

GOVERNMENT OF GOA

LAW COMMISSION

**Law regulating the Ownership of Apartment
and Promotion of the Construction, Sale,
Management and Transfer.**

Report No. 13

March 2011

LAW COMMISSION, GOA

(REPORT No. 13)

**Law regulating the Ownership of Apartment
and Promotion of the Construction, Sale,
Management and Transfer.**

**Forwarded to the Chief Minister, Government of Goa by Shri
Ramakant D. Khalap, Chairman, Law Commission, Goa on the
7th day of March 2011.**

The 2nd Law Commission constituted by Government of Goa for a period of one year (Order No. 9/5/2008-LA/100 dated 20th January 2009) and further extended for two years w.e.f. 06/04/2010 (Order No. 22/1/2010-LD(Estt.)/LC/530 dated 05/04/2010).

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

Chairman

Shri Ramakant D. Khalap

Members

Shri Cleofato Coutinho

Shri Mario Pinto Almeida

The Law Commission is located at B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa.

Secretarial Support

- 1. Shri Manohar Shetye, O.S.D. to Chairman/ Acting Secretary**

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

**Any enquiry relating to this Report should be addressed to the
O.S.D. to Chairman/ Acting Secretary and sent either by post to
the Law Commission, B S/1, 3rd Floor, Paraiso de Goa, Porvorim-
Goa or email to chairman-glc.goa@nic.in or
rdkhalap@rediffmail.com**

Report

Goa, the cynosure of all eyes is attracting large number of people from all parts of the country and abroad. Our population has grown from 7.6 lakhs in 1961 to more than 1.5 million in the year 2010. This has created a huge demand for residential, commercial, and industrial accommodation. Our villages are being urbanized at a rate never seen before. Where there was once natural cover is now a jungle of concrete. Numerous builders, contractors and real estate agents have jumped in the fray and lure investors for residential and other realty. It is now officially declared, after the first phase of census 2001 that more than 60,000 new houses have come up in the last 10 years due to rising nuclear families and migration from other States. There is thus a boom in the construction industry.

Over the years the construction activity has brought with it both smiles and tears to the needy householders. Apartments and flats on the lines of other cities in the country have now sprung up in Goa. Such complexes are expected to offer common facilities to its residents. However, the experiences are often harrowing. It has been a common complaint of whosoever that responded to our appeal regarding the Real Estate situation in Goa that -

- a) The promoter/ builder had no proper marketable title to the property.
- b) That the common areas like parking areas, open spaces, and terraces were sold sometimes even to non flat owners.
- c) That no co-operative society or any organization is formed to take care of the complex.
- d) That flats are sold only on the basis of agreements of sale or contracts to construct.
- e) Sources of water and power are not specified.
- f) No provision for sewage and waste disposal is made.
- g) Security arrangements are lacking
- h) The builders flout every rule in the book while constructing and allotting the flats.
- i) In many cases, there is not even a proper document of handing over/documents of completion and occupation of the building.
- j) Construction of the building is sub-standard.

This has led to a piquant situation leading very often to frustration, litigation and loss of hard earned money invested by the flat owners. This situation was brought to the notice of Goa Legislature as early as in 1983 and Bill No. 32 of 1983 was introduced in the Goa Assembly. The Bill appears to have lapsed probably because of lack of political will to enact a law for regulating

construction of building for housing purposes in the State of Goa. Although the Bill states in categorical terms that “there is no law to regulate the construction and sale of flats, shops, etc; as a consequence of which the purchasers are put to great hardships and even defrauded by unscrupulous builders. An official Bill on the present lines was moved during the time of Chief Minister Pratapsing Rane but the same had lapsed. The present Bill is a verbatim reproduction of the Goa Flats, Ownerships, Regulations Bill 1989 as presented by the Select Committee of the House headed by Dr. Luis Proto Barbosa on 27/7/1989. The original bill was moved by Shri Ramakant Khalap the Leader of the Opposition then” and now Chairman, Law Commission.

In the State of Maharashtra there are two Acts in force to prevent malpractices in the construction industry and to regulate construction, sale and management of ownership flats. These are:

1) The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2) The Maharashtra Apartment Ownership Act, 1970.

The Government of India having taken note of the deteriorating situation in the entire country, in matters of construction, regulation, sale and management of real estate decided to request the State Government to speedily enact a law to promote “planned, healthy, transparent, efficient and competitive development” real estate and construction, sale, transfer of residential colonies, buildings and apartments, townships and other similar properties by providing for a fair and true disclosure of all facts and information on completion of real estate project and proper conveyance of title to allottees/owners of such colonies, townships, buildings, etc. circulated a Model Bill which became handy for this Law Commission to consider enacting a proper piece of legislation for the State of Goa.

Accordingly, Law Commission, Goa appealed to the people of Goa at large and particularly the stake holders in the real estate industry to convey their views/suggestions which could be incorporated in the proposed legislation.

The Commission received several suggestions, many of which inter alia bemoaned that -

- a) Unscrupulous builders resorted to illegalities as regards licenses and approvals.
- b) Builders/promoters failed to convey proper title to the real estate purchaser.
- c) Builders/promoters failed to deliver documents of the possession and conveyance of ownership to the buyers of residential properties.

- d) Builders/promoters failed to constitute co-operative society or a valid legal organization of flat owners for management of the society.
- e) Sale of flats to more than one person.
- f) Sale of common parking places, open spaces, terraces, etc to different persons sometimes even to persons other than flat owners.

Many of these grievances were explained to us in person by aggrieved persons along with whatever documents they had in possession and urged us to come out with a law regulating Real Estate Industry as early as possible.

CREDAI (Confederation of Real Estate Developers Association of India) through their Goa Branch also approached us and made extensive presentation on the basis of another Model Act for Real Estate Regulation of Development compiled by them.

The Model law proposed by Government of India provides for a Regulatory Authority and an appellate Authority to decide all matters pertaining to Management; sale and control of construction of apartments. The Model law proposed by CREDAI contains Chapters proposing establishment of the Regulatory Authority and Appellate Tribunal.

The Law Commission is of the view that there should be no authorities in addition to the existing statutory authorities in Goa in order to avoid multiplicity of regulatory authorities and consequent corruption and red tapes. The Law Commission is of the opinion that the legislation ought to be administered by way of deterrence and proposes different punishments in case of its violations. The punishment may go upto 2 years imprisonment and a fine of upto 10 lakhs. The proposed legislation has the following salient features-

- 1) Compulsory execution of agreement containing details including carpet area, details of construction, and providing of all documents establishing title.
- 2) Compulsory transfer of apartment along with land and building to co-operative society or association and only in case where such organization cannot be formed, individuals Sale Deeds can be executed with proportionate rights in the land.
- 3) Prohibition on Mortgage of land/apartment without consent of the purchaser.
- 4) No receipt of money without letter of allotment or without entering into agreements.
- 5) Prohibition to collect the entire amount of consideration before delivery of possession.
- 6) Penalty in case of non compliance of the provisions of the Act.

By another recommendation the Law Commission desires to propose reduction in Stamp Duty to 1% for Housing Co-operative Societies as well as reduction of Registration fees from the existing 2% to 1% as a measure of promoting incorporation of Co-operative Housing Society as against other forms of conveyance of ownership.

With the above views in mind and in consideration of the views of both builders/promoters as well as existing and prospective flat owners and upon consideration of Model Law proposed by Government of India and Model Law by CREDAI. Law Commission has drafted a special Bill which we have named as “Goa Real Estate (Promotion, Control and Development) Bill 2011. The same is annexed to this Report.

**GOA REAL ESTATE (PROMOTION CONTROL AND
DEVELOPMENT) BILL 2011
(proposed) AN ACT**

To regulate, control and promote planned and healthy development and construction, sale, transfer and management of colonies, residential and commercial buildings, apartments and other similar properties, and to facilitate the smooth and speedy construction and maintenance and transfer of such colonies, residential and commercial buildings, apartments and sub-divided properties and for matters connected therewith or incidental thereto.

Be it enacted by Goa Assembly in the Year 2011 of the Republic of India as follows:

PRELIMINARY

1. Short title, extent and commencement:

- (1) This Act shall be called the Goa Real Estate (Control and Development) Act, 2010.
- (2) It extends to the State of Goa.
- (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions:

In this Act, unless the context otherwise requires, -

- (a) “advertisement” means visible representation made to the general public either through announcement or display or in any other manner, whatsoever, offering for sale, a sub-divided plot, residential or commercial building or apartment or inviting persons to take such plot, building or apartment;
- (b) “allottee”, in relation to a residential or commercial building, apartment, premises, flat, shop, office, garage, spaces, basement/stilt parking area or plot, means the person to whom such residential or commercial building or apartment or premises or flat or shop or office or garage or space or basement/stilt parking lots or plot has been allotted, sold or given on rent, lease or otherwise transferred by the promoter;

(c) “apartment”, whether called dwelling unit, flat, premises, including shops, garages, offices, suite, tenement, unit or by any other name, means a separate and independent unit located in a basement or cellar or on one or more floors or any part thereof, in a residential and/or commercial building or on a plot of land, used or intended to be used for residential or commercial purpose, or for any other type of independent use ancillary to such purposes and includes garage or basement/stilt parking space in the basement/stilt floor of a building, whether or not adjacent to the residential or commercial building in which such apartment is located which has been provided by the promoter for the use of the allottee for parking any vehicle, or as the case may be;

(d) “advocate” means a person enrolled an Advocate under the provisions of The Advocates Act 1961.

(e) “architect” means a person registered as an architect under the provisions of the Architects Act, 1972 (20 of 1972);

(f) “association” means a body of individuals, whether registered or not under any special statute, comprising of number of the holders of apartments in any building or colony, be that a registered society, co-operative society, a company, association of persons, condominium, etc., as the case may be;

(g) “building” means a structure meant for human habitation ~~residential~~ or for commercial use or both constructed on any land by use of any construction material;

(h) “building regulations” means the rules or regulations or byelaws made under any law for the time being in force for the erection or re-erection of buildings or parts thereof and for the purpose of this Act includes zoning or development control regulations framed under such law;

(i) “colony” means an area of land divided or proposed to be divided into plots meant for construction of residential, commercial or industrial buildings or any one or more such purposes, as well as a group of such buildings constructed or proposed to be constructed in such area, with or without sub-division thereof into plots, but does not include an area of land divided or proposed to be divided —

(i). for the purpose of agriculture; or

(ii). as a result of partition of lands owned by joint family unit, or partition of the lands devolved on account of inheritance and/or succession from common ancestors or partition of a joint or common holding between the co-owners

thereof but not with the intention of disposing the plots so partitioned for earning profits; or

(iii). in furtherance of any scheme sanctioned by the government or lawful authority, under any other law for the time being in force; or

(iv). for setting up a housing colony for the labourers or the employees working in any industry or factory, without any profit motive; or

(v). when total number of sub-divided plots do not exceed five or construction erected or to be erected in the area does not exceed a single building.

(j) “common areas and facilities” means common passages, staircase, lift area, common terraces, water tank and underground sump etc., in or pertaining to the concerned building, and includes common foot paths, club house, open spaces, internal roads, swimming pool, sewerage treatment plant, composting unit, watchman cabin, area for usage of government supplies such as electricity, water, telephone, gas, etc, to be contained within the area of the colony;

(k) “common expenses” means -

(i). all sums reasonably lawfully assessed or actually incurred for maintenance, repairs, administration, etc., of the colony or building and for provision of common amenities to the colony or the building, or the allottees of any apartment or plot therein,

(ii). any expenses incurred under the provisions of this Act or under the provisions of any other law for the time being in force, or otherwise agreed upon or resolved by majority of the members of ~~by~~ the Association in a meeting, as common expenses;

(iii). the Government and municipal taxes, levies, fares, fees etc., including ground rent and property tax, which is not assessed separately for each apartment;

(l) “company” means a company formed and registered under the Companies Act, 1956 (1 of 1956) and includes, -

(i). a corporation established by or under the Central Act or State Act;

(ii). a development authority or public authority established by the Government in this behalf under any law for the time being in force;

(m) “competent authority” means the local civic authority or authority under Town and Country Planning Act or any other statutory authority which exercises authority over area under its jurisdiction, and has powers to give permission for development or construction or supervision of development on that land.

(n) “contractor” means a person who has entered into a contract with the promoter or any other person authorized by him, for execution of any work, supply of goods, services, materials or equipment and includes, –

(i). his legal representatives,

(ii). successors in title or permitted assignees,

(iii). unless otherwise excluded, all sub-contractors who have similar arrangement with the contractor for execution of any work, supply of goods, services, materials or equipment;

(o) “current rate of interest” means the interest on Fixed Deposits for a term of one year as paid by the State Bank of India to any individual, at the relevant time;

(p) “development” with its grammatical variations and cognate expressions, means carrying out of construction activities of building, engineering activities or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment;

(q) “development charges” means the cost of development works;

(r) “development works” means the internal development works and external development works;

(s) “director”, in relation to a firm, means a partner of the firm, and in relation to a development authority or public authority means a person who takes decisions on matters of policy in his office or designated as such by the said authority.

(t) “engineer” means a person who possesses a bachelor’s degree or equivalent from an institution recognized by the All India Council of Technical Education or is registered as an engineer as defined under any law for the time being in force;

(u) “external development work”, means all such development works within the colony but outside the buildings in the same colony and includes, roads, road side drains, street lights, landscaping, children play area, garden, swimming pool, club house etc., for the benefit of colony;

(v) “Government’ means the Government of Goa.

(w) “internal development work”, means all such development works within the building in a colony and includes providing of elevator/lift system, fire extinguishing equipments, laying of electrical cables for passage and staircase lighting up to the meter box to be provided in the building, laying of pipes for water supply for each of the premises in the building from over head tank up to each premises, outlet pipes from the kitchen, bath and WC from each of the premises in the building up to the chamber provided on the ground near such building, laying of cables for telephone and cable TV from each of the premises in a building up to the junction box outside or in the terrace of such building;

(y) “land’ means a portion of the surface of the earth, comprising the ground or soil and everything under it or over it, and things which are attached to the earth, such as buildings, structures and trees, things which are permanently fastened to the earth or things attached to the earth, easements, rights and appurtenances belonging to them and the benefits arising out of such earth and includes the sites of villages or towns;

(za) “local authority” means the City Corporation of Panaji or Municipal Council under Goa Municipalities Act or Village Panchayat under Goa Panchayat Raj Act;

(zb) “market” means a place,-

(a) to sell;

(b) to offer to sell; or

(c) to engage in any transaction or other activities which shall or is likely to lead to a sale.

(...) “organization” means a Co-operative Society formed under The Goa Co-operative Societies Act, 2001, or a Company formed under the Companies Act, 1956, or an Association formed under The Societies Registration Act, 1860, for the purpose of maintenance of the buildings and common amenities.

(zd) “owner” means the owner of apartment having undivided interest in common areas and facilities appurtenant to such apartment in the percentage specified.

(ze) “person” includes, -

i. an individual,

ii. an individual in partnership with others,

iii. a company,

iv. a firm,

v. a local authority, an association of persons or a body of individuals, whether incorporated or not,

vi. joint family,

vii..... trust; and

viii. any such other entity as the Government may, by notification in the Official Gazette, specify in this behalf;

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

(zg) “project” means the real estate project under this Act;

(zh) “promoter” means, -

i. a person who constructs or causes to be constructed a residential or commercial building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

ii. a person who develops a colony for the purpose of selling to other persons all or some of the plots, whether with or without structures thereon;

Explanation:- For the purposes of sub-clauses (i) and (ii), where the person who constructs a residential or commercial building or converts a residential or commercial building into apartments or develops a colony, and the person who sells apartments or plots are different persons, both the persons shall be deemed to be the promoters;

iii. any development authority or any other public body, as the Government may, by notification in the Official Gazette, specify in respect of allottees of -

a. residential or commercial buildings or apartments constructed by them on lands owned by them or placed at their disposal by the Government; or

b. plots owned by them or placed at their disposal by the Government.

iv. organization who constructs apartments or residential buildings for its members, in respect of the allottees of such apartments or residential buildings.

v. any other person who poses himself as a builder, colonizer, contractor, developer, promoter or by any other name or claims to be acting the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or colony is developed;

vi. such other person who constructs any building or apartments for sale to general public or for its own use as the Government may, by notification in the Official Gazette, specify;

(zi) “property” means the land, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, and includes every type of right and interest in land which a person can have to the exclusion of other persons, such as possession, use and enjoyment free from interference, right of disposition and franchises;

(...) “prospectus” means literature outlining the main features of the project, giving details of business addresses, booking agents, and artistic view of the buildings/villas with other amenities of the project;

(zj) “real estate management” includes the activities of,

i. development of colonies and their management;

ii. promotion of construction, sale, transfer and management of residential buildings, apartments or other similar properties;

(zk) “Schedule” means the Schedule annexed to this Act.

Responsibilities of promoter and allottee:

3. Responsibility of the promoter to make available for inspection, all documents and information to persons intending to take plot or building or apartment in the real estate project:

A promoter who develops or intends to develop a real estate project, shall be liable to make available or cause to be made available for inspection the sanction accorded by the Competent Authority, to all persons taking or intending to take a plot, a building or an apartment on ownership basis in the project, at the time of making advance payment or at the time of executing the Agreement, all such information and documents which shall include but not be limited to the following, namely:-

(a) details of approvals granted by the Competent Authorities;

(b) Title certificate issued by Advocate showing marketability of the land;

(c) full and true disclosure of his enterprise details such as name, registered address, type of enterprise (proprietorship, societies, partnership companies, local authority etc.), registration details under the law registered etc.;

(d) a full and true disclosure of the nature of his title to the land on which the real estate project is developed or intended to be developed:

Provided that if such land is owned by another person, the consent of the owner of such land for the development of the project shall also be furnished.

(e) details of all encumbrances on such land, including any rights, title, interest or claim of any party in or over such land;

(f) the layout plan of the real estate project;

(g) the plan of development works to be executed in the project as approved by the competent authorities;

(h) the plan and specifications of the building or apartments constructed or to be constructed on the land, common areas, carpet, built up and super built up areas, facilities and common services proposed including lifts, fire-fighting equipment as required or approved by the local authority concerned in accordance with the provisions of the building regulations in force, and supply of electricity and water, sewerage and drainage systems to be supplied by the local bodies;

(i) the details of the parts of the colony or apartments and the appurtenant areas that are intended to be kept as common areas and facilities;

(j) the names and addresses of the authorized agents, property dealers, brokers or middlemen by whatever name called;

(k) the names and addresses of the architect, engineer and contractor retained for construction of the building or apartments; and

(l) such other information and documents as may be prescribed.

4. Issuing of advertisement or prospectus inviting advance or deposit:

(1) The advertisement by way of prospectus issued or published shall contain details of location of the site, membership of the Promoter with any Association/Organization having affiliation with any Associations or Confederation of developers, true statement and disclose, the area of the plots, building or apartments offered for sale, nature of title to the land, names of the agents or property dealers or brokers or middlemen known by any other name through whom the property proposed to be marketed and such other matters as may be prescribed.

5. Responsibility of promoters regarding veracity of the advertisement or prospectus:

When any person makes an advance or a deposit on the basis of the information contained in the advertisement or prospectus and if there is variance in actual development, the allottee is free to withdraw from the project provide no agreement is executed between the allottee and the Promoter.

Provided that if the person affected intends to withdraw from the project, he shall be returned his entire advance investment along with the current rate of interest as defined hereinabove, and such allottee shall not be entitled for any sort of compensation in this regard.

6. Agreement between promoter and allottee:

(1) Notwithstanding anything contained in any other law for the time being in force, a promoter shall not accept any sum of money as advance payment or deposit, from a person who comes forward to purchase a plot, building or apartment, as the case may be, without issuing Letter of Allotment and proper receipt for the same and thereafter enter into a written agreement, which shall contain particulars detailed out in schedule I. In case any amount accepted under letter of allotment before the agreement is entered into, an agreement

containing all details in terms of schedule I shall have to be entered into within 3 months from the receipt of the amount.

(2) The consideration shall be payable by the allottee to the Promoter either based on the stages of construction as may be specified in the Letter of Allotment or the Agreement for Sale, if the construction is in progress, or shall be based on fixed period if the construction is complete. However more than 95% of the total consideration amount cannot be collected before giving possession of the apartment/plot as the case may be.

(3) The agreement referred to in sub-section (1) shall contain particulars detailed out in Schedule I and shall specify inter alia, the schedule of development of the project including the construction of building and apartments, along with specifications of internal and external development works, the dates and manner by which payments towards the cost of the plot, building or apartment are to be made by the allottees and the date by which the possession of the plot, building or apartment would be handed over.

(4) The promoter shall not cancel unilaterally without any breach of the agreement of sale entered into under sub-section (1), and if he has sufficient cause to cancel it, he shall give due notice to the other parties to the agreement and tender a refund of the full amount collected at the time of executing the Deed of Cancellation of the earlier Agreement if such Agreement was executed. Amount of such refund shall be collected by the allottee from the office of the Promoter or the Promoter may refund the same without any interest by way of Cheque or Demand Draft and send the same to the address of the allottee as mentioned in the Agreement through Registered Post A.D. or Courier Service.

7. Responsibility of Promoter to take steps for formation of a Cooperative Society or company for maintaining and conveying the property:

On completion of the entire development and minimum number of persons required to form a Cooperative society or a company have taken possession of the premises, the promoter shall within the period of one month from the date of receipt of Occupancy Certificate for entire development submit an application to the Registrar for registration of the organization of persons who have entered into an agreements to purchase apartments or, as the case may be, as a company; and the promoter shall join, in respect of the premises which have not been taken in such application for membership of a co-operative society or as the case may be of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining apartments in accordance with the

provisions of this Act. The promoter shall be liable to payout goes to such society or company in respect of the unsold premises.

Provided that, if the promoter fails within one month to submit an application to the registrar for registration of society in the manner provided in the Goa Co-operative Societies Act, 2000, the registrar of Co-operative Societies receiving an application from the required number of persons as specified in the said Act, who have entered into agreement in terms of 4(1) of this Act from the said promoter, direct the District Deputy Registrar, Deputy Registrar or as the case may be, Assistant Registrar concerned, to register the society.

Provided further that, no such direction to register any society under the preceding proviso shall be given to the district Deputy Registrar, Deputy Registrar or, as the case may be Assistant Registrar without first verifying authenticity of the applicants' request and giving the concerned promoter a reasonable opportunity of being heard.

8. Responsibility of the Promoter regarding the account of sums taken from or on behalf of the allottees:

Promoters shall maintain, including as provided in Schedule II, all accounts of sums taken from and on behalf of allottees, register and record for audit purposes to be audited by a Chartered Accountant.

9. Responsibility of the promoter to the allottees during project period:

(1) Once the promoter enters into an agreement of sale with the allottee for transfer of the ownership by sale or lease of the plot or building or apartment, he shall be responsible to make available or cause to be made available, in addition to the information specified in section 6, the following in respect of the real estate project, namely:-

(a) display on site details of the approvals and licences given by the authorities and the names of Architect/Engineers of the project;

(2) The promoter shall also be responsible to furnish on demand and on payment of such charges of the aforesaid documents, to the allottees individually or collectively.

(3) It shall be the responsibility of the promoter to obtain a completion certificate of the building or apartments from the concerned competent

authority as per building regulations in force and make it available to the allottees individually or to an authorized collective of allottees as the case may be.

(4) If, after the construction of the building or apartments, the promoter does not apply, within a reasonable time, or is unable to so apply, for a completion certificate from the competent authority, the allottee of the building or apartment may apply for such certificate to the said authority and such authority may grant the required certificate.

(5) The cost incurred by the allottee in obtaining the above certificate under sub section (4) shall be recoverable from the promoter.

(6) The promoter shall also prepare and maintain all such other details as may be prescribed including the details as provided under Schedule II.

10. Adherence to approved plans, and project specifications by the promoter:

(1) After the layout plan of the plots in a colony or the plans and specifications of the building or apartment, as the case may be, are approved and the same are disclosed or furnished to the person who agrees to take the building or apartment, the promoter shall not make any alterations in the structures indicated therein provided such alterations are permissible as per The Goa Land Development and Building Construction Regulations or any other Regulations which are in force and such clauses are provided in the agreement between the allottee and the Promoter and which do not prejudice the allottee.

(2) After the plans and specifications of the buildings as approved by the local authority as aforesaid, are disclosed or furnished to the persons who enters into agreement in terms of Section 4, the promoter shall not make:

i) Any alterations in the structures described therein in respect of the apartment or apartments which are agreed to be taken, without the previous consent of that person; or

ii) Any other alterations or additions in the structure of the building without the previous consent of all the persons who have agreed to take the apartments in such building.

Provided that after the possession of the building or apartment is handed over to the allottee, the promoter shall not be responsible if additions and alterations

are done in the building or apartment by the allottee or occupier, in violation of the building regulations and without the consent of the promoter, project architect and project engineer, in writing.

(3) Subject to the provisions of sub-section (1), the building or apartments shall be constructed and completed in accordance with the plans and structural designs and specifications as referred to in sub-section (1) and if any defect in the building or apartments or in the material used in the construction is brought to the notice of the promoter within a period of two years from the date of handing over possession, it shall, wherever possible, be rectified by the promoter without further charge to the persons who have taken the building or apartments, and in other cases such persons shall be entitled to receive reasonable compensation.

(4) Where there is a dispute as regards any defect in the building or apartments or material used in the construction, or the reasonable possibility for the promoter to rectify any such defect or the amount of reasonable compensation payable in respect of any such defect.

11. Handing over of apartment, common areas and execution of the conveyance deed documents to the Collective:

(1) After obtaining the Occupancy Certificate of the entire development the promoter shall take all necessary steps to convey the exclusive ownership of the entire land with all the buildings constructed thereon to the Co-operative Society or a Company or a Association as the case may be, and if such co-operative society or company or association or condominium cannot be formed, shall execute conveyance of the apartment along with proportionate share in the land as well as proportionate share in the common areas in favour of the person with whom he had executed an agreement of sale of the apartment.

(4) The promoter shall not reserve any right in that property except to the extent of the apartments which he is taking up in his own name and the apartments which are unsold.

(5) After obtaining the completion certificate as provided in sub-section (3) of section 9 and handing over physical possession of the plots or buildings or apartments to the allottees in terms of this section, it shall be the responsibility of the promoter to hand over the possession of the common areas and appurtenants and also the originals of the plans and documents to the Cooperative Society or Company or Association of the allottees formed and registered under any other law for the time being in force:

12. No mortgage without consent:

(1) No promoter shall, after he executes an agreement to sell any plot, building or apartment, mortgage or create a charge on such plot, building or apartment without the previous written consent of the person who has taken or agreed to take such plot, building or apartment and if any such mortgage or charge is made or created without such previous consent after the registration of the agreement under section 10, then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the person who has taken or agreed to take such plot, building or apartment.

(2) Where a promoter has executed an agreement of sale of plot, building or apartment with a allottee and has not yet received from such allottee all the amounts agreed to be paid, the allottee shall not mortgage or create a charge against such plot, building or apartment without the previous written consent of the promoter:

Provided that the promoter shall not withhold consent if the mortgage or charge is proposed to be made or created for the purpose of obtaining finance for the payment of the amounts due to the promoter.

Provided further that the financial institutions/banks with whom mortgage is proposed to be created by the allottee, shall produce sanction letter from such financial institutions/banks, and assuring that the payment will be directly made to the Promoter as per the time schedule mentioned in the Agreement.

13. Supply of essential services:

(1) It shall be the responsibility of the promoter to provide services such as light in passages and staircases, lifts, fire extinguishing equipments as per agreement executed with the allottee of the building or apartment. However, it shall be the responsibility of the government to provide water, electricity, drainage, sewerage connections, roads etc., as the Promoter has paid the necessary Infrastructure Tax to the Government as per The Goa Tax on Infrastructure Act.

(2) The details of the services referred in sub-section (1) above which forms the responsibility of the Promoter, shall be kept by the Promoter in the form of a statement and further shall make it available on demand to the allottee or Association of allottees the applications made to the Government agencies for the supply of essential supplies such as water, electricity, drainage, sewerage connections etc.

14. General liabilities of allottees:

1. Every allottee who has entered into an agreement of sale to take a plot or an apartment under section 6 shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement and shall at the time of taking possession of the plot or apartment or building under section 9 pay the proportionate share of the municipal taxes, water and electricity charges, ground rent, if any, and other charges, in accordance with such agreement.

2. Every allottee shall cooperate in the formation of a Co-operative Society or a Company or a Association as the case may be and without reasonable excuse shall not fail to comply with the requirement of the bye laws or articles of association of such organization.

3. Every allottee shall pay to the cooperative society or the company or the association as the case may be charges for maintenance of the property, management of the society and other amounts permissible to be collected under such organization formed.

4. Every allottee shall immediately on taking possession of the premises from the Promoter, shall get transferred in their name, house-tax, electricity connection and water connection, by obtaining the NOC for such transfer from the Promoter. If the allottee fails to transfer the above said services in the name of the allottee and further defaults in payment of such services to the concerned departments, the allottee shall be solely responsible for such act.

OFFENCES AND PENALTIES

15. Penalty for contravention of sections 3 to 10 etc:

Whoever, without reasonable cause, fails to comply with, or contravenes, the provisions of sections 3 to 10 shall be liable to imprisonment for a term which may extent to 3 months and/or a fine of rupees up to three lakhs only.

16. Punishment for non compliance of Secs. 11 to 13:

Whoever without reasonable cause, fails to comply with or contravenes, the provisions of Section 11 to 13 shall be liable to imprisonment for a term which may extend to two years and fine up to Rupees ten lakhs.

17. Penalty for non-payment by the allottee under section 14:

Any allottee who without reasonable cause, fails to comply with, or contravenes, the provisions of section 14, shall be liable to a penalty which may extend to Rupees one lakh. However, if the Promoter desires to terminate the agreement with the allottee on account of such contraventions, the Promoter shall refund to the allottee the entire amount paid by the allottee towards the apartment, without any interest thereon but after deducting a sum of Rs.1,00,000/- towards the penalty as stated above.

18. Penalty for Contravention of other provisions of the Act or Rules made there under:

Any person, or promoter, or architect, or engineer, or estate agent, or contractor who, without reasonable cause, fails to comply with, or contravenes, any other provision of this Act or of any rules made there under, or does not pay the penalty imposed on him shall, if no other penalty is expressly provided for the offence under this Act, be liable to a penalty which may extend to rupees ten lakhs.

19. Offences by companies:

(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, or 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:

Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act 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 an 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 also 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.

20. Compounding of offences:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, may either before or after the institution of the proceeding, be compounded by a court before which such proceedings are pending.

21. Offences to be cognizable:

All offences under this sections shall be non-cognizable and bailable.

Miscellaneous

22. Jurisdiction of court:

(1) No court inferior Judicial Magistrate of the First Class shall try any offence punishable under this Act.

(2) No court shall take cognizance of an offence punishable under this Act or any rules or regulations made there under, except upon a complaint on writing by the allottee.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for the Judicial Magistrate of the First Class to pass a sentence of imprisonment or of fine or both under this Act.

23. Power to make Rules:

(1) The Goa Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

24. Protection of acts done in good faith:

No suit, prosecution or other legal proceedings shall lie against the Government for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or rules and regulations made thereunder.

25. Act to have overriding effect:

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Schedule- I

[See sub-section (1) of section 6]

Contents of the agreement and accompanying documents

The agreement shall contain, inter alia, in the case of apartments, and development of plots the following particulars, namely: -

- (1) details of the liability of the promoter to construct the apartments according to the plans and specifications, approved by the authority, which is required so to do under any law for the time being in force;
- (2) the date by which the possession of the apartment is to be handed over to the allottee;
- (3) the area of the apartments on carpet area built-up area basis, and the plan of the apartment shall show sizes ~~area~~ of the balconies;
- (4) the price of the apartment which shall be inclusive of proportionate price of the common area and facilities to be paid by the allottee of the apartment and the intervals at which the installments thereof may be paid;
- (5) the precise nature of the association to be constituted of the persons who have taken or are to take the apartments;
- (6) the nature, extent and description of the common areas and facilities and the limited common areas and facilities, if any;

(7) the percentage of undivided interest in the common areas and facilities, if any, pertaining to the apartment to be sold, such percentage shall be the ratio of the built-up area of the apartment to the total built-up area of all the apartments;

(8) the statement of the use for which the apartment is intended and restrictions on its use, if any;

(9) the liability of the promoter to develop the requisite infrastructure i.e., internal development works as per approved standards.

(10) the details of essential services to be provided and extent thereof such as water supply, electricity, passages, staircases, sanitary services, etc. by the local body such as water supply, electricity, sewerage connection, drains, roads, etc.

(11) The details of the conversion sanad, development permission, construction licence issued by the concerned authorities;

(12) Details of the Infrastructure Tax paid to the Government under The Goa Tax on Infrastructure Act, 2009.

(13) The details of the membership of the Promoter with any organization, association of Real Estate Developers which are affiliated to all India Federation or Confederation, giving its full address of the 'Consumer Redressal Forum' formed by such organization, with contract telephone numbers, e-mail ID etc., and other relevant particulars with regard to the same.

Schedule- II **[See section 8]**

Promoter's responsibility regarding the account of sums taken from or on behalf of the allottees

(1) The promoter shall maintain a separate account in their books of account ~~any~~ of sums taken by him from, or on behalf of, persons intending to take or who have taken a plot, building or an apartment, as advance towards sale price or for any other purpose, or as deposit including any sum so taken towards the share capital for the formation of a cooperative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, charges for water or electricity, revenue assessment, interest on mortgages or other encumbrances, if any, stamp duty and registration fee for the agreement of sale and conveyance deed).

Responsibility of promoter for outgoings till transfer

(1) A promoter who has collected from the allottees, sums for the payment of outgoings shall pay all outgoings (including ground rent, municipal or other local taxes, charges for water or electricity, interest on mortgages or other encumbrances, if any, provided it is so agreed between the allottee and the Promoter in the Agreement) until he transfers the physical possession of the property to the allottees or till the amount so collected is exhausted, whichever is earlier.

(2) Where any promoter fails to pay all or any of the outgoings as specified in sub-clause (1) hereinabove, collected by him from the allottees before transferring the property to such allottees the promoter shall continue to be liable even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be responsible for the cost of any legal proceedings which may be taken therefore by such authority or person.

Refund of amount

(1) If the promoter fails or is unable to give possession, of a plot or building or an apartment,

(a) in accordance with the terms of the agreement or, as the case may be, duly completed within the period specified therein or any further date agreed to by the parties; or

(b) due to discontinuance of his business as a promoter on account approvals being revoked by competent authority or any other reason.

he shall be liable on demand, without prejudice to other remedies to which he may be liable, to refund the amounts already received by him in respect of that plot, building, or apartment with interest at a rate not exceeding the current rate of interest.

(2) The interest referred to in sub-section (1) shall be chargeable from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded and such amount and interest shall be a charge on the land and other structures thereon.

Promoter's responsibility to maintain accounts, registers and records and to get his accounts audited

(1) A promoter shall maintain proper books of accounts and make available statement of such accounts for inspection by the association of allottees.

Audit

(1) The promoter or estate agent or contractor, as the case may be, shall get his accounts audited as per Income Tax Act and Rules in force.

RECOMMENDATION

- 1) “The Goa Real Estate (Promotion, Control and Development) Act 2011” as proposed may be enacted.**
- 2) Stamp Duty for conveyance in favour of Co-operative Housing Society be reduced to 1% irrespective of quantum of consideration.**
- 3) Registration fee for registration of Co-operative Housing Society be reduced to 1% irrespective of quantum of consideration.**

We recommend accordingly.

**Sd/-
(Ramakant D. Khalap)
Chairman**

**Sd/-
(Cleofato Coutinho)
Member**

**Sd/-
(Mario Pinto Almeida)
Member**