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PART III—Acts of the West Bengal Legislature

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 397-L.—9th March, 1994.—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 XX of 1993

**THE WEST BENGAL BUILDING (REGULATION OF PROMOTION OF
CONSTRUCTION AND TRANSFER BY PROMOTERS) ACT, 1993.**

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the *Calcutta
Gazette, Extraordinary*, of the 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.

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

(Sections 2, 3.)

(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.

Definitions.

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

- (a) "apartment" means an apartment as defined in the West Bengal Apartment Ownership Act, 1972; West Ben. Act XVI of 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-clause (a) to (i) of clause (2) of section 390 of the Calcutta Municipal Corporation Act, 1980, and includes an apartment; West Ben. Act LIX of 1980.
- (f) "prescribed" means prescribed by rules made under this Act;
- (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,
 - (iii) the Government,
 - (iv) an undertaking of the Government, or
 - (v) any board, company, corporation, firm, or other association of persons, established by or under any law for the time being in force;
- (h) "purchaser" 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, 1983; West Ben. Act XLV of 1983.
- (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.

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

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(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 promoter's 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;
- (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;

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(Section 4.)

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

(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:

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:

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(Sections 5-8.)

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; or
- (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.

Agreement and registration thereof.

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:

16 of 1908.

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

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

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,—

- (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.

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(Section 9.)

(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.

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.

(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:

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(Sections 10-12.)

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.

(Sections 13-15.)

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.

Penalties.

13. Any promoter 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 promoter 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 fifty thousand rupees or with both.

Offences by companies.

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:

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.

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(Sections 16, 17.)

Exemption.

16. (1) The provisions of this Act shall not apply to the construction, sale or transfer of any building by any Department of the State Government or the Central Government or of any other State Government or by the West Bengal Housing Board or by the Housing and Urban Development Corporation.

(2) The State Government may exempt the construction, sale or transfer of any building by any undertaking or by any statutory body or company established by the State Government or the Central Government or by any other State Government or by any organisation acting in collaboration with the State Government or the Central Government or with any other State Government from all or any of the provisions of this Act.

(3) Notwithstanding anything contained in the foregoing provisions of this section, if the State Government 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, it may 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 impose.

Repeal and saving.

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

West Ben. Act XVII of 1972.

(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.

By order of the Governor,

S. K. PHAUJDAR

Secy. to the Govt. of West Bengal.