

GOVERNMENT OF GOA

LAW COMMISSION

**Proposed amendments to the Goa Real Estate (Promotion
control and Development) Bill 2011.**

**Report No. 24
December 2012**

The 3rd Law Commission was constituted by Government Order No. 22-3-2009-LD-Estt/L.C./712 dated the 28th May, 2012 issued by the Law Department, Government of Goa.

The Law Commission consists of the Chairman and the two Members.

Chairman

Shri Narendra Sawaikar

Members

Shri Joaquim D'Souza

Shri Jayant P. Mulgaonkar

The Law Commission is located at **Cabin No. 019, Secretariat complex, Porvorim – Goa.**

**The text of this Report is available on the internet
www.goalawcommission.gov.in**

**Any enquiry relating to this Report should be addressed to
Chairman and sent either by post to the Law Commission,
Cabin No. 019, Secretariat Complex, Porvorim – Goa or email
to chairman-glc.goa@nic.in**

REPORT- 24

The Second Law Commission with its 13th Report proposed “Goa Real Estate (Promotion Control and Development) Bill”.

The Bill as proposed has been referred back to us with comments from the Town and Country Planning Department and Law (Legal affairs) Department of the Govt. of Goa.

Principally, attention of this Commission has thereby been drawn to the absence of any provision for Regulating Authority in the proposed Bill envisaged in the model Law proposed by the Govt. of India.

Query has also been made whether any changes are required to be incorporated in the proposed Bill having regard to provision of the competition Act 2002, and the observation made in that regard by the Competition Commission of India in the case of Belaire Owner’s Association V/S DLF Limited and others.

This Commission has noticed that the statement of object and reason of the proposed Bill is distinct from the model Law, the object of the model Law being establishment of a Regulating Authority. For the reasons stated in the said 13th Report of the 2nd Law Commission with which we are in respectful agreement, we are of the view that the creation of a separate Regulating Authority has no place in the scheme of the proposed Law.

We are also of the view that the provisions of the proposed Bill adequately take care of the guidelines set out by the Competition Commission of India in the afore referred case .

However, this commission does feel that a dispute resolution mechanism is needed for adjudicating authority under the Act for deciding such dispute under section10 of the proposed Act by suitably amending the proposed section 10. The Law commission is also of the view that rather than creating separate adjudicating authority the existing Senior Division Civil Courts designated by the Government for the purpose of adjudicating such disputes should be the Adjudicating Authority under the Act and that a single appeal should be provided from the decision of the adjudicating authority to the District Court and the decision of the Appellate Authority should be final and binding on the parties.

Proposed amendments to the Goa Real Estate (Promotion Control and Development) Bill 2011.

1. Amendment to section 2:

Add Clause (aa) after clause (a) in section 2 as under:

(aa) “adjudicating authority” means the Civil Judge Senior Division in the District designated by notification in the Official Gazette as the adjudicating authority to decide disputes under sub-section (4) of section 10.

Add Clause (i) after clause (h) in section 2 as under:

(i) “Civil Court” means the Civil Judge Senior Division, so appointed having territorial jurisdiction over that area under the Goa Civil Courts Act 1965.

Add Clause (t) after clause (s) in section 2 as under:

(t) “District Court” means the court having the territorial jurisdiction over that District.

Add sub- clause (v) in clause (ze) in section 2 as under:

v. a limited liability firm as provided under the limited Liability Partnership Act, 1999.

2. Amendment to section 10:

Add sub- sections 4, 5, 6, 7 and 8 to section 10 as under:

(4) Any dispute as regards any defect in the building or material used in construction, or the reasonable possibility for the promoter to rectify any such defect or the amount of reasonable compensation payable in respect of such defect shall be decided by the adjudicating authority upon an application made in this behalf within a period of three years from the date on which the cause of action has arisen.

(5) The adjudicating authority shall in holding any inquiry for deciding the dispute subject to any rules that may be made in this behalf, follow such summary procedure as it may deem fit and shall dispose of the dispute as expeditiously as possible and within a period of one year from the date of filing of the dispute, before it.

(6) A person aggrieved by the decision of the adjudicating authority may appeal to the District Court within 30 days from the date of the order and the District Court shall decide such appeal within 45 days from the filing of such appeal and the decision of the District Court in Appeal shall be final and binding.

(7) Section 5 and 12 of the Indian Limitation Act, 1963 shall apply to all applications filed under sub-section (4) and the appeals filed under section (6) above.

(8) The order of the adjudicating authority or the District Court, as the case may be, shall be enforced in the same manner as if it is a decree of the court, under the code of civil procedure, 1908 (5 of 1908).

Sd/-
(Narendra K. Sawaikar)
Chairman

Sd/-
(Jayant P. Mulgaonkar)
Member

Sd/-
(Joaquim D' Souza)
Member