

The Orissa Apartment Ownership Act, 1982

Act 1 of 1984

Keyword(s):

Apartment, Apartment Number, Apartment Owner, Association of Apartment Owners, Building, Common Area and Facilities, Common Expenses, Common Profits, Joint Family, Limited Common Areas and Facilities, Majority, Person, Property

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THE ORISSA APARTMENT OWNERSHIP ACT, 1982

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*[THE ORISSA APARTMENT OWNERSHIP ACT, 1982]

[Received the assent of the President on the 26th December 1983, first published in an extraordinary issue of the Orissa Gazette, dated the 20th January 1984.]

AN ACT TO MAKE PROVISION FOR OWNERSHIP OF AN INDIVIDUAL APARTMENT AND FOR MATTERS INCIDENTAL THERE TO.

BE it enacted by the Legislature of the State of Orissa in the Thirty-third Year of the Republic of India, as follows :—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Apartment Ownership Act, 1982.

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

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

Application
of the Act.

2. All buildings mainly used or proposed to be used for residence, office, practice of any profession or for carrying on any occupation, trade or business or for any other type of independent use shall be governed by the provisions of this Act and the sole owner or all the owners of such building shall duly execute and register a declaration setting out the particulars referred to in section 12 :

Provided that, the provisions of this Act shall not apply to property used for purposes of holding office or other wise of a Department of Government or of a Government Undertaking or where the property is owned and used by the owner himself or for letting it out to others.

Definitions.

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

(a) "apartment" means the part of a property intended for any type of independent use including one or more rooms or enclosed space located on one or more floors (or part or parts thereof) in a building intended to be used for residence, office, practice of any profession or for carrying on any occupation, trade or business or for any other type of independent use and with a direct exit to a public street, road or highway or to a common area leading to such street, road or highway;

(b) "apartment number" means the number, letter or combination thereof designating the apartment in the Declaration ;

(c) "apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities in the percentage specified and established in the Declaration ;

(d) "Association of Apartment Owners" means an association of apartment owners formed and acting as a group in accordance with the provisions made in the bye-laws and the declaration ;

(e) "building" means a multi-storied building containing two or more apartments ;

(f) "common area and facilities" unless otherwise provided in the Declaration or in lawful amendments thereto, includes—

*For Statement of Objects and reasons see *Orissa Gazette* Extraordinary, dated the 26th March 1982 (No. 392) for Select Committee report see *Orissa Gazette* Extraordinary, dated the 23rd September, 1982 (1382).

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[Orissa Act 3 of 1984]

(Sec.-3)

- (f) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building ;
- (ff) foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair ways, fire-escapes and entrances and exits of the building ;
- (iii) the basement, cellars, yards, gardens, parking areas, shopping areas, schools, garrages and storage spaces ;
- (iv) the premises for the lodging of jointors or persons employed for the management of the property ;
- (v) installation of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning, sewerage;
- (vf) elevators, tanks, Pumps, motors, compressors, pipes and ducts and in general all apparatus and installations existing for common use;
- (vii) such other community and commercial facilities as may be specially provided for in the Declaration; and
- (viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use ;
- (g) "common expenses" means—
- (i) all sums lawfully assessed against the apartment owners by the Association of Apartment owners or by the Competent Authority ;
- (ii) expenses of administration, maintenance, repair or replacement of the common areas and facilities ;
- (iii) expenses agreed upon as common expenses by the Association of Apartment owners ;
- (iv) expenses declared as common expenses by the provisions of this Act or by the Declaration or the bye-laws ;
- (h) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses ;
- (i) "Competent Authority" means in relation to building, constructed or to be constructed by a Housing Board, Improvement Trust, Development Authority or a Company, such officer not below the rank of a Deputy Collector as may be appointed by the State Government by notification;
- (j) "Declaration" means the instrument by which the property is submitted to the provisions of the Act, and such Declaration as from time to time may be lawfully amended;
- (k) "joint family", means an undivided Hindu family, and in the case of other persons, a group or unit, the members of which are, by custom joint in possession or residence;
- (l) "limited common areas and facilities" means those common areas and facilities which may be designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartment;

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[Orissa Act, 1 of 1984]

(Secs. 3-5)

(m) "majority" or "majority of apartment owners" means the apartment owners with fifty one per cent of the votes in accordance with the percentages assigned in the Declaration to the apartments for voting purposes;

(n) "person" includes a joint family;

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

(p) "property" means the land, the building, all improvements and structures thereon and the common areas and facilities and all easements, rights and appurtenances belong thereto and all articles of personal property intended for use in connection therewith which have been or are intended to be submitted to the provisions of this Act.

Member of a Co-operative Society deemed to be an owner in certain circumstances.

4. Where a Co-operative Society is the owner in respect of a property or part thereof, a member of such society in lawful occupation of an apartment comprised in such property or such part shall be deemed to be the owner of such apartment within the meaning of the provisions of this Act, excepting those of sub-section (1) of section 5.

An apartment to be transferable and heritable.

5 (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment and to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration;

(2) An apartment, together with its undivided interest in the common areas and facilities appurtenant to such apartment shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force and accordingly an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings, remedies and to penalty, forfeiture and punishment as any other immovable property or may make a bequest of the same under the laws applicable to the transfer and succession of immovable property:

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

(3) Notwithstanding anything contained in the Transfer of Property Act, 1882⁴ of 1882 or in any other law for the time being in force, but subject to provisions of section 14 of this Act, any person—

(a) acquiring by purchase, or

(b) taking lease of, for a period of thirty years or more,

an apartment comprised in a property shall—

(i) in respect of the said apartment, be subject to the provisions of this Act; and

(ii) execute and register an instrument in such a form, in such manner and within such period as may be prescribed, undertaking to comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Declaration.



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[Orissa Act 1 of 1984]

(secs. 6-7)

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

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

4 of 1882
2 of 1882

Common
Areas and
Facilities

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

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

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

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

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

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

Compliance
with bye-laws
covenants,
etc.

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

Certain
actions
Prohibited.

9. No apartment owner shall do any work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement or hereditament nor shall add any material structure or excavate any additional basement or cellar without the prior consent of all the other apartment owners.

Encumbrances
against
apartments,
a morval from
encumbrances
and
consent of part
owner.

10. (1) No encumbrance of any nature shall be created against the property :

Provided that encumbrances may arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, in the same manner and under the same conditions in every respect as encumbrances, may arise or be created upon or against any other separate parcel of property subject to individual ownership ;

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[Orissa Act 1 of 1984]

(Secs. 8—10)

Provided further that if any encumbrance has arisen or been created against such apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment, no apartment and such percentage of undivided interest shall be partitioned or subdivided in interest :

Provided also that, no labour performed or material furnished with the consent or at the request of an apartment owner or his agent or his contractor or sub-contractor shall be the basis for a charge or any encumbrance under the provisions of the Transfer of property Act, 1882, against the apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. Labour performed and materials furnished for the common areas and facilities, if duly authorised by the Association of Apartment owners, the Manager of Board of Managers in accordance with this Act, the Declaration or the bye-laws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for a charge or encumbrance under the Act, aforesaid against each of the apartments and shall be subject to the provisions of sub-section (2).

(2) In the event of a charge or any encumbrance against two or more apartments becoming effective, the apartment owners of the separate apartment may remove their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed with reference to the percentages specified in the Declaration. Subsequent to any such payment, discharge or other satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the charge or encumbrance so paid satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the person having a charge or any other encumbrance from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto in respect of which such payment, satisfaction or discharge has not been effected.

Common
profits and
expenses.

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

Contents of
Declaration.

12. (1) The Declaration referred to in Section 2 shall be submitted in such form and in such manner and within such period as may be prescribed and shall contain the following particulars namely:—

- (a) description of the land on which the building and the improvements are or are to be located and whether the land is free-hold or lease-hold ;
- (b) description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed ;
- (c) the apartment number of each apartment, and a statement of its location, approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification ;
- (d) description of the common areas and facilities ;
- (e) description of the limited common areas and facilities, if any, in which the use of which apartments their use is reserved ;

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[Orissa Act 1 of 1984]

(Secs.-11—13)

(f) value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the Declaration ;

(g) statement of the purposes for which the building and each of the apartments are intended and restricted as to use ;

(h) the name of the person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located ;

(i) provision as to the percentage of votes by the apartment owners, which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property ;

(j) the method by which the Declaration may be amended, consistent with the provision of this Act ;

(k) any other details in connection with the property which the persons executing the Declaration may deem desirable to set forth consistent with this Act.

(2) A true copy of each of the Declaration and bye-laws and all amendments to the Declaration or the bye-law shall be filed in the office of the Competent Authority. The Declaration may be amended under such circumstances and in such manner as may be prescribed.

A declaration of an instrument to be submitted before the Competent Authority and to be dealt with by him.

13. (1) All Declarations, all amendments thereto and all instruments referred to in sub-section (3) of section 5 shall in the first instance, be submitted in duplicate within fifteen days from the date of their execution to the Competent Authority along with copies of site plans and building plans with relevant title deeds.

(2) On receipt of the declaration or an amendment thereto or an instrument referred to in sub-section (1) the Competent Authority shall, after holding such inquiry as he may consider necessary for the purpose, examine the Declaration, the amendment or the instrument, as the case may be, to ascertain whether—

(i) the concern property is governed by this Act ; and

(ii) the Declaration, the amendment or the instrument is in order ;

and by an order in writing giving reasons therefor, accept or reject the Declaration the amendment or the instrument.

(3) Where the declaration, the amendment or the instrument is accepted by the Competent Authority, he shall return the same along with all the enclosure to the owner or owners, as the case may be, for registration within fifteen days of the date of return.

(4) Any person who is aggrieved by an order of rejection, may, within thirty days from the date of such order or within such further period as the appellate authority may allow on sufficient grounds being shown, prefer an appeal before the State Government whose order thereon shall be final.

(5) No order referred to in sub-section (3) or in sub-section (4) shall be called in question [in any Civil Court]¹.

1. Substituted by the Orissa Apartment Ownership (Amendment) Act, 1984 s. 2 (Orissa Act No. 10 of 1984).

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[Orissa Act 1 of 1984]

(Sections 14—16)

Sau motu
action by
the
competent
authority.

14. (1) Where the sole owners of a property fail to submit the declaration or the bye-laws, the competent authority shall, in the prescribed manner, take such action as he may deem necessary for submission of the declaration and bye-laws by the owner or owners of the property :

Provided that no order shall be passed under this sub-section without giving the parties concerned, the reasonable opportunity of being heard.

(2) Any person aggrieved by an order of the competent authority under sub-section (1) may, within thirty days from the date of communication of the order to him, prefer an appeal before the State Government and the decision of the State Government made thereon shall be final.

Declaration,
etc. to be
compulsorily
registrable.

15. (1) All instruments relating to the Declaration or any amendment thereto or to the withdrawal of the property from the provision of this Act under section 14 and instrument referred to in sub-section (3) of section 5 and the floor plans of the building shall be deemed to be instruments compulsorily registrable within the meaning of clause (b) of sub-section (1) of section 17 of the Registration Act, 1908. 16 of 1908

(2) Simultaneously with the registration of the Declaration there shall be filed alongwith it a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartment, stating the name of the building or that it has no name, and bearing the verified statement of an architect certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the local authority within whose jurisdiction the building is located. If such plans do not include a verified statement by such architect that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, there shall be recorded prior to the first conveyance of any apartment an amendment to the Declaration to which shall be attached a verified statement of an architect certifying that the plans thereto fore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout location, apartment number and dimension of the apartment as built.

Bye-laws and
their
contents.

16. (1) The administration of every property shall be governed by the bye-laws a true copy of which shall be annexed to the Declaration. No modification of or amendment to the bye-laws shall be valid unless setforth in an amendment to the Declaration, and such amendment is duly recorded and a copy thereof is duly filed with the Competent Authority.

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

- (a) the manner in which the Association of apartment owners is to be formed, the selection of a Board of Managers from among the apartment owners, the number of persons constituting the Board, the number of members of such Board to retire annually, the powers and duties of the Board, method of removal from office of members of the Board, the powers of the Board to engage the services of a Secretary or Manager and specifying which of the powers and duties granted to the Board by this Act or otherwise may be delegated by the Board to such Secretary or Manager;
- (b) manner of calling meetings of the apartment owners and the number to constitute a quorum ;
- (c) election of a president from amongst the members of the Board of Managers who shall preside over the meetings of such Board and the Association of apartment owners ;

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[Orissa Act 1 of 1984]

(Sections 16-18)

- (d) election of a Secretary who shall maintain a minute book wherein resolution shall be recorded ;
- (e) election of a Treasurer who shall keep the financial records and books of accounts ;
- (f) creation of an Association Fund ;
- (g) maintenance, repair and replacement of the common areas and facilities and payments therefor ;
- (h) manner of collecting from the apartment owners their share of the common expenses ;
- (i) designation and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities ;
- (j) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities ;
- (k) such restrictions on the requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners ;
- (l) the percentage of the votes required to amend the bye-laws ;
- (m) provisions enabling the Board of Managers to retain certain areas of the Building and lease to non-residents for commercial purposes and for distribution of resulting proceeds to the apartment owners as income or application thereof in reduction of their common charges for maintaining the building ;
- (n) any other matter not inconsistent with the provisions of this Act relating to the audit and accounts and administration of the property and annual and special general meetings, annual report and the like.

Functions of the Association to be discharged by the Competent Authority in certain circumstances.

17. (1) Where more than two-third of the owners of apartments of a property suggest in writing in the prescribed manner that the Competent Authority may discharge the functions of the Association of Apartment owners as laid down in the Act and the bye-laws framed thereunder, the Competent Authority with the prior approval of the State Government may discharge the functions of the Association of Apartment owners for such period as may be directed by the State Government.

(2) Every owner of an apartment of the property who has not suggested in writing as aforesaid shall as soon as may be practicable, be intimated of the approval of the State Government by registered letter issued to the address of his apartment.

Waiver of use of common areas and facilities, abandonment of apartment.

18. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment any of the common areas and facilities or by abandonment of his apartment.

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[Orissa Act 1 of 1984]

(Secs. 19—23)

Separate
assessment.

19. Notwithstanding anything to the contrary in any other law for the time being in force, each apartment of a property (including its percentage of undivided interest in the common areas and facilities appurtenant to such apartment) shall be deemed to be a separate unit for the purpose of assessment of tax on land, Municipal rate and taxes, and for this purpose, a local authority shall make all suitable rules to carry out the provisions of this section.

Common
expenses to
be a first
charge.

20. All sums assessed by the Association of apartment owners as the share of the common expenses chargeable in respect of any apartment shall constitute a charge on such apartment and shall have priority over all other charges, except charges, if any, on the apartment for payment of Government and Municipal rates and taxes and all sums unpaid on a first mortgage of the apartment.

Liability
before unpaid
common
expenses.

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

Disposition
of property,
destruction
or damage.

22. If within sixty days of the date of damage or destruction of the whole or any part of the property, it is not determined by the Association of Apartment Owners to repair, reconstruct or rebuild, then and in that event:—

- (a) the property shall be deemed to be owned in common by the apartment owners;
- (b) the undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities;
- (c) any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided therein;
- (d) the property shall be subject to partition in a suit filed by any apartment owner, in which event the net proceeds of sale together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in percentage equal to the percentage of undivided interest owned by each owner in the property after paying out all the respective shares of the apartment owners to the extent sufficient for the purpose and all charges on the undivided interest in the property owned by each apartment owner.

Penalties.

23. (1) If the owner of any apartment which is subject to the provisions of this Act, contravenes—

- (a) any of the provisions of section 9 or section 10;
- (b) any bye-law that may be framed;
- (c) any covenant, condition or restriction set forth in the Declaration to which he is subject or is a party;

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[Orissa Act I of 1984]

(Secs. 24—26)

he shall, at the instance of the Manager or the Board of Managers on behalf of the Association of the Apartment owners, or an aggrieved apartment owner or in a proper case of the Competent Authority, on conviction before a Magistrate, be liable to a fine which may extend to five thousand rupees and in case of continuing contravention, to an additional fine which may extend to rupees fifty for every day during which such contravention continues after the conviction.

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

(3) The provisions of this section shall be without prejudice to those of section 8, section 20 and section 21.

Powers to
make rules.

24 (1) The State Government may make * rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers they may make rules in respect of all matters expressly required or allowed by this Act to be prescribed.

Act to be
binding on
apartment
owners,
tenant, etc.

25. (1) All apartment owners, tenants of such owners, employees of owners and tenants, or any other person that may in any manner use property or any part thereof submitted to the provisions of this Act shall be subject to this Act and to the Declaration and the bye-laws of the Association of Apartment owners adopted pursuant to the provisions of this Act.

(2) All agreements, decisions and determinations lawfully made by the Association or Apartment Owners in accordance with the voting percentages established under this Act, declaration or bye-laws, shall be deemed to be binding on all apartment owners.

Removal of
doubts.

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

* For Rules see *Orissa Gazette, Extraordinary*, dated the 19th August 1992 (No. 1155)