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West Bengal Act XVI of 1972¹

THE WEST BENGAL APARTMENT OWNERSHIP ACT, 1972.

AMENDED

West Ben. Act XXVII of 1972.
West Ben. Act XL of 1974.
West Ben. Act XXI of 1992.
West Ben. Act XXVIII of 1996.
West Ben. Act XXXVI of 1997.

[5th July, 1972.]

An Act to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property.

WHEREAS it is expedient to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property;

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

1. (1) This Act may be called the West Bengal Apartment Ownership Act, 1972.

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

(3) This section shall come into force² at once; and the remaining provisions of this Act shall come into force in such areas, and on such dates as the State Government may, by notification in the *Official Gazette*, appoint; and different dates may be appointed for different areas.

²2. This Act shall apply to every building which is used, or is proposed to be used, mainly for residential purposes;

Provided that the sole owner or all the owners of every such building shall submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to in section 10:

Provided further that the State Government may exempt by any general or special order any such owner from submitting such building to the provisions of this Act.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, Part IVA of the 28th April, 1972, page 982; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of that Assembly held on 3rd May, 1972.

²This Act came into force on 7th June, 1973, vide Notification No. 547-H.I.V., dated the 6th June, 1973, published in the *Calcutta Gazette, Extraordinary*, Part I of the 6th June, 1973, page 2017.

³Section 2 was substituted for original section by s. 2 of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992). Prior to this substitution, the word "mainly" was substituted for the word "actually", in the proviso to original section, by s. 2 of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974).

Short title,
extent and
commence-
ment.

Application
of the Act.

(Section 3.)

Definitions.

3. In this Act, unless the context otherwise requires,—
- (a) "apartment" means part of a property having a direct exit to a road, street or highway or to a common area leading to such road, street or highway which together with its undivided interest in the common areas and facilities forms an independent ¹[residential unit, and includes a flat.]
- ²*Explanation.*—"Flat" shall mean 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 clause (2) of section 390 of the Calcutta Municipal Corporation Act, 1980;
- (b) "Association of Apartment Owners" means the association ³[competent to contract in its own name and] formed in accordance with the provisions made in the bye-laws;
- ⁴(c) "building" means a building containing two or more apartments or more than one building, each being a complete unit or each containing two or more apartments comprised in the same property;
- (d) "common areas and facilities" includes—
- (1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building,
 - (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exits of the building,
 - (3) the basements, cellars, yards, gardens, parking areas ⁵[, shopping centres, schools, garages,] ⁶[building or apartment vacant or occupied by a tenant or any other person, not being an owner, and transferred or proposed to be transferred to the Association of Apartment Owners] and storage spaces,

West Ben.
Act LIX of
1980.

¹Words within the square brackets were substituted for the words "residential unit;" by s. 2(1) of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Ben. Act XXVIII of 1996).

²*Explanation* was substituted for the original '*Explanation*' by s. 2(2), *ibid.*

³Words within the square brackets were inserted by s. 3(1) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

⁴Clause (c) was substituted by s. 3(2), *ibid.* Prior to this substitution, the words "or more than one building each containing four or more apartments comprised in the same property" were inserted, in original clause (c), by s. 3(1) of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974).

⁵Words within the square brackets were inserted by s. 3(2), *ibid.*

⁶Words within the square brackets were inserted by s. 3(3) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

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(Section 3.)

- (4) the premises for the lodging of janitors or persons employed for the management of the property,
 - (5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, sewerage, etc.,
 - (6) the elevators, tanks, pumps, motors, compressors, pipes and ducts and in general all apparatus and installations existing for common use,
 - (7) such other common facilities, as may be specially provided for in the Declaration,
 - (8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;
- (e) "common expenses" means expenses of administration, maintenance, repair or replacement of the common areas and facilities and all other sums assessed against the apartment owners by the Association of Apartment Owners;
- (f) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;
- ¹(g) "Competent Authority" means any person, or any officer not below the rank of a Deputy Magistrate, authorised by the State Government by notification in the *Official Gazette* to perform the functions of the Competent Authority under this Act for such area as may be specified in the notification, and different persons or officers may be authorised for different functions or for different areas;
- (h) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided;
- (i) "limited common areas and facilities" means those common areas and facilities which may be designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments;
- ²(ia) "owner", in relation to a property or part thereof or an apartment, includes any person owning the same or deemed

¹Clause (g) was first substituted for original clause by s. 2 of the West Bengal Apartment Ownership (Amendment) Act, 1972 (West Ben. Act XXVII of 1972). Then, the same was resubstituted by s. 3(4) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

²Clause (ia) was inserted by s. 3(3) of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974). Then, the same was substituted by s. 3(5) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

(Section 3A.)

to be owning the same, promoter or, for the purposes of this Act, excepting the provisions of sub-section (1) of section 4 thereof, lessee of such property or part thereof or of such apartment, where the lease is for a period of thirty years or more:

Provided that where a person has executed and registered an agreement for purchase or for taking lease for a period of thirty years or more of a building or an apartment or has paid the consideration or part thereof, he is deemed to be owning such building or apartment even though the document for purchase or lease has not been executed and registered:

- (j) "prescribed" means prescribed by rules made under this Act;
- (k) "property" comprises the land, the building and the common areas and facilities;
- ¹(l) "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,
 - (iii) the Government,
 - (iv) an undertaking of the Government, or
 - (v) any board or corporation established by or under any law for the time being in force.

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

²3A. Where a Co-operative Society is the owner in respect of a property or part thereof, a member of such society in legal occupation of an apartment comprised in such property or such part shall be deemed to be the owner of such apartment within the meaning of the provisions of this Act excepting those of sub-section (1) of section 4 thereof.

¹Clause (l) was inserted by s. 3(6) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

²Section 3A was inserted by s. 4 of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974).

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(Sections 4, 4A and 5.)

4. (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

An apartment to be transferable and heritable property.

(2) An apartment, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that no apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be partitioned or subdivided for any purpose whatsoever.

4 of 1882.

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

- (a) acquiring by purchase ²[or by inheritance], or
- (b) taking lease of, for a period of thirty years or more, an apartment comprised in a property submitted to the provisions of this Act, shall,—
 - (i) in respect of the said apartment, be subject to the provisions of this Act, and
 - (ii) execute and register an instrument in such form, in such manner and within such period as may be prescribed, undertaking to comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration.

2 of 1882.

³4A. Where an apartment is transferred to one person for a consideration paid or provided by another person for his own benefit, the transferee shall, notwithstanding anything in the Transfer of Property Act, 1882, or in the Indian Trusts Act, 1882, or in any other law for the time being in force, be deemed to be the real owner of such apartment, and no Court shall entertain any claim of the person, paying or providing the consideration, for title in such apartment on the ground that he did not intend to pay or provide such consideration for the benefit of the transferee and that the transferee is his *benamdar*, or on any other ground.

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

5. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration.

Common areas and facilities.

¹Sub-section (3) was inserted by s. 5, of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974).

²Words within the square brackets were inserted by s. 4 of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

³Section 4A was inserted by s. 6 of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974).

(Section 5.)

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall not be altered ¹[without the written consent of all the apartment owners. Addition or alteration, if any, is to be expressed subsequently] in an amended Declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.

(3) The common areas and facilities shall remain undivided, and no apartment owner or other person shall bring any action for partition or division of any part thereof, unless the property has been withdrawn from the provisions of this Act.

(4) Each apartment owner may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(5) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out in accordance with the provisions of this Act and the bye-laws made thereunder.

(6) The Association of Apartment Owners shall have ²* * * right, to be exercised by the Manager or the Board of Managers on behalf of the Association, with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary, to have access to each apartment from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein to prevent any damage to the common area and facilities or to other apartments.

¹Words within the square brackets were substituted for the words "without the consent of all the apartment owners expressed" by s. 3 of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Ben. Act XXVIII of 1996).

²The word "irrevocable" was omitted by s. 5(1) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

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(Sections 6-9.)

¹(7) The Association of Apartment Owners shall, subject to any covenants, conditions or restrictions if any agreement, have the right, to be exercised by the Manager or the Board of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary, to transfer ownership, by sale or by lease for thirty years or more, of any buildings of apartment owned or deemed to be owned as common areas and facilities by the Association and occupied by any tenant or any other person not being an owner:

Provided that no such transfer shall be made by the Association to any person, other than an existing tenant or an occupier, not being an owner, without the consent of all the apartment owners.

6. Each apartment owner shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration. Failure to comply with any of the same shall be a ground for an action to recover damages or for other relief or reliefs at the instance of the Manager or the Board of Managers on behalf of the Association of Apartment Owners or, in a proper case, by an aggrieved apartment owner.

Compliance with bye-laws, covenants, etc.

7. No apartment owner shall do any work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement or hereditament ²[or shall add any material structure or excavate any additional basement or cellar without first obtaining the consent, in writing, of all other apartment owners]

Certain work prohibited.

8. During the period the property remains subject to this Act, no encumbrance of any nature shall be created against the property. During such period an encumbrance may, however, be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, in the same manner as in relation to any other separate parcel of property subject to individual ownership.

Encumbrances against apartments.

9. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

Common profits and expenses.

¹Sub-section (7) was inserted by s. 5(2) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

²Words inserted by s. 2 of the West Bengal Apartment Ownership (Amendment) Act, 1997 (West Ben. Act XXXVI of 1997).

³Words "or shall add any material structure or excavate any additional basement or cellar" were omitted by s. 4 of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Ben. Act XXVIII of 1996).

(Sections 10, 10A.)

Contents of
Declaration.

10. (1) The Declaration referred to in section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely:—

- (a) description of the property;
- (b) nature of interest of the owner or owners in the property;
- (c) existing encumbrance, if any, affecting the property;
- (d) description of each apartment containing its location, [actual built-up area,] number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;
- (e) description of the common areas and facilities;
- (f) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;
- (g) value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner
* * * * *;
- (h) such other particulars as may be prescribed.

(2) The Declaration referred to in sub-section (1) may be amended under such circumstances and in such manner as may be prescribed.

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

³10A. (1) Any Declaration referred to in section 2 or any amendment thereto or any instrument referred to in sub-section (3) of section 4, shall, in the first instance, be submitted, in duplicate, within fifteen days from the date of its execution, to the competent authority along with copies of site plans, building plans and relevant title deeds.

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

- (a) [after issuing notice to the parties concerned and after holding such inquiry,] if any, as it may consider necessary for the purpose, examine the Declaration, the amendment or the instrument as the case may be, to ascertain whether—
 - (i) the property concerned comes within the purview of this Act, and
 - (ii) the Declaration, the amendment or the instrument is in order,

⁴Words within the square brackets were substituted for the words "approximate area," by s. 5(1) of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Ben. Act XXVIII of 1996).

⁵Words "for all purposes, including voting" were omitted by s. 5(2), *ibid.*

⁶Section 10A was inserted by s. 7 of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974).

⁷Words within the square brackets were substituted for the words "after holding such inquiry" by s. 6(1)(a) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

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(Sections 10B, 11.)

- (b) by an order in writing giving reasons therefor accept or reject the Declaration, the amendment or the instrument, and
- (c) in case of acceptance, immediately return the Declaration, the amendment or the instrument along with all the enclosures to the owner or owners, as the case may be, for registration, within fifteen days of the date of return,
- ¹(d) in case of rejection, forthwith communicate the order of rejection to the owner or owners.

²(3) Any person aggrieved by an order of rejection under sub-section (2) may appeal to such appellate authority as the State Government may, by notification in the *Official Gazette*, appoint, provided that such appeal shall be made within thirty days from the date of such order or within such further period as the appellate authority may allow on sufficient grounds being shown in this behalf. The order of the appellate authority on any such appeal shall be final and shall not be called in question in any court of law.

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

³10B. Notwithstanding anything in this Act, the State Government may, on its own, call for and examine the records of any proceeding before the Competent Authority or the appellate authority within thirty days from the date of any order made by such Competent Authority or appellate authority, as the case may be, in such proceeding, and make such order thereon as it may think fit.

Power to call for records etc.

11. (1) All the apartment owners may ⁴[with the prior permission of the State Government,] withdraw a property from the provisions of this Act by an instrument executed to that effect.

Withdrawal from the provisions of the Act.

(2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the apartment owners and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

(3) Any encumbrance affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided herein.

¹Clause (d) was inserted by s. 6(1)(b) of the West Bengal Apartment Ownership (Amendment) Act, 1992 (West Ben. Act XXI of 1992).

²Sub-section (3) was substituted by s. 6(2), *ibid*.

³Section 10B was inserted by s. 7, *ibid*.

⁴Words inserted by s. 8, *ibid*.

(Sections 12, 13.)

Instruments
of Declara-
tion etc.,
compulso-
rily
registrable.

12. (1) All instruments relating to the Declaration or any amendment thereto referred to in section 10 or the withdrawal of a property from the provisions of this Act referred to in section 11 ¹[or the instrument referred to in sub-section (3) of section 4] shall be deemed to be instruments compulsorily registrable within the meaning of clause (b) of sub-section (1) of section 17 of the Registration Act, 1908.

16 of 1908.

(2) The withdrawal provided for in section 11 shall in no way bar the subsequent re-submission of the property to the provisions of this Act.

Bye-laws.

13. (1) Every property shall be administered in accordance with such bye-laws as may be framed by the Competent Authority with the prior approval of the State Government.

(2) The bye-laws shall provide for the following amongst other matters, namely:—

- (a) the manner in which the Association of Apartment Owners is to be formed, the election of a Board of Managers from among the apartment owners, the number of persons constituting the Board, the number of members of such Board to retire annually, the powers and duties of the Board; the honorarium, if any, of the members of the Board; the method of removal from office of members of the Board; the powers of the Board to engage the services of a Secretary or Manager, delegation of powers and duties to such Secretary or Manager;
- (b) method of calling meetings of the apartment owners and the number to constitute a quorum;
- (c) election of a President who shall preside over the meetings of the Board and of the Association of Apartment Owners;
- (d) maintenance, repair and replacement of the common areas and facilities and payments therefor;
- (e) manner of collecting share of the common expenses from the apartment owners;
- (f) any other matter considered to be necessary for the administration of the property.

¹Words, figures and brackets were inserted by s. 8 of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974).

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(Sections 14-16 and 16A.)

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

Separate
assessment.

15. All sums assessed by the Association of Apartment Owners for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment prior to all other charges, except charge, if any, on the apartment for payment of municipal rates and taxes.

Charge for
property of
common
expenses.

16. Upon the sale of an apartment, the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessment against the latter for his share of the common expenses up to the time of the sale.

Liability for
unpaid
common
expenses.

¹16A. (1) If the owner of any apartment subject to the provisions of this Act, contravenes—

Penalty.

- (a) any of the provisions of section 7 or section 8,
- (b) any bye-law that may be framed by the Competent Authority, or
- (c) any covenant, condition or restriction set forth in the Declaration to which he is subject or a party, ³[or if such owner stands in the way of submitting the property to the provisions of this Act and does not furnish the particulars or documents as required for execution of Declaration in accordance with the provisions of section 10A and the rules made under this Act, he shall,] at the instance of the Manager or the Board of Managers on behalf of the Association of the Apartment Owners, an aggrieved apartment owner or, in a proper case, the Competent Authority, on conviction before a Magistrate, be liable to a fine which may extend to rupees one thousand or to a term of imprisonment which may extend to six months or to both, and in case of continuing contravention, to additional fine which may extend to rupees fifty for everyday during which such contravention continues after conviction for the first such contravention.

¹Section 14 was substituted for original section by s. 9 of the West Bengal Apartment Ownership (Amendment) Act, 1974 (West Ben. Act XL of 1974).

²Section 16A was inserted by s. 10, *ibid.*

³Words within the square brackets were substituted for the words "he shall," by s. 6 of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Ben. Act XXVIII of 1996).

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(Sections 16B, 17 and 18.)

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

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

Control and supersession.

16B. (1) If the Association of Apartment Owners having right to be exercised by the Manager or the Board of Managers fails to perform its functions under this Act or the bye-laws made thereunder, the Competent Authority may give to it such directions as that Authority considers fit.

(2) If the Competent Authority is of the opinion that the function of the Manager or the Board of Managers is detrimental to the interest of the Association of Apartment Owners or of the apartment owners or is against the public interest, the Competent Authority may give a notice to the Manager or the Board of Managers to show cause why he should not be removed or, as the case may be, it should not be superseded. If the reply of the Manager or the Board of Managers is not considered satisfactory, the Competent Authority may by order remove the Manager or supersede the Board of Managers, as the case may be, and appoint any member from amongst the members of the concerned Association of Apartment Owners or any employee of the State Government or any other person as administrator to perform the functions of the Manager or the Board of Managers, as the case may be, for a period not exceeding six months:

Provided that the Competent Authority may, if it considers necessary so to do, by order extend the period of removal of the Manager or supersession of the Board of Managers, as the case may be, for a further period, not exceeding six months at a time; so, however, that the aggregate period of removal or supersession, as the case may be, shall not exceed three years.

Power to make rules.

17. The State Government may make rules for carrying out the purposes of this Act.

Removal of doubts.

18. For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882, shall, in so far as they are not inconsistent with the provisions of this Act, apply to every apartment together with its undivided interest in the common areas and facilities as those provisions apply in relation to any other immovable property.

4 of 1882.

¹Section 16B was inserted by s. 7 of the West Bengal Apartment Ownership (Amendment) Act, 1996 (West Ben. Act XXVIII of 1996).