

PUNJAB VIDHAN SABHA

BILL NO.18-PLA-2021

**THE PUNJAB APARTMENT AND PROPERTY REGULATION
(AMENDMENT) BILL, 2021**

(Bill as passed by the Punjab Vidhan Sabha)

The following Bill was passed by the Punjab Vidhan Sabha:-

A

BILL

further to amend the Punjab Apartment and Property Regulation Act, 1995.

BE it enacted by the Legislature of the State of Punjab in the Seventy-second year of the Republic of India as follows:-

1. (1) This Act may be called the Punjab Apartment and Property Regulation (Amendment) Act, 2021. Short title and commencement.

(2) It shall come into force on and with effect from the date of its publication in the Official Gazette.

2. In the Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as the principal Act), in section 2,- Amendment in section 2 of Punjab Act 14 of 1995.

(i) for clause (a), the following clause shall be substituted, namely:-

"(a) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a colony, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment, or to make advances or deposits for such purposes;"

(ii) in clause (cc), for the words "five or more apartments", wherever occurring, the words "eight or more apartments" shall be substituted;

(iii) in clause (i),-

(a) for the words "one thousand square meters", wherever occurring, the words "five hundred square meters" shall be substituted; and

(b) in sub-clause (ii), for the sign ";" at the end, the sign

and word "; or" shall be substituted and after sub-clause (ii), the following sub-clause shall be added, namely:-

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

(iv) for clause (j), the following clause shall be substituted, namely:-

"(j) "common areas" means,-

- (i) the entire land of the project, or where the project is developed in phases, the entire land of that phase;
- (ii) the staircases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
- (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
- (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
- (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the project; and
- (viii) all other portions of the project necessary or convenient for its maintenance, safety, etc., and in common use;"

(v) after clause (l), the following clauses shall be inserted, namely:-

"(la) "completion certificate of building" means a certificate

issued by the competent authority on written request of the applicant or promoter after completion of building works including finishing of all common services and utilities as provided in the approved Building Plans and Service Plans;

(lb) "completion certificate of project" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;"

(vi) for clause (o), the following clause shall be substituted, namely:-

"(o) "estate agent" means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services, whether as commission or otherwise, and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen, by whatever name called;"

(vii) after clause (v), the following clauses shall be inserted, namely:-

"(va) "occupation certificate of building" means a certificate issued by the competent authority to occupy a building or part of the building or any portion whatsoever;

(vb) "partial completion certificate" means a certificate issued by the authority, competent to issue the same, for a part of project area on completion of development works in that part or part of a building block in case of built up projects, as the case may be;" and

(viii) for clause (w), the following clause shall be substituted, namely:-

"(w) "person" includes,-

- (i) an individual;
- (ii) a Hindu Undivided Family;
- (iii) a company;
- (iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;
- (v) an association of persons or a body of individuals, whether incorporated or not;
- (vi) a co-operative society registered under the Punjab Co-operative Societies Act, 1961 (Punjab Act No. 25 of 1961); and
- (vii) any such other entity as the State Government may, by notification, specify in this behalf;".

Amendment in section 3 of Punjab Act 14 of 1995.

3. In the principal Act, in section 3, for sub-section (2), the following sub-section shall be substituted, namely:-

"(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 officer not below the rank of Tehsildar after he has examined the transactions concerning it in the previous ten years and where the promoter is not the owner of the land on which development is proposed, details of the consent of the owner of the land along with a copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner and copies of title and other documents reflecting the title of such owner on the land proposed to be developed;
- (b) furnish details of encumbrances on the land on which development of project is proposed, including details of any rights, title interest and name of any party in or over such land or non-encumbrance certificate, through an advocate having experience of atleast ten years from the revenue authority not below the rank of Tehsildar, as the case may be; and
- (c) submit an affidavit that all statutory requirements have been got completed for submission of revised layout or building plans."

4. In the principal Act, in section 4, in sub-section (1), for clause (a), the following shall be substituted, namely:-

Amendment in section 4 of Punjab Act 14 of 1995.

- "(a) (i) he obtains license under sub-section (3) of section 5; and
(ii) he obtains registration under section 5 of the Real Estate (Regulation and Development) Act, 2016 (Central Act No. 16 of 2016),

which are in force and have not been suspended or revoked and their numbers are mentioned in the advertisement or prospects; and".

5. In the principal Act, in section 6,-

Amendment in section 6 of Punjab Act 14 of 1995.

- (i) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:-

"(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 ten 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 as provided under section 13 of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereunder together with 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 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 such rate as may be prescribed in this behalf including compensation in the manner as provided under the Real Estate (Regulation and Development) Act, 2016 and the rules made thereunder."; and

- (ii) sub-section (3) shall be omitted.

6. In the principal Act, for section 9, the following section shall be substituted, namely:-

Substitution of section 9 of Punjab Act 14 of 1995.

"9. The promoter shall maintain a separate account in any scheduled bank of sums of seventy percent 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

Accounts of sums taken by promoter.

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):

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the colony, in proportion to the percentage of completion of the colony:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the colony:

Provided further that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular colony have been utilised for the colony and the withdrawal has been in compliance with the proportion to the percentage of completion of the colony.

Explanation.- For the purpose of this section, the term "scheduled bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934."

Insertion of section 10 - A of Punjab Act 14 of 1995.

7. In the principal Act, after section 10, the following section shall be inserted, namely:-

"10-A. (1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a colony to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the competent authority:

Non-transfer of majority rights and liabilities.

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings, as the case may be, in the colony made by the erstwhile promoter.

Explanation.- For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the competent authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act and the rules made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under the provisions of this section shall not result in extension of time to the intending promoter to complete the colony and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act and the rules made thereunder."

8. In the principal Act, for sections 12 and 13, the following sections shall be substituted, namely:-

Substitution of sections 12 and 13 of Punjab Act 14 of 1995.

"12. (1) If the promoter,-

Refund of amount. (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 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 apartment with interest including compensation at such rate and in such manner as provided under section 18 of the Real Estate (Regulation and Development) Act, 2016 and the rules made thereunder, 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:

Provided that where an allottee does not intend to withdraw from the colony, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed under the Punjab State Real Estate (Regulation and Development) Rules, 2017 made under the Real Estate (Regulation and Development) Act, 2016.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land on which the colony is being developed or has been developed, in the manner as provided under the Real Estate (Regulation and Development) Act, 2016, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act and the rules made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, as provided under the Real Estate (Regulation and Development) Act, 2016.

13. (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 obtaining the consent of two-third of allottees who take or agree to take such apartment or plot, and without the prior written approval of the competent authority:

Provided that 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) On the transfer or assignment being permitted by the allottees and the competent authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the colony and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be.

(3) 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."

9. In the principal Act, in section 14, for the existing proviso under sub-section (2), the following proviso shall be substituted, namely:-

Amendment in section 14 of Punjab Act 14 of 1995.

"Provided that the promoter shall transfer free of cost the area under roads, open spaces, parks and sites meant for public utilities to the local authority or development authority or association of allottees, as the case may be, and this transfer would be exempted from stamp duty and any cess applicable."

10. In the principal Act, in section 15, after sub-section (2), the following sub-section shall be added, namely:-

Amendment in section 15 of Punjab Act 14 of 1995.

"(3) After obtaining the completion certificate or occupancy certificate, as the case may be, and handing over physical possession to the allottees, it shall be the responsibility of the promoter to handover the necessary documents and plans including common areas, to the local authority or development authority or the association of the allottees, as the case may be."

11. In the principal Act, in section 16, in sub-section (3), the words and signs "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" shall be omitted.

Amendment in section 16 of Punjab Act 14 of 1995

12. In the principal Act, in section 17, for sub-section (4), the following sub-section shall be substituted, namely:-

Amendment in section 17 of Punjab Act 14 of 1995.

"(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 to a penalty for every day during which such default continues, which may cumulatively extend upto five percent of the estimated cost of the colony as determined by the competent authority."

13. In the principal Act, for section 17-A, the following section shall be substituted, namely:-

Substitution of section 17-A of Punjab Act 14 of 1995.

"17-A. (1) After obtaining occupation certificate and within three months of majority of the apartments being allotted, sold, or otherwise transferred, the promoter shall make an application to the competent authority appointed under clause (m) of section 3 of the Punjab Apartment Ownership Act, 1995 (Punjab Act No. 13 of 1995) for the registration of association, with the persons who have taken apartments as members and if the promoter fails to make such application, the allottees shall make such application.

Formation of association.

(2) If the promoter or the allottees, as the case may be, fail(s) to make application for registration of the association within the period mentioned in sub-section (1), the competent authority shall by an order, direct the promoter or the allottees, as the case may be, to form an association of residents in respect of a project within such period, as may be specified in the order.

(3) The owner or allottee or occupier of any apartment shall be a member of the association from the date he takes possession of such apartment.

(4) The promoter of the project shall be an associate member of the association in respect of apartment(s) meant for allotment or sale, but not yet allotted or sold. When such apartment(s) is later on allotted, sold or otherwise transferred, the allottee shall become a member of the association and the promoter shall cease to be an associate member of the association in respect of such apartment from the date of possession.

(5) The responsibility for administration and management of the apartments and maintenance and upkeep of common areas, infrastructure and common services of the project shall devolve on the association from the date specified by the competent authority in the order passed under sub-section (13) of section 5."

Substitution of section 19 of Punjab Act 14 of 1995.

14. In the principal Act, for section 19, the following section shall be substituted, namely:-

"19. (1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate, as may be prescribed and compensation in the manner as provided under the Real Estate (Regulation and Development) Act, 2016, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business

➤ as a developer on account of suspension or cancellation of his license under the provisions of this Act or the rules made thereunder or suspension or revocation of his registration under the provisions of the Real Estate (Regulation and Development) Act, 2016.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building, as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building, as the case may be, under sections 6 or 18, shall be responsible to make necessary payments in such manner and within such time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest at such rate, as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building, as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building, as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 15."

15. In the principal Act, in section 36,-

(i) for sub-sections (1), (2), (3) and (6), the following sub-sections shall be substituted, namely:-

"(1) Any person or promoter or his agent registered under the Act, who, without reasonable cause, fails to comply with or contravenes the provisions of section 5 shall, on conviction, be punished with imprisonment for a minimum term of three years which may extend to seven years and with

Amendment in
section 36 of
Punjab Act 14
of 1995.

minimum fine of rupees two lac, which may extend to rupees five lac.

(2) Any promoter who fails to comply or contravenes any other provisions of this Act, other than that provided under section 5, and the rules made thereunder, shall be liable to a penalty which may extend upto five per cent of the cost of the estimated cost of the colony as determined by the competent authority.

(3) Any estate agent who, without reasonable excuse, fails to comply with, or contravenes, any provision of this Act or of any rule made thereunder shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend upto five percent cost of the plot or building, as the case may be, for which the sale or purchase has been facilitated.

(6) The fine or penalty imposed under sub-sections (1), (2), (3) or (4) may be recovered as an arrear of land revenue and out of the fine so recovered, the Judicial Magistrate may award such amount as he deems fit to the person from whom the advance or deposit was obtained by the promoter or the estate agent, as the case may be."; and

(ii) after sub-section (6), the following sub-sections shall be added, namely:-

"(7) Any promoter, who fails to comply with, or contravenes any of the orders or directions of the competent authority, shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent of the estimated cost of the colony as determined by the competent authority.

(8) Any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Authority or the Revisional Authority, as the case may be, shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of the colony, or with both.

(9) Any estate agent, who fails to comply with, or contravenes any of the orders or directions of the competent authority, shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent of the estimated cost of plot, apartment or building, as the case may be, for which the sale or purchase has been facilitated, as determined by the competent authority.

(10) Any estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Authority or the Revisional Authority, as the case may be, shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of plot, apartment or building, as the case may be, for which the sale or purchase has been facilitated, or with both.

(11) Any allottee, who fails to comply with, or contravenes any of the orders, decisions or directions of the competent authority, shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent of the plot, apartment or building cost, as the case may be, as determined by the competent authority.

(12) Any allottee, who fails to comply with, or contravenes any of the orders or directions of the Appellate Authority or the Revisional Authority, as the case may be, shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the plot, apartment or building cost, as the case may be, or with both."

CHANDIGARH:
THE 22ND MARCH, 2021

SHASHI LAKHANPAL MISHRA,
SECRETARY.