

MAHARASHTRA ACT No. XLV OF 1963¹

[THE MAHARASHTRA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT, 1963]

[Received the assent of the President on the 12th day of December 1963; assent first published in the *Maharashtra Government Gazette*, Part IV, on 16th day of December 1963.]

Amended by Mah.	29 of 1964.	Amended by Mah.	9 of 1981.
" "	1 of 1966.	" "	6 of 1982 (12-2-1982)*
" "	2 of 1968.	" "	13 of 1983.
" "	11 of 1970.	" "	5 of 1984† (1-2-1984)*
" "	15 of 1971.	" "	6 of 1985‡ (20-2-1985)*
" "	5 of 1973.	" "	12 of 1986 (30-1-1986)*
" "	53 of 1974 (1-1-1975)*	" "	36 of 1986 (13-4-1987)*
" "	66 of 1977	" "	15 of 1990£ (17-3-1990)*
" "	1 of 1979.	" "	10 of 1995 †† (1-4-1995)*

An Act to regulate or a certain period, in the State of Maharashtra, the promotion of the construction of, the sale and management, and the transfer of flats on ownership basis

WHEREAS, it has been brought to the notice of the State Government that, consequent on the acute shortage of housing in the several areas of the State of Maharashtra, sundry abuses, malpractices and difficulties relating to the promotion of the construction of, and the sale and management and transfer of flats taken on ownership basis exist, and are increasing;

¹ For Statement of Objects and Reasons, see *Maharashtra Government Gazette*, 1963, Part V, page 117.

* This indicates the date of commencement of Act.

† Sections 4 and 5 of this Act read as follows:—

" 4. (1) Where any agreement for sale was entered into, or was purported to be entered into under section 4 of the principal Act and such agreement was not registered under the Registration Act before the commencement of this Act, then notwithstanding anything contained in any law for the time being in force or in any judgement, decree or order of any Court, such agreement shall not be invalid or ineffective, merely on the ground that it was not registered as required by the said section 4, and shall be deemed always to have been valid and enforceable, if such document is duly presented for registration on or before the 31st December 1984 and registered under the said section 4 as amended by this Act. Validating provisions.

(2) In computing any period of limitation prescribed by any law for the time being in force, for the purpose of taking any legal proceeding for enforcing any rights or liabilities arising from any agreement for sale deemed to be valid and enforceable under sub-section (1) or for execution or enforcing any other documents depending on or connected with such agreement for sale, the period from the date on which such agreement is entered into and the date on which it is registered under section 4 of the principal Act as amended by this Act shall be excluded.

5. Nothing in this Act shall render any person liable to be convicted of any offence under the principal Act, in respect of anything done or omitted to be done, before the commencement of this Act, if such act or omission was not an offence under the principal Act but for the amendments made in the principal Act by this Act. Savings.

‡ Maharashtra Ordinance No. III of 1985 was repealed by Mah. 6 of 1985, s. 3(I).

£ Maharashtra Ordinance No. VI of 1990 was repealed by Mah. 15 of 1990, s. 3(I).

†† Sections 3 and 4 of this Act read as follows:—

" 3. Nothing in this Act shall render any person liable to be convicted of any offence in respect of anything done or omitted to be done, during the period commencing on the 1st day of April 1995 and ending on the date of publication of this Act in the *Official Gazette*, if such act or omission was not an offence but for the retrospective extensions of duration of the principal Act, by this Act. Saving.

4. For the removal of doubt, it is hereby declared that the principal Act, which was to expire after the 31st March 1995 having been retrospectively extended from the 1st April 1995 shall be deemed never to have expired at any time and all its provisions as amended and extended by this Act shall, subject to the provisions of section 3 of this Act, be deemed to be continuously in force. Removal of doubt.

AND WHEREAS, the Government in order to advise itself as respects the manner of dealing with these matters, appointed a committee by Government Resolution in the Urban Development and Public Health Department No. S. 248-79599-F, dated the 20th May 1960, to inquire into and report to the State Government on the several matters referred to aforesaid with the purpose of considering measures for their amelioration;

AND WHEREAS, the aforesaid Committee has submitted its report to Government in June 1961, which report has been published for general information;

AND WHEREAS, it is now expedient after considering the recommendations and suggestions made therein, to make provision during the period of such shortage of housing, for the regulation of the promotion of the construction, sale and management and transfer, of flats taken on ownership basis in the State of Maharashtra; It is hereby enacted in the Fourteenth Year of the Republic of India as follows :—

Short title,
extent,
commence-
ment and
duration.

1. (1) This Act may be called the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963.

(2) It extends to the whole of the State of Maharashtra.

(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force in ¹[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.

(4) This Act shall remain in force upto and inclusive of the 31st day of March ²[2000] and shall then expire.

(5) Section 7 of the Bombay General Clauses Act, 1904, shall apply upon the expiry of this Act as if it had then been repealed by a Maharashtra Act. Bom.
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Definitions.

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

(a) "Flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, show-room or shop or godown ³[or for carrying on any industry or business] (and includes a garage), the premises forming part of a building ⁴[and includes an apartment.]

Explanation.—Notwithstanding that provisions is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained;

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

(c) "promoter" means a person who constructs or causes to be constructed a block or building of flats ⁵[or apartments] for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the persons who sells are different persons, the term includes both;

¹ Greater Bombay on 10th day of February 1964 (*vide* G.N., U.D. & P.H.D., No. FOE. 1062/432-Unification (a), dated 8th February 1964).

² These figures were substituted for the figures "1995" by Mah. 10 of 1995, s. 2.

³ These words were inserted and shall be deemed always to have been inserted by Mah. 36 of 1986, s. 2.

⁴ These words were added by Mah. 15 of 1971, Sch.

⁵ These words were inserted, *ibid.*

Mah. XXIV of 1961. I of 1956. (d) "Registrar" means the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, or, as the case may be, in the Companies Act, 1956 ;

(e) "to construct a block or building of flats ¹[or apartments]" includes to convert a building or part thereof into flats ¹[or apartments] ;

Mah. XV of 1971. ²[(f) the expressions, "apartment" and "apartment owner" shall have the meanings, respectively assigned to them in the Maharashtra Apartment Ownership Act, 1970.]

3. (1) Notwithstanding anything in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned. General liabilities of promoter.

(2) A promoter, who constructs or intends to construct such block or building of flats, shall—

(a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years standing, ³[and having been duly entered in the Property card or extract of Village Forms VI or VII and XII or any other relevant revenue record;]

(b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land ;

(c) give inspection on seven day's notice or demand, of the plans and specifications of the building built or to be built on the land; such plans and specifications, having been approved by the local authority which he is required so to do under any law for the time being in force ;

(d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided ;

(e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the buildings, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement, the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the building;

(f) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly);

(g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken ;

(h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats ;

¹ These words were inserted, by Mah. 15 of 1971, Sch.

² Clause (f) was added, *ibid.*

³ These words were added by Mah. 36 of 1986, s. 3(a).

(i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority) ;

(j) make a full and true disclosure of all outgoing (including ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any) ;

(k) make a full and true disclosure of such other information and documents in such manner as may be prescribed ; and give on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor ;

¹[(l) display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c), at the site and permit inspection thereof to persons intending to take or taking one or more flats ;

(m) when the flats are advertised for sale, disclose *inter alia* in the advertisement the following particulars, namely :—

(i) the extent of the carpet area of the flat including the area of the balconies which should be shown separately ;

(ii) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat ; and the intervals at which the instalments thereof may be paid ;

(iii) the nature, extent and description of the common areas and facilities ;
and

(iv) the nature, extent and description of limited common areas and facilities if any.]

Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.

4. ²[(1)] Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under ³[the Registration Act, 1908 (hereinafter in this section referred to as "the Registration Act ")] ⁴[and such agreement shall be in the prescribed form.] XVI
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⁵[(1A) The agreement to be prescribed and sub-section (1) shall contain *inter alia* the particulars as specified in clause (a) ; and to such agreement there shall be attached the copies of the documents specified in clause (b),—

(a) particulars,—

(i) if the building is to be constructed, the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force ;

¹ These clauses were added by Mah. 36 of 1986, s. 3(b).

² Section 4 was renumbered as sub-section (1) of that section by Mah. 5 of 1984, s. 2(1).

³ These words, figures and brackets were substituted for the word and figures " the Indian Registration Act, 1908 ", *ibid.*, s. 2(1).

⁴ These words were substituted for the portion beginning with the words " and such agreement and ending with the words " may be prescribed " by Mah. 36 of 1986, s. 4(a).

⁵ Sub-section (1A) was inserted, *ibid.*, s. 4(b).

(ii) the date by which the possession of the flat is to be handed over to the purchaser ;

(iii) the extent of the carpet area of the flat including the area of the balconies which should be shown separately ;

(iv) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which instalments thereof may be paid ;

(v) the precise nature of the organisation to be constituted of the persons who have taken or are to take the flats ;

(vi) the nature, extent and description of limited common areas and facilities;

(vii) the nature, extent and description of limited common areas and facilities, if any ;

(viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold ;

(ix) statement of the use of which the flat is intended and restriction of its use, if any ;

(x) percentage of undivided interests in the limited common areas and facilities, if any, appertaining to the flat agreed to be sold ;

(b) copies of documents,—

(i) the certificate by an Attorney-at-law or Advocate under clause (a) of sub-section (2) of section 3 ;

(ii) Property Card or extract of Village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed ;

(iii) the plans and specifications of the flat as approved by the concerned local authority.]

1[(2) Any agreement for sale entered into under sub-section(1) shall be presented by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration, within the time allowed under sections 23 to 26 (both inclusive)of the said Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assign or agent as laid down in sections 34 and 35 of the said Act also within the time aforesaid:

Provided that, where any agreement for sale is entered into, or is purported, to be entered into, under sub-section (1), at any time before the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment and Validating Provisions) Act, V of 1983, and such agreement was not presented for registration or was presented for registration but its execution was not admitted before the registration officer by the person concerned, before the commencement of the said Act, then such document may be presented at the proper registration office for registration, and its execution may be admitted, by any of the persons concerned referred to above in this sub-section, on or before the 31st December 1984, and the registering officer shall accept such document for registration, and register it under the Registration Act, as if it were presented, and its execution was admitted, within the time laid down in the Registration Act:

¹ Sub-section (2) was added by Mah. 5 of 1984, s. 2(2).

Provided further that, on presenting a document for registration as aforesaid if the person executing such document or his representative, assign or agent does not appear before the registering officer and admit the execution of the document, the registering officer shall cause a summons to be issued under section 36 of the Registration Act requiring the executant to appear at the registration office, either in person or by duly authorised agent, at a time fixed in the summons. If the executant fails to appear in compliance with the summons, the execution of the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly. If the executant appears before the registering officer as required by the summons but denies execution of the document, the registering officer shall, after giving him a reasonable opportunity of being heard, if satisfied that the document has been executed by him, proceed to register the document accordingly.]

Effect of non-registration of agreement required to be registered under section 4. 1[4A. Where an agreement for sale entered into under sub-section (1) of section 4, whether entered into before or after the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment and Validating Provisions) Act, 1983, remains unregistered for any reason, then notwithstanding anything contained in any law for the time being in force, or in any judgement, decree or order of any Court, it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction not required to be effected by registered instrument.] Mah. V of 1984. XLVII of 1963. IV of 1882.

Promoter to maintain separate account of sums taken as advance or deposit and to be trustee therefor and disburse them for purposes for which given. 5. The promoter shall maintain a separate account in any bank of sums taken, by him, from persons intending to take or who have taken flats, as advance or deposit including any sums so taken towards the share capital for the formation of co-operative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances if any); and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes and shall on demand in writing by an officer appointed by general or special order by the State Government for the purpose, make full and true disclosure of all transactions in respect of that account.

Responsibility for payment of outgoings till property is transferred. 6. A promoter shall, while he is in possession, and where he collects from persons who have taken over flats or are to take over flats sums for the payment of outgoings even thereafter, pay all outgoings (including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any), until he transfers the property to the persons taking over the flats, or to the organisation of any such persons, ²[where any promoter fails to pay all or any of the outgoings collected by him from the persons who have taken over flats or are to take over flats, before transferring the property to the persons taking over the flats or to the organisation of any such persons, 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 to be responsible for any legal proceedings which may be taken therefor by such authority or person.]

¹This section was inserted, Mah. 5 of 1984, s. 3.

²This portion was added and was deemed always to have been added by Mah.36 of 1986, s. 5.

7. (1) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make—

(i) any alteration in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person ;

¹[(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 flats in such building.]

(2) Subject to sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid; and if any defect in the building or material used, or if any unauthorised change in the construction of brought to the notice of the promoter within a period of ²[three years] from the date is handing over possession, it shall wherever possible to be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such persons shall be entitled to receive reasonable compensation for such defect or change. Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction, ³[or as to whether it is reasonably possible for the promoter to rectify any such defect or change, or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be, or is not, rectified by the promoter,] the matter shall, on payment of such fee as may be prescribed, ⁵[and within a period of three years from the date of handing over possession, be referred for decision—

After plans and specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flats ; and defects noticed within [three years] to be rectified.

(i) in an urban agglomeration as defined in clause (n) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976, to such competent authority authorised by the State Government under clause (d) of section 2 of that Act, and

(ii) in any other area, to such Deputy Chief Engineer, or to such other Officer of the rank equivalent to that of Superintending Engineer in the Maharashtra Service of Engineers, of a Board established under section 18 of the Maharashtra Housing and Area Development Act, 1976.

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of 1977.

as the State Government may by general or special order, specify in this behalf, such competent authority, Deputy Chief Engineer or, as the case may be, the other officer of a Board shall, after inquiry record his decision, which shall be final.]

⁶7A. For the removal of doubt, it is hereby declared that clause (ii) of sub-section (1) of section 7 having been retrospectively substituted by clause (a) of section 6 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Act, 1986 (hereinafter in this section referred to as "the Amendment Act"), it shall be deemed to be effective as if the said clause (ii) as so substituted had been in force at all material times ; and the expression "or construct any additional structures" in clause (ii) of sub-section (1) of section 7 as it existed before the commencement of the Amendment Act and the expression "constructed and completed in accordance with the plans and specifications aforesaid" and "any unauthorised change in the construction" in sub-section (2) of section 7 shall, notwithstanding anything contained in

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of
1986.

Removal of
doubt.

¹ Clauses (ii) was substituted and was deemed always to have been substituted Mah. 36 of 1986. s. 6 (a).

² These words were substituted and were deemed always to have been substituted for the words "one year" *ibid.*, s. 6(b)(i).

³ These words were deemed always to have been inserted by Mah. 11 of 1970, s. 3.

⁴ These words were substituted for the words "A year" by Mah. 36 of 1986, s. 6(c).

⁵ This portion was substituted for the portion beginning with the words "be referred" and ending with the words "shall be final" by Mah. 36 of 1986, s. 6(b)(ii).

⁶ Section 7A was inserted, *ibid.*, s. 7.

this Act or in any agreement, or in any judgement, decree or order of any Court, be deemed never to apply or to have applied in respect of the construction of any other additional building or structures constructed or to be constructed under a scheme or project of development in the layout after obtaining the approval of a local authority in accordance with the building rules or building bye-laws or Development Control Rules made under any law for the time being in force.]

8. If—

Refund of amount paid with interest for failure to give possession within specified time or further time allowed.

(a) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or

(b) the promoter for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist,

then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat (with simple interest at nine percent per annum from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances.

No mortgage etc., to be created without consent of parties after execution of agreement for sale.

9. No promoter shall, after he executes an agreement to sell any flat, mortgage or create a charge on the flat on the land, without the previous consent of the persons who take or agree to take the flats, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 4 is registered, it shall not affect the right and interest of such persons.

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

10. ¹[(1)] As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a Co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats 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 flats in accordance with the provisions of this Act.

¹[(2) If any property consisting of building or buildings is constructed or to be constructed ²[and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing and registering Declaration as provided by that Act] then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

Mah. XV of 1971. Mah. XXIV of 1961.

* * * * *

¹ Section 10 was renumbered as sub-section (1) of that section and sub-section (2) was added by Mah. 15 of 1971, Sch.

² This portion was substituted for the portion beginning with " and the apartment takers propose to submit " and ending with " as required by that Act " by Mah. 53 of 1974, s. 6(a).

³ The words " and each apartment owner shall be entitled to the exclusive ownership and possession of his apartment as provided in the mentioned Act " were deleted, *ibid.*, s. 6(d).

11. A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat takers [or apartment owners] his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

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

12. (1) Every person who has executed an agreement to take a flat shall pay at the proper time and place the price, his proportionate share of the municipal taxes, water and electricity charges, ground rent (if any) and other public charges in accordance with his agreement with the promoter; and where a co-operative society or company of persons taking the flats is to be constituted, co-operate in the formation of such society or company, as the case may be.

General liabilities of flat-taker.

(2) Any person who has executed an agreement to take a flat and who, without reasonable excuse, fails to comply with or contravenes sub-section (1) shall, on conviction, be punished with fine which may extend to two thousand rupees.

²[12A. (1) No person, who is a promoter, or who is in-charge of management or connected with the management of a block or building of flats, whether as member of a managing committee, director, secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person, cut off, withhold, or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken or agreed to be taken by him.

Manager not to cut off, withheld, curtail or reduce essential supply or service.

(2) The person who has taken or agreed to take the flat or the occupier may, if the manager has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.

(3) If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service, and that it was cut off or withheld or curtailed or reduced by the manager without just and sufficient cause, the Court shall make an order directing the manager to restore such supply or service before a date to be specified in the order.

(4) The manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter, be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees.

¹ These words were inserted by Mah. 15 of 1971, Sch.

² Section 12A was inserted by Mah. 29 of 1964, s. 2.

Section 4 of Mah. 29 of 1964, reads as under :—

"4. The amendments made by sections 2 and 3 shall be deemed to have been inserted in the principal Act and shall be deemed to have come into force in Greater Bombay, on the 10th day of February 1964; but nothing therein shall render any person liable to be convicted of any offence in respect of any act or omission by him before the commencement of this Act, if such act was not an offence under the principal Act, at that date, but for the provisions herein inserted. But if any person has cut off, withheld or in any manner curtailed or reduced, any essential supply or service in respect of any flat at any time before the commencement of the Maharashtra Ownership Flats (Regulation of promotion of construction, sale, management and transfer) (Amendment) Act, 1964, and continues or allows the continuance thereof after such commencement he shall be liable to the penalties provided in that aforementioned section 2."

Retrospective effect and saving.

- (5) Notwithstanding anything contained in any law for the time being in force,—
- (a) in Greater Bombay, the Court of Small Causes, Bombay,
 - (b) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court, and
 - (c) elsewhere, the Court of the Civil Judge (Senior Division),

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shall have jurisdiction to decide any application made under sub-section (2), and no other Court shall have jurisdiction to entertain such application. No appeal shall lie from any order made on such application; but in Greater Bombay a bench of two judges of the Court of Small Causes, Bombay, which shall not include the Judge who made such order, and elsewhere the District Court, may for the purpose of satisfying itself that the order made was according to law, call for the case in which such order was made and the Bench or Court aforesaid or the District Judge or any Judge to which the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit.

(6) Any manager who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

(7) The offence under sub-section (6) shall be cognizable, and shall not be triable by any Court inferior to that of a ¹[Metropolitan Magistrate, or a Judicial Magistrate of the First Class]

Explanation I.—In this section, essential supply or service includes the supply of water, electricity, lights in passages and on stair-cases, and lifts and conservancy or sanitary service.

Explanation II.—For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority].

Offences by promoters. ²[13. (1) Any promoter who, without reasonable excuse, fails to comply with or contravenes, the provisions of section 3, 4, 5 [save as provided in sub-section (2) of this section]. 10 or 11 shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine, or with both.

(2) Any promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section 5 shall, on conviction, be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Any promoter who, without reasonable excuse, fails to comply with or contravenes, any other provision of this Act or any rule made thereunder, shall, if no other penalty is expressly provided for the offence, be punished, on conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

Power of Magistrate to pass sentences under this Act. 13A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the First Class to pass on any person convicted of any offence under this Act a sentence of imprisonment or of fine or both as provided in the relevant section of this Act, in excess of his powers under section 27 of the said Code.] II of 1974.

¹ These words were substituted for the words " Presidency Magistrate, or a Magistrate of the First Class " by Mah. 12 of 1986, s. 3

² Sections 13 and 13A were substituted for the original section 13 by Mah. 36 of 1986, s. 8.

14 (1) If the person committing an offence under this Act is 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 business by the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly : Offences by
companies.

Provided that, nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he 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 with the consent or connivance of, or is attributable to any negligence 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 purposes of this section,—

(a) “ company ” means a body corporate and includes a firm or other association of individuals ; and

(b) “ director ” in relation to a firm means a partner in firm.

15. (1) The State Government may, subject to the condition of previous publication, by notification in the *Official Gazette*, make rules for carrying into effect the provision of this Act. Power to
make rule.

(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) under section 3, the particulars as respects the design and the materials to be used in the construction of the building and the other information and documents to be disclosed, the manner in which disclosure to be made and the documents of which true copies shall be given by the promoter ;

¹[(b) under section 4, the form of agreement ;]

(c) under section 10, the period within which the promoter shall submit an application for registration of a co-operative society or a company ;

(d) under section 11, the period within which the promoter shall execute the conveyance ;

(e) any other matter which has to be, or may be, prescribed by rules.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the *Official Gazette*, the rule shall from the date of publication of such notification have effect only in such modified form or be no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

¹ Clause (b) was substituted for the original by Mah. 36 of 1986, s. 9.

Act to be in addition to Transfer of Property Act and to over-ride contract to the contrary.

16. The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882, and shall take effect notwithstanding anything to the contrary contained in any contract. IV of 1882.

Application of certain provisions to flats already in existence.

17. As respects flats which on the commencement of this Act have already been constructed, or converted, the provisions of sections 2, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 apply with the following modifications, that is to say—

(a) in section 2, in clause (c) the words "means a person who constructs" shall be read as if the words "means a person who has constructed" had been substituted ;

(b) in section 8, if the date specified or agreed to has already passed at the commencement of this Act, then the promoter shall give possession within three months from such commencement of this Act; and if for any reasons beyond his control and of his agent, the promoter has been unable to give possession of the flat within three months from such commencement, he shall give possession thereof within a period of three months thereafter, or a further period of three months if those reasons still exist; and thereafter the promoter shall be liable on demand to refund the amounts on the terms and conditions provided in the said section ;

(c) in section 9, the words and figures "after the agreement referred to in section 4 is registered" shall be read as if the words "after the commencement of this Act" had been substituted ;

(d) in section 10, the words "As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period" shall be read if the words "Where the minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within three months from the commencement of this Act had been substituted ;

(e) in section 11, the words and figure "in accordance with the agreement executed under section 4" shall be read as if the words "in accordance with any agreement made in respect thereof" had been substituted and the work "within the prescribed period" shall be read as if the words "within three months from the commencement of this Act" have been substituted.

Act not to apply to Housing and Area Development Authority and Boards.

18. Nothing in this Act shall apply to the Maharashtra Housing and Area Development Authority and the Boards established under the Maharashtra Housing and Area Development Act, 1976.]

Mah.
XXVIII
of
1977.

¹ Section 18 was substituted for the original by Mah. 12 of 1986, s. 4.