (a) of proviso to sub-section (2) of section 9 of the Act shall be not more than fifteen per cent per annum of the advance payment or deposit calculated for the period commencing from the date following the date of expiry of the specified period to the date of giving possession of the flat and the extent of compensation payable as per clause (b) of proviso to sub-section (2) of section 9 of the Act shall be not more than twenty-five per cent of the advance payment or deposit made by the party.

In both the cases the party shall apply to the authorised officer by an application containing all particulars and papers in respect of advance paid to the promoter with date and the terms of agreement and the period of blocking. The amount of compensation as claimed by the applicant shall be examined by the authorised officer. On his being satisfied, an order shall be issued to the promoter concerned for adjustment of the said amount against the value of the respective flat for the purchase of which the applicant entered into an agreement with the promoter or for payment of the said amount to the party, as the case may be. The order shall be binding on the promoter and, in case of defiance, it shall be an offence punishable under section 13A of the Act.";

(7) after rule 11, insert the following rule:—

"11A. Procedure for compensation claimed by promoter.—The extent of compensation to be claimed by the promoter under clause (c) of proviso to sub-section (2) of section 9 of the Act, shall be not more than ten per cent of the balance consideration money calculated for the period commencing from the date following the date of expiry of three months as stated in clause (c) of proviso to sub-section (2) of section 9 of the Act, to the date of taking possession of the flat and the promoter shall apply to the authorised officer by an application containing all particulars and papers in respect of consideration money agreed upon in the agreement under section 7 of the Act. The amount of compensation as claimed by the promoter shall be examined by the authorised officer. On his being satisfied, an order shall be issued to the person concerned directing him to pay such amount to the promoter within a period not more than thirty days from the date of issue of such order.";

(8) in Form 'A', in the right hand at the top under the existing heading, insert the following word and figures "Date";

(9) in Form 'C', for the existing note, substitute the following note:—

"Note: This Certificate is valid for a period of 10 years from the date of issue. Copy to the authority sanctioning the plan.";

(10) in Form 'D', in item 3,—

- (a) in sub-item (b), omit the words 'my/our'; and
- (b) in sub-item (c), in the brackets, omit the word 'registered';

(11) in Form 'E', in the foot notes,—

(a) for serial No. 1 and the entries relating thereto, *substitute* the following serial No. and entries:—

"1. This permission shall remain valid for a period of five years from the date of issue *vide* section 4A of the Act."

(b) for serial No. 2 and the entries relating thereto, *substitute* the following serial No. and entries:—

"2. Regarding extension of validity of this permission, *see* provisions under section 4A of the Act."

(12) in Form 'G', for the words "A copy of the Agreement made under section 7 of the Act and duly registered is enclosed for perusal", *substitute* the words "A copy of the Agreement made under section 7 of the Act is enclosed for perusal";

(13) after Form 'G', *insert* the following Form:—

"Form 'H'

[See rule 3A.]

Application Form by the promoter for renewal of registration under section 4 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993

From :

Address :

To

The Authorised Officer under the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993

Sir,

I/We being registered promoter(s) under the provision of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 do hereby apply for renewal of my/our registration certificate being No. dt. under sub-section (1) of section 4 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.

2. Copy of the Challan No. dt. showing the payment of prescribed fee of Rs. 1,000/- (Rupees One thousand) only is enclosed herewith.

3. The original registration certificate being No. dt. is also enclosed.

4. It is hereby declared that none of the applicants—

(a) is of unsound mind or stands so declared by a competent Court, or

(b) is an undischarged insolvent, or

(c) being a discharged insolvent has not obtained from the Court having jurisdiction, a certificate, that his insolvency was caused by misfortune without any misconduct on his part, or

(d) has been convicted of an offence of criminal breach of trust, or

(e) is otherwise incompetent to make any contract under any law for the time being in force.

Yours faithfully,

Dated:

[Signature of applicant(s) with seal, wherever applicable]"

By order of the Governor,

DILIP KUMAR DUTTA,
Secy. to the Govt. of West Bengal.

The

Kolkata Gazette
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AGRAHAYANA 8]

TUESDAY, NOVEMBER 29, 2005

[SAKA 1927

PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL**DEPARTMENT OF HOUSING****Law (Promoters) Section**

New Secretariat Buildings (3rd Floor, 'C' Block)

1, K. S. Roy Road, Kolkata-700 001

No. 755-HIV/3P-2/2005

Kolkata, the 25th November, 2005.

NOTIFICATION

In exercise of the power conferred by section 15 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Bengal Act XX of 1993), the Governor is pleased to make, after previous publication as required by sub-section (1) of section 15 of the said Act, the following amendments to the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Rules, 1995.

This shall come into force from the date of its publication in the *Official Gazette*.

Amendments

In the said rules,—

(1) in rule 4, for sub-rule (2), *substitute* the following sub-rule:—

“(2) The application shall be accompanied by a copy of registration certificate issued in terms of sub-rule (1) of rule 3 and a fee of ten thousand rupees where the estimated expenditure for construction to be undertaken does not exceed fifty lakh rupees or fifteen thousand rupees where such expenditure exceeds fifty lakh rupees but does not exceed one crore rupees or twenty thousand rupees where such expenditure exceeds one crore rupees but does not exceed three crore rupees or thirty thousand rupees where such expenditure exceeds three crore rupees, which may be deposited through T.R. Form No. 7 in the Reserve Bank of India or in the Treasury or in the State Bank of India under appropriate head of account.”;

- (2) for rule 8A, *substitute* the following rule:—

"8A. Advance payment or deposit under section 7:—(1) The amount of advance payment or deposit at the time of entering into written agreement under section 7 of the Act shall not be more than forty per cent of the total price payable for the flat as per written agreement under section 7 of the Act.

(2) A further amount of not more than twenty per cent of the total price payable as per written agreement under section 7 of the Act may be procured by the promoters from the prospective purchasers of the flat after the construction completed up to the plinth level.

(3) Another amount of not more than twenty per cent of the total price payable as per written agreement under section 7 of the Act may be procured by the promoters from the prospective purchasers of the flat after casting of the ultimate roof of the building."

- (3) in Form 'A' in serial No. 2, for the words "An attested copy of receipt No." *substitute* the words "Original T.R. Form No. 7 being no.";

- (4) (a) in Form 'D', in the left hand, at the top under the heading, *insert* the following words:—

"From : _____

Address : _____";

- (b) in the second para, after the words "building containing _____ flats", *insert* the words "at premises No. (complete address) _____";

- (c) after serial No. 2 and entries relating thereto, *insert* the following serial No. and entries relating thereto:—

"2A. Original T.R. Form No. 7 being No. _____ dated _____ showing the payment of prescribed fees for permission for construction of Rs. _____ (in figure/in word _____) only is enclosed.";

- (d) in serial No. 3(e), after the words "common area facilities", *insert* the words "prepared by appropriate authority";

- (e) in serial No. 3(h), after the words "The estimated expenditure for such construction", *insert* the words "duly authenticated by appropriate authority competent for preparing estimate.";

- (f) for serial No. 3(o), *substitute* the following:—

"3(o) Copy of up-to-date Income Tax Return submission/sales tax (VAT, if applicable) clearance of the applicant to be furnished."

By order of the Governor,

SUPRIYA GUHA,
Secy. to the Govt. of West Bengal,
Housing Department.