

Punjab Apartment and Property Regulation Act, 1995

Punjab Apartment and Property Regulation Act, 1995

Punjab Act 14 of 1995

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Received the assent of the President of India on the 2nd August, 1995, and was published in the Punjab Gazette, (Extra.), Legislative Supplement, Part I, dated August 9, 1995/Sravana 18, 1917.

All Act to regulate the promotion of the construction, sale, transfer and management of apartments Oil ownership basis, to regulate colonies and property transactions. and to provide for registration of promoters and estate agents and enforcement of obligations Oil promoters and estate agents and for matters connected therewith or incidental thereto.

Be it enacted by the Legislature of the State of Punjab in the Forty-Sixth Year of the Republic of India as follows:

PART I

CHAPTER I

Preliminary

1. Short title, extent and commencement. - (i) This Act may be called the Punjab Apartment and Property Regulation Act, 1995.

(2) It shall extend to the whole of the State of Punjab.

(3) This Act shall come into force on such date as the State Government may by notification in the official Gazette, appoint and different dates may be appointed for different areas of the State.

✓ **NOTES**

Coming into Force - Notification: No 2/3/92-2HGIV5080. dated 13th October, 1995 – In exercise of powers conferred by subsection (3) of section 1 of the Punjab Apartment and Property Regulation Act, 1995 (Punjab Act 14 of 1995) the Governor Punjab is pleased to appoint 15th day of October 1995, as the date on which the said Act shall come into force in the whole of the State of Punjab.

Statement of Objects and Reasons - For some time past the problem of controlling the activities of the private colonisers engaged in the construction of apartments and sale of plots has been engaging the attention of the State Government.

Some of the private colonisers are operating solely with the motive of profits with scant regard to the interest and rights of the individual buyers of plots /flats. In order to check, control and regulate effectively the activities of such private colonisers and protect the interests of the consumers, the Government felt the need to formulate a law.. The National Housing Policy also stipulates a larger role for the private initiative in adding to the Housing stock and serviced land for housing which also needs a progressive law which encourages construction of houses/development of plots by the private parties and fully protects the interest of the buyers of plots/flats.

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The Government of India have also prepared and circulated a Model Draft Bill, for the guidance of the State Government to enact such a legislation speedily. Hence this Bill.

Scope of the Act. The Act of 1995 has been enacted with a view to regulate the promotion of the construction, transfer and management of apartments on ownership basis, to regulate colonies and property transactions and to provide for registration of promoters and estate agents and enforcement of obligations on promoters and estate agents and for matters connected therewith or incidental thereto. Before the enactment of 1995 Act, the Punjab Regulation of Colonies Act, 1975 occupied the field. However, it was felt that the private colonizers were operating in the State with the sole motive of making profits without regard to the interest and rights of individual buyers of plots/flats. In order to check, control and regulate the activities of private colonisers and protect the interest of the consumers keeping in view the National Housing Policy, the Legislature enacted the 1995 Act.

National Housing Policy. - About the necessity for promoting a national housing policy to overcome the acute shortage of housing in our country, this Court had occasion to consider in *Prabhakaran Nair etc. etc. v. State of Tamil Nadu and others*, AIR 1987 SC 2117. In para 30. it was stated as under :-

"It is common knowledge that there is a acute shortage of housing, various factors have led to this problem. The laws relating to letting and of landlord and tenant in different States have from different States' angles tried to grapple the problem. Yet in view of the magnitude of the problem, the problem has become insoluble and the litigations abound and the people suffer. More houses must, therefore, be built, more accommodation and more spaces made available for the people to live in. Men with money should be given proper and meaningful incentives as in some European countries to build houses, tax holidays for new houses can be encouraged. The tenants should also be given protection and security and certain amount of reasonableness in the rent. Escalation of prices in the urban properties, land, materials and houses must be rationally checked. This country very vitally and very urgently requires on National Housing Policy if we want to prevent a major breakdown of law and order and gradual disillusionment of people. After all shelter is one of our fundamental rights. New national housing policy must attract new builders, encourage new building, make available new spaces, rationalise, the rent structure and rationalise the rent provisions and bring certain amount of uniformity though having scope for sufficient flexibility among the States to adjust such legislation according to its needs."

Again, in *Mis Shantistar Builders v. Narayan Khimalal Totame and others*, AIR 1990 SC 630, dealing with the case, it was observed as under:-

"Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for the human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.

With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living con

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conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are features which are mainly responsible for increase in the homeless urban population. Millions of people today, live on the pavements of different cities of India and a greater number live animal like existence in Jhuggis".

Thus, it would be clear that both the decisions clearly emphasis the basic need of every citizen of this country to have a reasonable accommodation to life. They also emphasis the need to encourage house building activities. We need not underscore the magnitude of the problem and the urgent need to provide solution excepting to subscribe to the above judicial pronouncements.

2. Definitions. - In this Act, unless the context otherwise requires,-

(a) "advertisement" means any board, device, letter, model, notice, placard, sign board, or representation in any manner whatsoever, wholly or in part, intended for being announced or displayed so as to make it generally known;

(b) "allottee" in relation to an apartment or plot, means the person to whom such apartment or plot has been allotted, sold or otherwise transferred by the promoter;

(c) "apartment" whether called block, chamber, dwelling unit, flat, lot, premises, suite, tenement, unit or by any other name, means a separate and self-contained part of any property, including one or more rooms or enclosed spaces, located on one or more floors, or, any part or parts thereof, in a building, or in a plot of land, used or intended to be used for residence, office, shop, showroom, or godown or for carrying on any business, industry, occupation, profession or trade, or for any other type of independent use ancillary to the purpose specified above and with a direct exit to a public street, road or highway or to a common area leading to such street, road or highway, and includes any garage or room whether or not adjacent to the building in which such apartment is located, provided by the promoter for the use by the allottee for parking any vehicle or, as the case may be, for the residence of any domestic servant employed in such apartment;

Explanation. - (1) If a basement, cellar, garage, room, shop or storage space is sold separately from any apartment, it shall be treated as an independent apartment and not as part of any other apartment or of the common areas and facilities:

Explanation. - (2) Notwithstanding that provision is made for sanitary, wash., ing, bathing or other conveniences as common to two or more apartments, the apartments shall be deemed to be separate and self-contained;

(d) "apartment number" means the number, letter or combination thereof, designating an apartment;

(e) "apartment owner" means the person owning an apartment and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the conveyance deed of apartment;

Explanation. - A member of a co-operative housing society of the tenant co-partnership type, or an allottee under a hire-purchase agreement, will be deemed to be an owner, entitled to membership of the association;

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(f) "association" means an association consisting of all the apartment owners in a building acting as a group in accordance with the bye-laws made by the association under the Punjab Apartment Ownership Act, 1995;

(g) "building" means a building constructed on any land, containing eleven or more apartments, or two or more buildings with a total of eleven or more apartments, or any existing building converted into eleven or more apartments;

(h) "building regulations" means the rules or regulations or bye-laws made under any law for the time being in force for the erection or re-erection of buildings or parts thereof and for the purpose of this Act includes Zoning Regulations framed under any law for the time being in force;

(i) "colony" means an area of land not less than one thousand square metres divided or proposed to be divided into plots for residential, commercial or industrial purpose, but does not include any area of abadi deh of a village falling inside its Lal Lakir or phimy or any area of land divided or proposed to be divided

(i) for the purpose of agriculture; or

(ii) as a result of family partition, inheritance, succession, or partition of joint, holdings not with the motive of earning profit; or

(iii) by the owner of a factory for setting up a housing colony for the labourers or the employees working in the factory :

Provided that there is no profit motive;

Explanation. - The term "agriculture" used in clause (i) shall include horticulture, dairy farming and poultry farming;

(j) "common areas and facilities", in relation to a building, means all parts of the building or the land on which it is located and all easements, rights and appurtenances belonging to the land or the building, which are neither in the exclusive possession of an apartment owner in terms of his conveyance deed of apartment, nor are handed over or intended to be handed over to local authority or other public service agency and shall include the limited common areas and facilities;

(k) "common expenses" means,-'

(i) all sums lawfully assessed against the apartment owners by the association for meeting the expenses of administration, maintenance, repair or replacement of the common areas and facilities;

(ii) expenses, declared by the provisions of this Act or by the bye-laws made by the association under the Punjab Apartment Ownership Act, 1995, or agreed upon by the association, as common expenses;

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

(l) "competent authority" means any person or authority appointed by the State Government, by notification in the Official Gazette, to exercise and perform all or any of the powers and functions of the competent authority under this Act and the rules made thereunder;

(m) "development charges" means the cost of external development works and internal development works;

(n) "development works" means internal development works and external development works;

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(0) "estate agent" means a person who negotiates or acts on behalf of one person in a transaction of transfer of his property, whether by way of sale, lease, licence, mortgage or otherwise, with another person, and receives remuneration for his services in the form of commission, and includes also a person who introduces to each other for negotiation such persons or their agents;

Explanation. - The person who acts as described in clause (0) shall be deemed to be an estate agent, even if he styles himself as a land or housing agent, property or real estate consultant, property dealer, realtor, or by any other name;

(p) "external development works" includes roads and road systems, water supply, sewerage and drainage systems, electric supply or any other work which may have to be executed in the periphery of, or outside, a colony for its benefit;

(q) "Government" or "State Government" means the Government of the State of Punjab;

(r) "internal development works" means roads, foot-paths, water supply, sewers, drains, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, or any other work in a colony necessary for its proper development;

(s) "joint family" means a, Hindu undivided family and in the case of other person, a group the members of which are by custom joint in possession or residence;

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

(u) "limited common areas and facilities" means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or transfer of any apartment, as reserved for use of certain apartments to the exclusion of the other apartments;

(v) "local authority" means a corporation constituted under section 4 of the Punjab Municipal Corporation Act, 1976 (Punjab Act No. 42 of 1976) or a committee constituted under section 12 of the Punjab Municipal Act, 1911 (Punjab Act No: 3 of 1911) or any other authority notified by the State Government for the purposes of this Act;

(w) "person" includes a company, firm, co-operative society, joint family and an incorporated body of persons;

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

(y) "promoter" means the person,-

(a) who constructs or causes to be constructed a building consisting of apartments, or, converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons, and includes his assigns; or

(b) who develops land into a colony, whether or not he also constructs structures on any of the plots, for the purpose of selling to other persons, all or some of the plots, whether open or with structures thereon; and

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(c) where the person who constructs or converts a building or develops a colony and the person who sells apartments or plots are different persons, the term include both of them.

Explanation. - (1) Any development authority and any other public body so notified by the State Government are deemed to be promoter in respect of allottees of,-

(i) buildings constructed by them on land owned by them or placed at their disposal by the State Government; or

(ii) plots owned by them or placed at their disposal by the State Government:

Explanation. - (2) A person who acts as described in sub-clause (c) of clause (y) shall be deemed to be a promoter, even if,

(i) he styles himself as a builder, coloniser, contractor, developer, Estate promoter or by any other name; or

(ii) he claims to be acting as the holder of a power of attorney from the owner of the land on which the building IS constructed or colony IS developed;

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

(za) "section" means a section of this Act.

✓ **NOTES**

Definition. - Definition is explicit statement of the full connotation of a term. I According to well established principles of interpretation of statute even a definition clause is always subject to context in which the word is used. If the context so requires, a word may be given meaning not covered by the definition clause.

"Context otherwise requires." - Definition given in the Act is normally to be taken to apply whenever that word occurs in the statute. The definition, however, will not apply if the word appears in a subject or context which makes the application of the definition impossible and repugnant to the meaning of the context in which the word is found. When the expression "context otherwise requires" is used with reference to any provision of the Act and it results in absurdity, then the definition given cannot be used and has to be discarded and then ordinary meaning assigned to it is to be used and not that the definition is to be expanded to mean some thing different which legislature itself did not contemplate.

Words not defined in Act but used in Act. - When a word or expression used in a statute is not defined it should as far as possible be so interpreted as to be consistent with the scheme of the statute. Where a statute defines an expression or a word used in the statute, that definition must prevail: but otherwise reference must be made to general concept of the object.

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When a word is capable of being construed either in its popular sense or as a word of art it is for those who assert that it is used in a technical and not in a popular sense to establish the fact.

Means. - When a statute says that a word or phrase shall 'mean' - not merely that it shall 'include' - certain things or acts, 'the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition'.

"Development Work" and "Amenity". - The expression "Development Work" as is not synonymous with "Amenity". The expression "Amenity" has been used in Act and Rule 2(b) of the Rules. Rules are subservient to the Act, although they may be read conjointly with the Act, if any necessity arises therefor. Even Rule 5 specifies the obligation of the colonizer as regard providing for the development works. The expression "amenity" as defined in Rule 2(b) of the Rules is wider than "development works". No principle of construction of statute suggests that a wider expression used in the rule may be read in the Statute employing narrower expression. Even in the rule the said expressions have been used for different purposes. The licence also does not postulate that all amenities must be provided by the colonizer at its own expense. If the terms 'Development Works' and 'Amenity' are treated as carrying the same meaning, the plot holders may be held to be bound to meet the costs for construction of schools, hospitals, community centres etc. The cost of construction in terms of the said provisions thereof is to be borne by DLF or its nominees.

Development Charges - Scope. - In a case under HUDA Act it was held that the coloniser is required to pay the cost of external development works if the same are required to be carried out by the government or local authority. The Director has the power to determine the proportion and the time within the payment of EDC is to be made. The expression 'external development works' as defined in Section 2(g) includes sewerage, drainage, roads and electrical works which may have to be executed in the periphery of or outside the colony for the joint benefit of two or more colonies. This, however, does not mean that such works are confined to one or more colonisers. In its very concept, the external development is meant for the community at large and is not confined to a person who may develop a colony for the benefit of a group of individuals, i.e., plot holders. All those including the coloniser who are benefited by external development works are required to pay for it. Of course, the Government has the discretion to grant exemption to economically weaker sections and similar other groups. The use of the words 'in the periphery' or 'or outside' in the definition of the expression 'external development works' is a clear indication of the intention of the Legislature not to confine the external development works to the particular colony. If the Legislature wanted to confine the external development works to the particular colony or colonies, then the definition of the said expression would have been differently worded. The reason why the external development works are not confined to the particular colony or colonies is not far to seek. The works, like laying of roads, sewerage, drainage and electrical lines involve huge expenditure. If these works are to be confined to few individuals who may purchase the land for setting up a colony, then such persons and ultimately the plot/flat owners would be burdened with exorbitant cost and the very object of urbanisation of the area of involving private entrepreneurs, i.e., colonisers would be frustrated. So far as the coloniser is concerned, he can realise this amount from the plot holders in advance. Even if he/it pays for the external development works from his/its own resources, then the cost of external development works can be realised from those who are allotted plots after completion of the colony.

CHAPTER II

Regulation of Promotion of Construction, Sale, Transfer and Management of Apartments, Plots and Properties

3. General liabilities of promoter. - (1) Notwithstanding anything in any other law for the time being in the force, a promoter, who develops a colony or who constructs or intends to construct a building of apartments, shall, in all transactions with persons taking or intending to take a plot or an apartment on ownership basis, be liable to give or produce, or cause to be given or produced, the information and the documents mentioned hereinafter in this section.

(2) A promoter who develops a colony or who constructs or intends to construct such building of apartments shall,-

- (a) make full and true disclosure of the nature of his title to the land on which such colony is developed or such building is constructed or is to be constructed, such title to the land having been duly certified by an attorney-at law or an advocate of not less than seven years standing, after he has examined the transactions concerning it in the previous thirty years; and if the land is owned by another person, the consent of the owner of such land to the development of the colony or construction of the building has been obtained;
- (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 days' notice or demand,
 - (i) of the layout of the colony and plan of development works to be executed in a colony as approved by the prescribed authority in the case of a colony; and
 - (ii) of the plan, and specifications of the building built or to be built on the land as well as of the common areas and facilities and common services provided (including supply of electricity and water, sewerage and drainage systems, lifts, fire-fighting equipment), such plans and specifications being in accordance with the provisions of the building regulations, and approved by the authority which is required so to do under any law for the time being in force, indicating thereon what parts of the building and the appurtenant areas are intended to be kept as common areas and facilities in the case of apartments :

Provided that the number and sizes of the apartments shall conform to such building regulations, and the area of an apartment shall not exceed such limit as may be fixed by the competent authority;

- (d) display or keep all the documents, plans and specifications or copies thereof referred to in clauses (a), (b) and (c) of this sub-section at the site and in his office and make them available for inspection to persons taking or intending to take a plot or an apartment and after the association is formed, he shall furnish the association a copy of these documents and of the sanctioned plan of the building;
- (e) disclose the nature of fixtures, fittings and amenities, including the provision for one or more lifts, provided or to be provided;

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- (f) disclose on reasonable notice or demand, if the promoter is himself the builder, the prescribed particulars as respects the designs and the material to be used in construction, and, if the promoter is not himself the builder, disclose all agreements entered into by him with the architects and contractors regarding the design, materials and construction of the building;
- (g) specify, in writing, the date by which possession of the plot or apartment is to be handed over and he shall hand over such possession accordingly;
- (h) except where there are no agreements about specific plots or apartments and allotment is made by draw of lots, prepare and maintain a list of plots or apartments with their numbers, the names and addresses of the parties who have taken or agreed to take plots or apartments, the price charged or agreed to be charged therefor, and the terms and conditions, if any, on which the plots or apartments are taken or agreed to be taken:

Provided that the competent authority may direct that -

- (i) in the case of residential apartments, if the total number of apartments is one hundred or more, ten per cent of the apartments; "and
- (ii) in the case of colony, if the total area of the colony is forty hectares or more, ten per cent of the area under residential plots and houses, be reserved for being sold or leased to such persons belonging to such economically weaker sections of society, in such manner and on such terms and conditions as may be prescribed;
- (f) state in writing, the precise nature of and the terms and conditions governing the association to be constituted of persons who have taken or are to take the apartments;
- (j) not allow persons to enter into possession until an occupation certificate required under any law is duly given by the appropriate authority under that law and no person shall take possession of an apartment until such occupation certificate is obtained;
- (k) make a full and true disclosure of all outgoings, including ground rent, if any, municipal or other taxes, charges for water and electricity, revenue assessment, interest on mortgages or other encumbrances, if any;
- (1) give the estimated cost of the building and the apartments proposed to be constructed, or colony to be developed, and the manner in which escalation in such cost for valid reasons may be approved by mutual agreement; "
- (m) make a full true disclosure of such other information and documents in such manner as may be prescribed; and
- (n) give on demand and on payment of reasonable charges true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed.

4. Issuing of advertisement or prospectus. - (1) No promoter shall issue an advertisement or prospectus, offering for sale any apartment or plot, or inviting persons who intend to take such apartments or plots to make advances or deposits, unless,

- (a) the promoter holds a certificate of registration under sub- section (2) of section 21 and it is in force and has not been suspended or revoked, and its number is mentioned in the advertisement or prospectus; and

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b) a copy of the advertisement or prospectus is filed in the office of the competent authority before its issue or publication.

(2) The advertisement or prospectus issued under sub-section (1) shall disclose the area of the apartments or plots offered for sale, title to the land, extent and situation of land, the price payable and in the case of colonies, also layout of the colony, the plan regarding the development works to be executed in a colony and the number and the validity of the licence issued by the competent authority under sub-section (3) of section 5, and such other matters as may be prescribed.

(3) The advertisement or prospectus shall be available for inspection at the office of the promoter and at the site where the building is being constructed or on the land being developed into a colony, alongwith the documents specified in this section and in section 3.

(4) When any person makes an advance or deposits on the faith of the advertisement or prospectus, and sustains any loss or damage by reason of any untrue statement included therein, he shall be compensated by,

- (a) the promoter, if an individual;
- (b) every partner of the firm, if the promoter is a firm;
- (c) every person who is a director at the time of issue of the advertisement or prospectus, if the promoter is a company;

Provided, however, that such person shall not be liable if he proves that,

- (a) he withdrew his consent to become a director before the issue of the advertisement or prospectus; or
- (b) the advertisement or prospectus was issued without his knowledge or consent, and on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (c) after the issue of the advertisement or prospectus and before any agreement was entered into with buyers of plots or apartments, he, on becoming aware of any untrue statement therein, withdrew his consent and gave reasonable public notice of the withdrawal and of the reasons therefor.

(5) When any advertisement or prospectus includes any untrue statement, every person who authorised its issue, shall be punished with imprisonment for a term which may extend upto one year or with fine which may extend upto five thousand rupees, or, with both, unless he proves that the statement was immaterial or that he had reason to believe and did upto the time of issue of the advertisement or prospectus believe that the statement was true.

✓ **NOTES**

Bar of section 4. - A few provisions of the Act may be noticed. The Act was published in the Gazette on August 9, 1995. In Section 1(3), it was provided that the Act "shall come into force on such date as the State Government may by notification in the official Gazette, appoint and different dates may be appointed for different areas of the State." Vide notification dated October 13, 1995, the Act was enforced with effect from October 15, 1995 in the whole of the State of Punjab. Under Section 4, it has been *inter alia* provided that 'no promoter shall issue an advertisement or prospectus, offering for sale any apartment or plot, or inviting persons who intend to take such apartments or plots to make advances or deposits, unless (a) the promoter holds a certificate of registration under sub-section (2) of Section 21 and its number is mentioned in the advertisement or prospectus " By Section 21(1), it was pro-

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vided that" from such date as may be fixed by the State Government, by notification in the official Gazette in this behalf, no person shall carry on the business of promoter or estate agent, or represent or hold himself out as carrying on such business, except under and in accordance with the terms and conditions of the certificate of registration granted under this Act." Clause (2) provides for the submission of an application for registration as a promoter or as an estate agent alongwith the prescribed fee on the prescribed form. It is, thus, clear that the provision for registration of promoters and estate agents was to become operative from a date to be fixed by the State Government by notification in the official Gazette. The application had to be submitted on a prescribed form. The prescribed fee had also to be deposited. It is only thereafter that the bar under Section 4 could become operative.

Advertisements issued before framing of rules - Do not violate the Act. - Prior to the promulgation of this Act, the provisions of Punjab Regulation of colonies Act 1975 were in force. Even under those provisions, a person was debarred from setting up a colony except after compliance thereof. However, by section 46, the provisions of the 1975 Act were repealed. On the promulgation of the 1995 Act, the provisions of the 1975 Act were no longer in force. Thereafter, it had become incumbent on a person to get himself registered in view of the provisions of Section 21. The date in this behalf was fixed as November 30, 1995 vide notification dated November 10, 1995. The application for registration had to be made on the prescribed form. The form had to be prescribed under the rules. The rules were also promulgated on November 23, 1995. Thus there was a hiatus in the intervening period. It was during this interval when the 1975 Act did not exist and the provisions of 1995 Act regarding registration as a promoter were not in force that the advertisements had been issued by the petitioner. It was declared by the High Court that the advertisements did not violate the provisions of the 1995 Act.

5. Development of land into colony. - (1) Any promoter, who desires to develop a land into a colony, shall make an application in the prescribed form alongwith the prescribed information and with the prescribed fee to the competent authority for grant of permission for the same and separate permission will be necessary for each colony.

(2) On receipt of the application under sub-section (1), the competent authority, after making enquiry into the title to the land, extent and situation of the land, capacity of the promoter to develop the colony, layout of the colony, conformity of the development of the colony with the neighbouring areas, plan of development works to be executed in the colony and such other matters as it may deem fit, and after affording the applicant an opportunity of being heard and also taking into consideration the opinion of the prescribed authority, shall pass an order, in writing, recording reasons either granting or refusing to grant such permission. "

(3) Where an order is passed granting permission under sub-section (2), the competent authority shall grant a licence in the prescribed form, after the promoter has furnished a bank guarantee equal to twenty five per cent of the estimated cost of the development works certified by the competent authority and the promoter has undertaken to enter into an agreement in the prescribed form for carrying out completion of development works in accordance with the conditions of the licence so granted.

(4) The licence granted under sub-section (3) shall be valid for a period of three years and will be renewable from year on payment of prescribed fee.

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(5) The promoter shall enter into agreement undertaking to pay proportionate development charges for external development works to be carried out by the Government or a local authority.

(6) The competent authority shall determine the proportion in which, and the time within which, the estimated development charges referred to in sub-section (5) shall be paid to the State Government, or the local authority, as the case may be.

(7) The promoter shall carry out and complete the development of the land in accordance with the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976) and other laws for the time being in force.

(8) The promoter shall construct or get constructed at his own Cost schools, hospitals, community centres and other Community buildings, on the land set apart for this purpose or transfer such land to the State Government either free Cost or upon payment of actual Cost of developed land, as decided by the State Government, which shall be at liberty to transfer such land to any local authority or any person or institution on such terms and conditions as it may deem fit;

Provided that if, having regard to the amenities which exist or are proposed to be provided in the locality, the competent authority is of the opinion that it is not necessary to provide one or more of such amenities, it may exempt the promoter from providing such amenities, either wholly or in part, on such terms and conditions as it may deem fit.

(9) The promoter shall, where the total area of the colony is forty hectares or more, reserve upto ten per cent of the area under residential plots and apartments as the competent authority may direct, for being sold or leased to such persons belonging to such economically weaker sections of society, in such manner and on such terms and conditions, as may be prescribed.

(10) The promoter shall carry out all directions issued by the competent authority for ensuring due compliance of the execution of the layout and the development works therein and to permit the competent authority or any officer authorised by it to inspect such execution..

(11) The promoter shall be responsible for the maintenance and upkeep of all roads, open spaces, public parks and public health services until the date of transfer thereof, free of Cost to the State Government or the local authority.

(12) In the event of the promoter contravening any provisions of this Act, or rules made there under or any conditions of the licence granted under sub-section (3) the competent authority may, after giving an opportunity of being heard, cancel the licence and enforce the bank guarantee furnished by the promoter under the said sub-section (3).

(13) When a licence is cancelled under sub-section (12), the competent authority may itself carry out or cause to be carried out the development works, and after adjusting the amount received as a result of enforcement of bank guarantee, recover such charges as the competent authority may have to incur on the said development works from the promoter and the allottees in the manner prescribed as arrears of land revenue.

(14) The liability of the promoter for payment of development charges referred to in sub-section (13) shall not exceed the amount the promoter has actually recovered from the allottees less the amount actually spent on such development works, and that of the allottees shall not exceed the amount which they would have to pay to the pro.-

Pun jab Apartment & Property Regulation Act, 1995 Section 5

moter towards the expenses of the said development works under the terms of the agreement of sale or transfer entered into between them:

Provided that the competent authority may, recover from the allottees with their consent, an amount in excess or what may be admissible under the aforesaid terms of agreement of sale or transfer.

(15) Notwithstanding anything contained in this Act, after development works have been carried out under sub-section (13), the competent authority may, with a view to enabling the promoter, to transfer the possession of, and the title to, the land to the allottees within a specified time, authorise the promoter by an order to receive the balance amount, if any, due from the allottees after adjustment of the amount which may have been recovered by the competent authority towards the cost of the development works and also transfer the possession of, and the title to, the land to the allottees within aforesaid time and if the promoter fails to do so, the competent authority shall on behalf of the promoter transfer the possession of, and title to, the land to the allottees on receipt of the amount which was due from them.

(16) After meeting the expenses on development works under sub-section (13), the balance amount shall be payable to the promoter.

✓ NOTES

License granted by authority not competent to grant license - Cancellation.- - A careful reading of the provisions quoted above shows that the power to grant licence vests with the person appointed as the 'competent authority' under Section 2(1). The inquiry envisaged by Section 5(2) has to be made by the competent authority and the licence has also to be granted by the said authority. Thus, no person or authority other than the one who is appointed by the State Government by notification in the official gazette as the competent authority can exercise the powers and functions earmarked for the competent authority under the Act and the Rules. Where the Additional Chief Administrator, P.U.D.A., Ludhiana did not have the power of the competent authority and he had no jurisdiction to grant licences to the petitioners under Section 5 read with Rules 10 and 13. As a logical corollary, it was held that the action of the Additional Chief Administrator, P.U.D.A. Ludhiana to grant licences was null and void. When it was argued that even though the Additional Chief Administrator, P. U.D .A., Ludhiana may have acted beyond his authority, the licences granted to the petitioners have created a vested right in them and the Additional Chief Administrator, P. U .D.A., Mohali could not have deprived them of the right to develop colonies in accordance with the licence by cancellation thereof without giving action-oriented notice and opportunity of hearing, it was *held* that "the argument built up on the edifice of violation of natural justice appears attractive but on a closer scrutiny we do not find any merit in it because the authority which granted licences to the petitioners did not have the power to do so. Rather, the grant of licences to the petitioners was null and void and keeping in view one of the salutary principles of law that the jurisdiction under Article 226 cannot be exercised for restoring an illegal or void order....."

Right to transfer. - Right of transfer of land is indisputably incidental to the right of ownership. Such a right can be curtailed or taken away only by reason of a statute. An embargo upon the owner of the land to transfer the same in the opinion of this Court should not be readily inferred. Section 3(3)(a)(iv) of the Haryana Development of Urban Areas Act does not expressly impose any restriction. The same is merely a part of an undertaking. Assuming that a prohibition to transfer the land can be read therein by necessary implication, it is interesting to note that the consequence of violation of such undertaking has not been specified. In other words, if a transfer IS made in violation of the undertaking, the statute does not provide that the same would be illegal or the transferee would not derive any title by reason thereof.

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The right of a transferee, however, would be subject to the building laws or regulatory statute relating to user of the property. In terms of the said Act, in the event the Government takes over the plots it would be at liberty to transfer such land to any person or institution including a local authority as it may deem fit. Purpose of such a clause, therefore, is to ensure that schools, hospitals, community centres and other community buildings are established at the places reserved therefor in the sanction plan but there does not exist any embargo as regards the person or persons who would run and manage the same.

A regulatory Act must be construed having regard to the purpose it seeks to achieve. State as a statutory authority cannot ask for something which is not contemplated under the Act. A statute relating to regulation of user of land must not be construed to be a limitation prohibiting transfer of land which does not affect its user.

6. Contents of agreement of sale. - (1) Notwithstanding anything contained in any other law for the time being in force, a promoter who intends to construct or constructs a building of apartments, all or some of which are to be taken or are taken on ownership basis, or who intends to offer for sale plots in a colony, shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than twenty five 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 apartments, or plots, as the case may be, and the agreement shall be in the prescribed form together with prescribed documents and shall be registered under the Registration Act, 1908 (Central Act No. 16 of 1908) :

Provided that, if only a refundable application fee is collected from the applicant before draw of lots for allotment, such agreement will be required only after such draw of lots.

(2) The promoter shall not cancel unilaterally the agreement of sale entered into under sub-section (1) and if he has sufficient cause to cancel it, he shall give due notice to the other parties to the agreement and tender a refund of the full amount collected together with interest at the rate as may be prescribed.

(3) The agreement to be prescribed under sub-section (1) shall contain *inter alia* the particulars as hereunder specified in clause (a) in respect of apartments and as specified in clause (b) in respect of plots in a colony and to such agreement shall be attached the copies of the documents specified in clause (c),-

- (a) the particulars in the case of apartment,
 - (i) if the building is to be constructed, the liability of the promoter to construct the building according to the plans and specifications approved by the authority which is required so to do under any law for the time being in force;
 - (ii) the date by which the possession of the apartment is to be handed over to the allottee;
 - (iii) the area of the apartment including the area of the balconies which should be shown separately;
 - (iv) the price of the apartment including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the allottee of the apartment and the intervals at which the instalments thereof may be paid;

Pun jab Apartment & Property Regulation Act, 1995 Section 7

- (v) the precise nature of the association to be constituted of the persons who have taken or are to take the apartments;
 - (vi) the nature, extent and description of the common areas and facilities and the limited common areas and facilities, if any;
 - (vii) the percentage of undivided interest in the common areas and facilities and in the limited common areas and facilities, if any, appertaining to the apartment agreed to be sold, such percentage shall be the ratio of the built-up area of the apartment to the total built-up area of all the apartments;
 - (viii) the statement of the use for which the apartment is intended and restrictions on its use, if any; .
- (b) particulars in the case of plots in a colony,
- (i) the date by which the possession of the plot is to be handed over to allottee;
 - (ii) the area and price of the plot; and
 - (iii) the .statement of the use for which the plot is intended and restriction on its use, it any;
- (c) the copies of documents to be attached with the agreement,
- (i) the certificate by an attorney-at-law or advocate referred to in clause (a) of sub-section (2) of section 3;
 - (ii) certified copy from any relevant revenue record showing the nature of the title of the promoter to the plot or the land on which the building of apartments is constructed or is to be constructed; and
 - (iii) the plans and specifications of the apartment as approved by the authority which is required so to do under any law for the time being in force.

7. Registration of agreements of sale. - (1) Any agreement of sale entered into under the sub-section (1) of section 6 shall be presented for registration under the Registration Act, 1908, (Central Act No. 16 of 1908), by the promoter or by any other person competent to do so at the proper registration office and execution thereof shall be admitted by the person executing the document or his representative, assignee or agent.

(2) Where any agreement of sale is entered into or is purported to be entered into at any time before the commencement of this Act, such document may be presented for registration at the proper registration office and its execution may be admitted by any of the persons concerned within six months of the commencement of this Act, and the registering officer shall accept such document for registration and register it as if it was presented and its execution admitted within time.

(3) On presenting a document for registration under sub-section (2), if the person executing such document or his representative, assignee 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 requiring the executant to appear at the . registration office either in person or by duly authorised agent on a date fixed in the summons and if the executant fails to appear in compliance with the summons so issued, the execution of the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly and if the executant appears before the registering officer but denies execution of the document,

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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.

8. Effect of non-registration of agreement. - Where any agreement for sale entered into under subsection (1) of section 6, whether entered into before or after the commencement of this Act, 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 (Central Act No. 47 of 1963), or as evidence, of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, (Central Act No. IV of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument.

9. Accounts of sums taken by promoters. - The promoter shall maintain a separate account in any scheduled bank of sums taken by him from persons intending to take or who have taken apartments or plots, as advance, towards sale price or for any other purpose, or, deposit, including any sum so taken towards the share capital for the formation of a co-operative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, charges for water or electricity, revenue assessment, interest on mortgages or other encumbrances, if any, stamp duty and registration fee for the agreement of sale and the conveyance); and the promoter shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes including for the construction of apartments and, in the case of colonies, for meeting the cost of development works, and shall on demand, in writing, by the competent authority make full and true disclosure of all transactions in respect of that account and shall not utilise for any other purpose the amounts so collected for a particular purpose.

10. Responsibility for outgoings till transfer. - A promoter shall, while he is in possession, and, where he collects from persons who have taken or are to take apartments or plots, sums for the payment of outgoings. even thereafter, pay all outgoings (including ground rent, municipal or other local taxes, charges for water or electricity, revenue assessment, interest on mortgages or other encumbrances, if any) until he transfers the property to the persons taking over the apartments or plots, where any promoter fails to pay all or any of the outgoings collected by him from the persons who have taken over or are to take over apartments or plots, before transferring the property to the persons taking over the apartments or plots, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be responsible for any legal proceedings which may be taken therefor by such authority or person.

11. No alterations, rectification of defect. - (1) After the plans and specifications of the building as approved by the authority which is required so to do under any law are disclosed or furnished to the person who agrees to take an apartment, the promoter shall;

- (i) not make any alterations in the structures described therein in respect of such apartment, without the previous consent of that person; or

Pun jab Apartment & Property Regulation Act, 1995 Section 12

(ii) not make any other alterations in, or additions to the structure of the building or construct any additional structures, without the previous consent of all the persons who have agreed to take apartments in such building.

(2) Subject to the provisions of 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 is brought to the notice of the promoter within a period of two years from the date of handing over possession, it shall wherever possible be rectified by the promoter without further charge to the persons who have agreed to take the apartments, and in other cases such persons shall be entitled to receive reasonable compensation for such defects or change and where there is a dispute as regards any defect in the building or material used or any unauthorised change in the construction, 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 and within a period of three years from the date of handing over possession, be referred for decision to the competent authority and the competent authority shall, after giving an opportunity of being heard to the parties and after making further enquiry, if any, as it may deem fit, record its decision and the decision so recorded shall be final.

12. Refund of amount. - If the promoter,

- (a) fails to give possession, in accordance with the terms of his agreement, of a plot or an apartment duly completed by the date specified, or any further date agreed to by the parties; or
- (b) for reasons beyond his control and of his agents, is unable to give possession of the plot or the apartment by the date specified, or the further agreed date; 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 that plot or apartments with simple interest at the rate as may be determined by the competent authority from the date the promoter 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 on which a plot is to be developed, or a building is or was to be constructed and the construction, if any, thereon shall be subject to any prior encumbrances.

13. No mortgage without consent. - (1) No promoter shall, after he executes an agreement to sell any apartment or plot, mortgage or create a charge on such apartment or the land or the plot, without the previous consent of the person who takes or agrees to take such apartment or plot, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 6 is registered, it shall not affect the right and interest of such person.

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

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

Punjab Apartment & Property Regulation Act, 1995, Section 14

14. Occupation and completion certificate. - (1) It is the responsibility of the promoter,

- (i) in the case of apartments, to obtain from the authority required to do so under any law completion and occupation certificates for the building and if a promoter, within a reasonable time, after the construction of the building, does not apply for an occupation certificate from the aforesaid authority, the allottee of an apartment may apply for an occupation certificate from the said authority; and
- (ii) in the case of a colony, to obtain completion certificate from the competent authority to the effect that the development works have been completed in all respects as per terms and conditions of the licence granted to him under section 5.

(2) The authority referred to in sub-section (1) shall, after satisfying itself about the agreement of sale between the promoter and the allottee and the compliance of the building regulations and all other formalities, issue an occupation certificate.

15. Promoter to execute documents. - After the occupation certificate is obtained under section 14, the promoter shall submit a copy thereof to the competent authority and thereafter he shall take all necessary steps to complete his title and convey the exclusive ownership of the apartment containing such particulars as may be prescribed and the undivided interest in the common areas and facilities appurtenant to such apartment to the person in whose favour he has executed an agreement of sale of that apartment, and execute a conveyance deed of apartment containing such particulars as may be prescribed and all other relevant documents therefor in accordance with such agreement, within three months from the date of giving possession of the apartment and also deliver all documents of title relating to the property which may be in his possession or power and the promoter shall not reserve any right in the property except to the extent of apartments which he is taking up in his own name and apartments which are meant for sale but are still unsold.

16. Enforcement of registration of conveyance. - (1) If the promoter without sufficient cause fails to execute the conveyance deed of apartment and other relevant documents within three months in terms of the provisions of section 15, the person in possession of the apartment in pursuance of the agreement of sale may make an application, in writing, in the prescribed form to the competent authority for a certificate to be produced before the concerned registering officer for enforcing the registration of the transfer and on receipt of such application and after making such enquiry as may be necessary and satisfying itself that occupation certificate has been obtained from the authority required to do so under any law and the person in possession has done what he was required to do under the agreement of sale, the competent authority shall issue a certificate to the registering officer that it is a fit case for enforcing registration of the conveyance deed and direct the person who has taken the apartment to present the conveyance deed of apartment though not executed by the promoter for unilateral execution of registration.

(2) After the conveyance deed of apartment alongwith the certificate issued by the competent authority under sub-section (1) is presented for registration, the registering officer shall cause a summons to be issued to the promoter and if the promoter fails to appear in compliance with the summons so issued, the execution of the instrument shall be deemed to be admitted by him and the registering officer shall proceed to register the instrument and if the promoter appears but denies execution of the con-

Pun jab Apartment & Property Regulation Act, 1995 Section 17

veyance deed, the registering officer, after giving him a reasonable opportunity of being heard, if satisfied that the promoter has failed to execute the conveyance deed without sufficient cause, shall proceed to register the same.

(3) If the promoter fails to execute a written agreement of sale as required by section 6, or fails to execute the conveyance deed of apartment and other relevant documents as specified in sub-section (1), within three months, the competent authority may, either on a complaint or *suo moto*, impose for each plot or apartment for which there is a default, a penalty up to a maximum of five per cent of the price of the plot or the apartment or five thousand rupees, whichever is greater, and further minimum penalty for each plot or apartment of one hundred rupees for each day for which the default continues, and the penalty may be recovered as an arrear of land revenue.

(4) The penalty imposed in sub-section (3) shall be in addition to any action taken under the Indian Stamp Act, 1899 (Central Act No.2 of 1899) or the Registration Act, 1908 (Central Act No. 16 of 1908), and if a penalty is imposed under the provisions of any or these Acts, the promoter shall not be liable to penalty for the same offence under this Act or under any other law governing the apartment ownership.

17. Promoter's responsibility for essential services. - (1) No promoter and no person who is responsible for the management and maintenance of a building of apartments, shall without just and sufficient cause, either by himself or through any person, cut off, withhold, curtail or reduce, any essential supply or service enjoyed in respect of such apartment by the person who has taken or agreed to take an apartment or by any person in occupation thereof through or under him.

(2) If there is a contravention of the provisions of sub-section (1), the person who has taken or agreed to take the apartment or the occupier thereof may make an application to the competent authority for a direction to restore such supply or service.

(3) If the competent authority on enquiry finds that the person referred to in subsection (2) has been in enjoyment of the essential supply or service and that it was cut off or withheld or curtailed or reduced without just and sufficient cause, the competent authority shall make an order directing the restoration of such supply or service before a date to be specified in the order.

(4) If the supply or service is not restored before the date specified under sub-section (3), the promoter or the person responsible for the management and maintenance of the building or apartment shall be liable, upon a further direction by the competent authority to that effect, to a penalty which may extend to one hundred rupees for each day during which the default continues thereafter.

(5) Notwithstanding anything contained in any law for the time being in force, the competent authority shall have jurisdiction to decide any application made under sub-section (2), and no other court shall have jurisdiction to entertain such application and, no appeal shall lie from any order made on such application:

Provided that the State Government may for the purpose of satisfying itself that the order made was according to law, call for the case in which such an order was made and may pass such order with respect thereto as it thinks fit.

(6) Any promoter or person responsible for the management and maintenance of building or apartment, 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, which may extend to five thousand rupees, or, with both.

Punjab Apartment & Property Regulation Act, 1995, Section 18

(7) The offence under sub-section (6) shall be cognizable, and shall not be triable by any court inferior to that of Judicial Magistrate of the First Class.

Explanation. - (1) In this section, "essential supply or service" includes the supply of water, electricity, lights in passages and on staircase, and lifts and conservancy or sanitary service.

Explanation. - (2) For the purposes of this section withholding any essential supply or service shall include acts or omissions attributable to the promoter or the person responsible for the management and maintenance of the building or apartment, on account of which the essential supply or service is cut off by the local authority or any other authority.

18. Regulation of property transactions. - (1) A promoter who enters into a transaction for the transfer relating to a property shall,-

- (a) make full and true disclosure of the nature of his title to the property indicating clearly that his title to property has been duly certified by an attorney at-law or an advocate of not less than seven years standing, after he has examined transactions concerning it in the previous thirty years;
- (b) make full and true disclosure of all encumbrances on such property, including any right, title, interest or claim of any party in or over such property;
- (c) in case the property is land held on lease, produce consent from the lessor for the transaction;
- (d) in case the property is land subject to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act No. 33 of 1976), produce clearance from the competent authority under that Act;
- (e) make full and true disclosure of any reservations, in the development plan framed under any law for the time being in force or restrictions on the use to which the property may be put and any liability to carry out any development works;
- (f) specify in writing the date by which possession of the property is to be handed over;
- (g) make full and true disclosure of all outgoing, including ground rent, if any, municipal or other local taxes, revenue assessment, interest on any mortgage or other encumbrance, development charges or charges for maintenance and upkeep of roads, drainage, sewerage, water supply, electricity, laid out and constructed by the Government or any local authority.

(2) No person shall issue a prospectus or advertisement offering for sale any property, unless the prospectus or advertisement indicates the place and time the documents and certificates relating to the matters specified in sub-section (1) are available for inspection.

(3) The provisions of sub-sections (4) and (5) of section 4 shall apply *mutatis mutandis* for mis-statements in the prospectus or advertisement issued under sub-section (2) of this section.

(4) The provisions of sections 13, 15 and 16 shall apply *mutatis mutandis* to a transaction of property made under this section.,

Punjab Apartment & Property Regulation Act, 1995 Section 19

19. General liabilities of allottee. - (1) Every allottee who has executed an agreement of sale to take an apartment or a plot under section 6 or any property under section 18 shall pay at the proper time and place, the price, the proportionate share of the municipal taxes, water and electricity charges, ground rent, if any, and other charges in accordance with the agreement of sale.

(2) Any person who has executed an agreement of sale of an apartment or plot or other property and who, without reasonable excuse, fails to comply with or contravenes the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to one per cent of the price of the apartment or plot or property, as the case may be, or one thousand rupees, whichever is greater.

20. Restriction on structures in a colony. - Every person, erecting or re-erecting any structure in a colony in respect whereof a licence has been obtained under subsection (3) of section 5, shall comply with such conditions regarding use of land, layout plan, zoning regulations, site coverage, height of building, set back lines, structural and sanitary requirements, architectural control, design of buildings and material to be used in erection thereof as may be prescribed.

CHAPTER III

Registration of Promoters and Estate Agents

21. Registration compulsory. - (1) From such date as may be fixed by the State Government, by notification in the Official Gazette in this behalf, no person shall carry on the business of promoter or estate agent, or represent or hold himself out as carrying on such business, except under and in accordance with the terms and conditions of the certificate of registration granted under this Act.

(2) An application for registration under sub-section (1) as a promoter, or as an estate agent, as the case may be, shall be made along with a prescribed fee in the prescribed form to the competent authority, and the competent authority on receipt of the application may enter the name of the applicant in the register of promoters, or, in the register of estate agents, as the case may be, maintained under this Act in the prescribed form and grant a certificate of registration in the prescribed form to such person for the conduct of his business in accordance with the terms and conditions of the certificate of registration and the provisions of this Act and the rules made thereunder.

✓ NOTES

Advertisements issued before framing of rules - Do not violate the Act. - Prior to the promulgation of this Act, the provisions of Punjab Regulation of colonies Act 1975 were in force. Even under those provisions, a person was debarred from setting up a colony except after compliance thereof. However, by section 46, the provisions of the 1975 Act were repealed. On the promulgation of the 1995 Act, the provisions of the 1975 Act were no longer in force. Thereafter, it had become incumbent on a person to get himself registered in view of the provisions of Section 21. The date in this behalf was fixed as November 30, 1995 vide notification dated November 10, 1995. The application for registration had to be made on the prescribed form. The form had to be prescribed under the rules. The rules were also promulgated on November 23, 1995. Thus there was a hiatus in the intervening period. It was during this interval when the 1975 Act did not exist and the provisions of 1995 Act regarding registration as a pro-

Punjab Apartment & Property Regulation Act, 1995, Section 22

moter were not in force that the advertisements had been issued by the petitioner. It was declared by the High Court that the advertisements did not violative the provisions of the 1995Act.

22. Conditions for registration. - Before registering and granting a certificate of registration to a promoter or, an estate agent under the provisions of Section 21, the competent authority shall satisfy itself,

(a) in the case if the application is for registration as a promoter, that the promoter himself or one of his employees, or one of the partners of the firm or one of the directors of the company if the applicant is a firm or company, as the case may be, possesses the prescribed qualifications for conducting the business of a promoter;

(b) in the case if the application is for registration as an estate agent that the applicant possesses qualifications as may be prescribed;

(c) that the applicant furnishes to the competent authority, either a bank guarantee or a security, for such amount and in such manner as may be prescribed; .

Provided that where the applicant is a statutory corporation, board or authority established under any law for the time being in force, no such security shall be required;

(d) that the applicant produces an income-tax clearance certificate from the income tax authorities;

(e) that the applicant has not been convicted of an offence under this Act or under any law relating to construction or use of premises, or, if convicted, a period of five years has elapsed after that conviction:

Provided that an authority created for development of land or housing under any law for the time being in force, shall be exempted from these conditions, and shall be granted a certificate of registration on application.

23. Term and renewal of registration. - Every certificate of registration of a promoter or an estate agent granted under section 21 shall be valid for a period of five years and, on the expiry of such a period, it may be renewed for another period of five years by the competent authority, on an application along with the prescribed fee, made by the promoter or the estate agent in that behalf:

Provided that the conditions referred to in section 22 continue to be fulfilled and the application has been made at least three months before the expiry of the certificate of registration.

24. Refusal to grant or renew registration. - If, after giving the applicant an opportunity of being heard, the competent authority, refuses to grant or renew a certificate of registration, it shall record its reasons therefor in writing and communicate the same to the applicant.

Punjab Apartment & Property Regulation Act, 1995 Section 25

25. Cancellation of certificate of registration. - (1) A certificate of registration granted under section 21 shall be liable to be cancelled by the competent authority on the grounds mentioned in sub-section (2) and by an order made in writing recording the reasons for such cancellation.

(2) A certificate or registration is liable to be cancelled, if the promoter or estate agent, as the case may be,

- (a) surrenders the certificate of registration as he does not wish to continue carrying on the business;
- (b) has applied to be adjudicated or has been adjudicated an insolvent or is an undischarged insolvent;
- (c) has been adjudicated to be of unsound mind by a competent court;
- (d) has been convicted of an offence under this Act or under any law relating to construction or use of premises and a period of five years has not elapsed after that conviction;
- (e) has contravened any of the terms or conditions of the certificate of registration or any of the provisions of this Act or the rules made thereunder.

26. Notice before cancellation. - (1) Before cancelling a certificate of registration under section 25, the competent authority shall give notice to the promoter, or the estate agent, as the case may be, specifying the grounds and calling upon him to show-cause why the certificate of registration should not be cancelled.

(2) After considering the explanation, if any, offered by the promoter, or, the estate agent, as the case may be, the competent authority may cancel the certificate of registration, or pass such orders as it may deem fit.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the competent authority may suspend the certificate of registration of a promoter or an estate agent, as the case may be, pending decision on the matter of cancellation of the certificate of registration.

(4) Where any certificate of registration is suspended or cancelled under this Act, no person shall be entitled to any compensation or the refund of any fee paid in respect thereof.

27. Carrying on business after cancellation. - When a certificate of registration is suspended or cancelled under the provisions of section 26 or when it expires and is not renewed, under the provisions of section 23, a promoter-or estate agent, as the case may be, shall cease to carry on the business and any business or activity in furtherance of his business during the period of suspension or after the expiry or cancellation of the certificate of registration, shall be deemed to be carried on without any certificate of registration for the purpose of section 21 and shall be liable for all consequences thereof:

Provided that, when decision is pending on an application for renewal of registration, no such presumption shall be made, if business is carried on after the expiry of the period of registration of certificate.

Punjab Apartment & Property Regulation Act, 1995, Section 28

28. Maintenance of accounts and records. - (1) Every registered promoter or estate agent shall maintain such accounts, registers and records in such form and manner as may be prescribed.

(2) The competent authority shall maintain such register as may be prescribed showing sufficient particulars of all cases in which licence under section 5 or certificate of registration under this Chapter is granted or refused by him and the said register shall be available for inspection without charges by all interested persons and such persons shall be entitled to have extract therefrom.

29. Audit. - The promoter or estate agent shall get his accounts audited after the close of every financial year by a chartered accountant, and shall produce a statement of accounts duly certified and signed by such chartered accountant in the manner prescribed and it shall be verified during the audit that amounts collected for a particular purpose are not utilised for any other purpose.

30. Periodical returns. - Every registered promoter or estate agent shall submit to the competent authority such periodical returns as may be prescribed.

31. Inspection. - For the purpose of satisfying itself, that the requirements of this . Act and the rules made there under or the terms and conditions of the certificate of registration granted under this Chapter or licence granted under section 5 of a promoter or an estate agent are duly complied with, the competent authority may inspect or cause to be inspected, at any time' during business hours, any accounts or records of a promoter or an estate agent relating to such business.