

THIRTY – EIGHTH REPORT

**STANDING COMMITTEE ON
URBAN AND RURAL DEVELOPMENT
(2002)**

(THIRTEENTH LOK SABHA)

THE DELHI APARTMENT OWNERSHIP BILL, 2001

**MINISTRY OF URBAN DEVELOPMENT
AND POVERTY ALLEVIATION**

(DEPARTMENT OF URBAN DEVELOPMENT)

Presented to Lok Sabha on 17.12.2002

Laid in Rajya Sabha on 17.12.2002

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2002/Agrahanaya, 1924 (Saka)

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**COMPOSITION OF THE STANDING COMMITTEE ON
URBAN AND RURAL DEVELOPMENT (2002)**

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| 4. | Shrimati Sudesh Luthra | - | Under Secretary |
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| 6. | Shri A.K. Srivastava | - | Committee Officer |

**COMPOSITION OF THE STANDING COMMITTEE ON
URBAN AND RURAL DEVELOPMENT (2001)**

Shri Anant Gangaram Geete - *Chairman*

***MEMBERS
LOK SABHA***

2. Shri Mani Shankar Aiyar
3. Shri Padmanava Behera
4. Shri Jaswant Singh Bishnoi
5. Shri Ambati Brahmaniah
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SECRETARIAT

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|----|------------------------|---|-------------------|
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| 2. | Shri K. Chakraborty | - | Deputy Secretary |
| 3. | Shrimati Sudesh Luthra | - | Under Secretary |
| 4. | Shri A.K. Srivastava | - | Committee Officer |

INTRODUCTION

I, the Chairman of the Standing Committee on Urban & Rural Development (2002) having been authorised by the Committee to submit the Report on their behalf, present the Thirty Eighth Report on the Delhi Apartment Ownership Bill, 2001.

2. The Delhi Apartment Ownership Bill, 2001 was introduced in Lok Sabha on 24th July, 2001 and was referred to the Committee (13th Lok Sabha) by the Hon'ble Speaker under Rule 331 E(1)(b) of the Rules of Procedure and Conduct of Business in Lok Sabha on the 26th July, 2001.

3. The Committee (2001) issued press release inviting memoranda on the Bill from various associations/organisations experts etc. Around 37 memoranda were received from various interested groups/individuals etc. and were duly examined by the Committee. The Committee took oral evidence of 13 associations/organisations/ experts etc. at their sittings held on 26th, 27th September, and 5th December, 2001. A list of such associations and experts is given in Appendix - XV. Before the Committee (2001) could finalise the Report the term of the Committee expired. The Committee (2002) resumed examination of the Bill and undertook a local visit to inspect the position of common area and facilities in various multi-storeyed apartments in Delhi on 9th May, 2002. The Committee also took evidence of the representatives of the Department of Urban Development (Ministry of Urban Development and Poverty Alleviation) on 26th November, 2002.

4. The Committee at their sittings held on 3rd and 4th December, 2002 considered the Bill clause by clause. They also called the representatives of the Ministries of Urban Development and Poverty Alleviation and Law, Justice and Company Affairs and sought clarifications on the various clauses of the Bill.

5. The Report was considered and adopted by the Committee at their sitting held on 12th December, 2002.

6. The Committee place on record their deep sense of appreciation of the work done by the Committee (2001). They wish to extend their thanks to the officers of the Department of Urban Development (Ministry of Urban Development and Poverty Alleviation), who had appeared before the Committee and placed their considered views. They further wish to thank the said Ministry for furnishing the requisite material on the points raised by the Committee in connection with the examination of the Bill. The Committee would also like to thank the officers of the Ministry of Law, Justice and Company Affairs, who had assisted the Committee and gave their valuable suggestions.

7. The Committee were also greatly benefitted from the views/suggestions of individuals, associations and experts and the representatives of various Departments/ Organisations of Central Government and the Government of NCT, Delhi etc. They express their thanks to all who had furnished memoranda and/or tendered evidence before the Committee, as referred to in para (3) above.

8. The Committee would also like to place on record their deep sense of appreciation for the invaluable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

NEW DELHI;

16 December, 2002

25 Agrahayana, 1924 (Saka)

(CHANDRAKANT KHAIRE)

Chairman,

*Standing Committee on Urban
and Rural Development*

REPORT

PART I

BACKGROUND OF THE BILL

The Delhi Apartment Ownership Bill, 2001 (Appendix-I) was introduced in Lok Sabha on 24th July, 2001 and referred to the Committee on Urban and Rural Development on 26th July, 2001 for examination and Report.

1.2 The Statement of Objects and Reasons as appended to the Bill *inter-alia* states as under:-

“The proposed legislation envisages a comprehensive framework for management of multi-apartment buildings to secure the title and rights of apartment owners with simple procedure of transfer and registration of titles. The management of common services and facilities would also become more effective and the legislation would facilitate proper enforcement of obligations of promoters and apartment owners.”

1.3 It may be pertinent to mention here that the said Bill seeks to replace the Delhi Apartment Ownership Act, 1986 (Appendix – II). The history of the Bill, as furnished by the Ministry of Urban Development and Poverty Alleviation is given below:-

“The Delhi Apartment Ownership Act came into force from 1st December, 1987 immediately after the notification of the Act. The competent authority i.e. the Delhi Administration and Delhi Development Authority (DDA) raised certain points relating to the appointment of competent authority as defined in the Act. Besides, a need was felt to provide for the protection of the individual's title to the apartment including the effective management of undivided common interests and services. Another major lacuna found was lack of penal provisions in the Act to deal with the non-compliance of various provisions. Besides, there were certain anomalies regarding the rule making powers of the administrator under the Act. In the meantime, representations from apartment owners were received with reference to the scope of the Act, the application to certain sections of the Act as well as some definitions and connected matters. It was generally felt that the Delhi Apartment Ownership Act would require a complete overhaul in order to clarify certain provisions and provide for deterrent punishment for non-observance of obligations so as to make the Act effective.

A Working Group was set up in June, 1988 to examine and work out modalities for implementing the Act. The Working Group recommended amendments to some provisions of the Act. The National Housing Policy (1994) also envisage amendment to such Acts in the light of present day requirements and the growth of buildings with residential and commercial premises. It was felt that instead of making extensive amendments to the existing Act, it would be more appropriate to draft a comprehensive legislation which would cover all the identified issues relating to sale and transfer of apartments by builders and developers and also protection of the interests of apartment owners.

To overcome the above mentioned anomalies a model apartment ownership legislation (Appendix III) was formulated by the Government in 1992 and sent to the State Governments in 1992 for adoption with such modifications as were considered necessary to suit local conditions. The proposed changes were so extensive as to justify

the replacement of Delhi Apartment Ownership Act, 1986 with a new “legislation. This process would also obviate the necessity of going through the cumbersome process of amendment of the earlier Act with extensive footnotes and explanations. The revised Delhi Apartment Ownership Bill-incorporating the changes was, therefore, drafted after a complete overhaul of Delhi Apartment Ownership Act, 1986. The proposed Bill envisages a comprehensive framework for management of multi-apartment buildings to secure the title and rights of apartment owners with simple procedure of transfer and registration of titles. The management of common services and facilities would also become more effective and the legislation would facilitate proper enforcement of obligations of promoters and apartment owners.

1.4 The salient features of the proposed Delhi Apartment Ownership Bill are as follows:

- (i) It is proposed that the Central Government will have the authority to notify the officer or authority to discharge the functions of the competent authority.
- (ii) The draft Bill applies to every building with four or more apartments. Further in case where a building has only two or three apartments the owner of the building can opt to be covered under the proposed Act.
- (iii) In the proposed Act, the percentage share in undivided common area is computed on the basis of built up area of the apartment to the built up of all the apartments in the buildings.
- (iv) The proposed Bill modifies provision regarding formation of an association of apartment owners by laying down that the association must be formed within three months of one-third of the apartments being allotted.
- (v) The proposed Bill provided for registration of the association of apartment owners as a Co-operative Society by the competent authority who shall have the powers of Registrar, Co-operative society.
- (vi) The proposed Bill provides that the Board could be superseded and an Administrator may be appointed for six months at a time, but not exceeding three years.
- (vii) The proposed Bill seeks to add teeth to the legislation by providing penalty to promoters, apartment owners or associations for contravention of the provisions of the proposed Act or Rules or any by-laws framed by the association under the proposed Act.
- (viii) It is proposed to set up an Appellate Authority to hear appeals against the order of competent authority.
- (ix) The proposed Bill seeks to bar the jurisdiction of the Civil Courts entertain/decide any question relating to matters arising under the Act.

1.5 The Bill was referred to the Committee on Urban and Rural Development on 26th July, 2001. The Committee (2001) had examined the various clauses of the Bill in detail and heard the views of various Experts, Organisations and associations. The views of the public were also invited through press releases in various newspapers. Around 35 Memoranda were received. The Committee heard the views of 13 Experts/Organisations/associations/Departments etc. which include some of the important offices of the Delhi Government i.e. MCD, NDMC, Registrar, Cooperative Group Housing Societies and certain Organisations like DDA and HDFC etc. The Committee(2002) also undertook a local visit and inspected the position of common areas and facilities in various multi – storeyed apartments in Delhi. The Statement showing important provisions of the Delhi Apartment Ownership Act, 1986 and the Delhi Apartment Ownership Bill, 2001 has been given at Appendix IV. Besides the statements indicating the clause by clause suggestion made by associations/experts and individual etc. and the comments of the Union Government are at *Appendices V*. The Committee took oral evidence of the representatives of Ministry of Urban Development and Poverty Alleviation (Department of Urban Development). The Committee were also assisted by the officers of Ministry of Law, Justice and Company Affairs at the time of oral evidence and clause by clause consideration of the Bill.

PART-II

Analysis of the Delhi Apartment Ownership Bill, 2001

2.1 After taking into consideration the views expressed by various associations/experts/organisations/individuals, Departments of the Government of NCT, Delhi, other Central Departments like HUDCO, DDA, HDFC etc. and the Union Ministry of Urban Development and Poverty Alleviation (Department of Urban Development), the Committee propose certain amendments/suggestions to the Delhi Apartment Ownership Bill, 2001 as suggested in the succeeding paragraphs:

To whom the Act would apply

2.2 Clause 2 of the Bill provides for the applicability of the provisions of the Bill to every apartment in a building in the National Capital Territory of Delhi having four or more apartments. Where a building has two or three apartments, the owner of such a building would have the option with regard to the applicability of these provisions.

2.3 The Union Government has stated that maintenance of the common areas and facilities and other related issues would perhaps not be so problematic in buildings having two or three apartments. The various representatives of associations/organisations etc. who appeared before the Committee, expressed concerns about the maintenance of common areas and facilities in the buildings having less than four apartments. In the multi-storeyed buildings in all the Co-operative Group Housing Societies, there is already a provision of maintenance of common areas etc. and as such the problem is not severe in such buildings. Municipal Corporation of Delhi have stated in their Memorandum that the applicability of the Act should be made mandatory for all, since plotted developments in buildings is being converted into apartments.

2.4 While clarifying the provisions regarding applicability of the said law, the Secretary, Department of Urban Development stated as below:

“This law will be applicable to any building which has four apartments and not necessarily four floors. The Bill also provides that the owners of any building which has two or three apartments, can choose to come under this Act.”

2.5 On a query regarding making the provision compulsory for buildings having two or three apartments, the representative of the Department stated as below:

“Our feeling is that if it is only two or three apartments, the maintenance of common areas would not be a problem. So obviously it is not very useful to have an association. Supposing a building is having only two apartments, to form an association for two apartments may not be necessary. So our suggestion is that it should be applicable in case of four or more apartments, below that it may be optional.”

The issue regarding Power of Attorney

2.6 Various associations/experts who appeared before the Committee expressed the concerns regarding the role of owners of the properties on the basis of Power of Attorney. It was observed that most of the property owners in Delhi have the properties on Power of Attorney basis. In this case, the owners of the associations to be formed under the Bill would be the persons who are not residing in the complex. In such a situation, there was a possibility of having parallel bodies like various societies which played a predominant role in the various common problems of the area. Thus, it was apprehended that the objective of the Bill would not be fulfilled. Similar apprehensions were expressed by the residents while the Committee inspected the position of common areas in various multi-storeyed buildings in Delhi during the local visit. In this regard, various suggestions were made such as the rate of stamp duty should be decreased so as to encourage registration in case of sale or transfer of property and the existing properties on Power of Attorney basis should be transferred into freehold without any charges. A suggestion was also made that some flat rate should be charged for conversion of Power of Attorney into freehold. The suggestion was also made for introducing slabs for charging stamp duty.

2.7 As regards the rate of stamp duty in Delhi it was clarified by the Ministry that in Delhi, the stamp duty is 13%. With regard to the rate of stamp duty in other States/UTs, the Ministry has furnished information in respect of some of the States like Karnataka, Uttar Pradesh, West Bengal, Tamil Nadu, Maharashtra and Andhra Pradesh, the details of which have been given in Appendix - VI.

2.8 In Karnataka, Uttar Pradesh, West Bengal and Tamil Nadu, there is uniform rate for calculating stamp duty. In Karnataka, it is higher i.e. 10%. In Uttar Pradesh and Tamil Nadu, the rate is 8%, whereas in West Bengal, it is 5%. As regards Maharashtra and Andhra Pradesh, there are certain slabs.

2.9 As regards the conversion of leasehold land into freehold property, it was clarified by the Ministry that the Power of Attorney properties are converted into freehold as per the policy which requires that all such General Power of Attorney holders should be duly registered. Further, it was stated that the registration and other related laws (Amendment) Act, 2001 requires that the registration of General Power of Attorney which is in the nature of contract to sell immovable property will be required to be registered compulsorily and such a contract for transfer of the immovable property in the nature of part performance of the contract shall also attract 90% of the stamp duty as a conveyance.

2.10 The representative of the Municipal Corporation expressed the similar apprehensions before the Committee. The Union Government in their response to the various apprehensions from various quarters stated that so far as rights of Power of Attorney holders are concerned, the Ministry of Law, Justice and Company Affairs had clarified that as per Section 2 of Powers of Attorney Act, 1882, the donee of the Power of Attorney may execute or do anything in and with his own name and signature and own seal etc. and thing so executed or done, shall be as effectual in law as if it had been done by the donee of the power in the name and with the signature and seal, of the donor thereof. Therefore, to the extent the power has been attorned the attorney shall be in a

position to stand in the shoes of the allottee. They also suggested that a provision can be made by way of an explanation in the definition under Clause 3 (d) to the effect that apartment owner would include his duly constituted GPA duly registered and linkage should be established between the original allottee and all the subsequent GPA holders. As regards the apprehensions of various experts/individuals who appeared before the Committee regarding the Power of Attorney holder to be eligible to be the member of the association to be formed under the provision of Apartment Bill, it was clarified by the Ministry that Clause 42(1) of the Bill provides that the provisions of the Act shall be binding on the apartment owners, their tenants, employees or any other persons who may in any manner use the property or its part to which the Act applies.

2.11 The Committee examined in detail the issues raised by various interested groups regarding the applicability of the provisions of the Act as contained in Clause 2 of the Bill according to which the applicability is compulsory for a building having four or more apartments and for two or three apartments, provision is optional. After considering the clarifications given by the Union Ministry, they find that for a building having only two apartments, no meaningful purpose will be served by forming an association and as such the provision of making the law optional in respect of two or three apartments is alright and they in view of this, endorse Clause 2 of the Bill.

2.12 While endorsing Clause 2 of the Bill, the Committee make the following general observations/recommendations:

- (i) As suggested by the Ministry, it should be made explicitly clear in the Bill that an apartment owner would include his duly constituted General Power of Attorney duly registered and further linkage should be established between the original allottee and all the subsequent GPA holders.**
- (ii) The rate of stamp duty in Delhi is much higher as compared to other States. The Government should consider reducing the stamp duty so as to encourage sale/transfer by registration.**
- (iii) The Government should ensure a single window system for the conversion of leasehold property to freehold and all the applications in this regard should be disposed of within the prescribed period.**

DEFINITIONS

Clause 3 (l)

2.13 Clause 3 (l) defines common areas and facilities. As per the views expressed by different experts, individuals and other organisations, etc., who appeared before the Committee, the definition of common areas and facilities as given in Clause 3 of the Bill is not very comprehensive. It was expressed that the previous Act defined common areas and facilities in a detailed manner. It was suggested that various common areas/facilities like parks, lobbies, lawns, electric and water supply, basement, terrace, car park, etc. should also be included in common areas and facilities. Similar views were expressed by NDMC in their memoranda. The Union Government while responding to the various suggestions made by the organisations, etc., stated that the definition of common areas

and facilities in the Bill takes into account every aspect. Clause 3(l) provides that the term would mean all parts of the building or the land on which it is located and all easements rights and appurtenances relating to the land or the building which are neither in exclusive possession of owner in terms of Deed of apartment nor are handed over/intended to be handed over to local authority or other public service agencies. Specific area as common areas may not include all possible areas as common areas as the concept of common area may change depending on usage. This definition takes into account even unforeseen situation. Hence the existing definition is more inclusive and apt.

Right on Terrace

2.14 The Committee undertook a local visit to the various multi-storeyed apartments in Delhi to inspect the position of common areas and facilities. As regards the right of terrace, following concerns were expressed by the residents:

- (i) In Cooperative Group Housing Societies, the terrace is a common property whereas in respect of DDA flats, there is unwritten authority giving freedom to enjoy extra space on the terrace by flats just below the terrace. This is sometimes being quoted by Co-operative Group Housing residents also. There has to be a legal clarity on the point of terrace and common properties in the Cooperative Group Housing Societies.
- (ii) Owners of the top flats should be debarred from constructing any structure on the terrace and that lower flat residents should have free access to terrace for checking/repairing their water tanks/TV antenna etc.

When asked for the comments of the Government, the Ministry stated that:

“The definition of common areas and facilities clearly indicate that it would include 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 owner in terms of his Deed of Apartment, nor are handed over or intended to be handed over to the local authority or other public service agency. It is, therefore, clear that the terrace comes under common areas and its misuse can be prevented by the association.”

2.15 The Committee feel that there is no clarity of law so far as the ownership of the roof / terrace is concerned. Besides there is no uniformity too on this point. In some of the multi-storeyed flats, the legal right of roof/terrace has been given to the owner of the top flat, whereas in some of the proprietries the roof/terrace is considered as a common property. In view of the apprehensions expressed by certain interested groups, the Committee urge the Government to indicate roof/terrace explicitly as common area suitably in the Bill, after taking into account the legal position in this regard.

2.16 The period prescribed for

- (i) Execution of Deed of sub-lease (Clause 8)**
- (ii) Execution of Deed of apartment (Clause 12)**
- (iii) Formation and Registration of association (Clause 14)**

Provisions under the Bill

Execution of Deed of sub-lease

In case of execution of sub-leases, the period prescribed as per the provision made under the Bill in the case of a building constructed before the commencement of proposed Act, within three months from such commencement. In the case of a building constructed after the commencement of the proposed Act prescribed period is within three months of the date on which the possession of a apartment is delivered. There is no provision in the Bill regarding extension of time by the competent authority. Any delay in execution of the Deed would attract penalty provision.

(ii) Execution of Deed of apartment

Clause 12 of the Bill provides that the promoter shall execute a Deed of apartment within the period of three months from the date of allotment, sale or other transfer in case the allotment etc. is made after the commencement of the Act. In case such allotment etc. is made before the commencement of the Act, the period for execution of Deed is one year from the date of commencement of the Act.

Further the competent authority has been empowered under this Clause to grant extension of time for a period not exceeding six months, if it is satisfied that the promoter was prevented by sufficient cause from executing the Deed of apartment within the prescribed period. Any further delay would attract penalty.

(iii) Formation and registration of association

Clause 14 of the Bill provides that every promoter shall make an application to competent authority for registration of association within a period of three months from the date of commencement of the Act if more than one third of such apartments were allotted, sold or otherwise transferred before such commencement. In any other case, the period of three months will be counted after more than one third apartments are allotted, sold or otherwise transferred. In this case also, there is no provision in the Bill for extension of time by the competent authority.

2.17 Most of the organisations, associations expressed the view that above mentioned period for execution of Deed, sub-lease and formation and registration of association is not sufficient. It was suggested to increase the period of three months to one year. Some also suggested to increase the period even upto two years. For the period prescribed for registration of association, it was observed that three months was not sufficient and it was suggested to increase such period to six months.

2.18 The Government while responding to the suggestions made by the experts/associations etc. have submitted that while normally the period, as prescribed in

the Bill could be retained including the period of extension, if any, in hardship cases, the competent authority may be moved for extension of time.

2.19 The Committee find that the prescribed period of three months for (i) execution of Deed of sub-lease (Clause 8(1)(a) and 8(1) (b)), (ii) execution of Deed of apartment (Clause 12(1) (a)) and (iii) formation and registration of association (Clause 14 (2) (a) and (b)), is not sufficient as several formalities are required to be completed. Taking a balanced view in this regard, they recommend that the prescribed period of three months in all the above mentioned cases should be increased to six months. After the said six months, a provision should be made whereby the competent authority should be empowered to relax the period for further six months. After the extended period of six months as relaxed by the competent authority is over, the penalty provision wherever applicable, should apply.

2.19 (a) The Committee further find that Clause 12 (1) (a) and (b) provides for the period for execution of a Deed of Apartment by the promoter. In the case of the allotment, sale or other transfer made after the commencement of the Act, the period prescribed is three months, whereas in the case of allotment, sale or other transfer made before the commencement of the Act such period is within one year from the date of commencement. They further note that proviso two of the said Clause provides for relaxation of the aforesaid period by the competent authority. In the said proviso the period indicated is three months or six months. The Committee feel since proviso relates to Clause 12 (a) & (b), the period indicated should be as given in said Clause i.e. three months (12(1) (a)) and one year (12(1)(b)). They urge the Government to review the said position and rectify the mistake in the said proviso so that it reflects the position given in the main Clause.

2.20 Registration of endorsements

As per Clause 13 of the Bill, every Deed of apartment and even endorsement thereon relating to the transfer of the apartment are to be compulsorily registered.

The views of the Government

2.21 When asked whether sufficient administrative machinery is available to ensure that the endorsements are timely registered and no harassment is caused to the public, the Government have replied that since the registration is to be done by the office of registrar which is already existing area wise, there would perhaps be no problem. However, the government of NCT of Delhi would be requested by them, after the Act comes into force, to make sufficient arrangement for infrastructure facilities so as to ensure timely registration of the required documents without any harassment to the public.

2.22 Registration charges

As per the information provided by the Government, registration charges in Delhi are at very nominal rate, ranging from Rs.20 to Rs.40 per document. The position of

registration charges in some of the States has been given in Appendix-VI. The various organisations associated with advancing loans to individuals for purchase of house like HDFC and HUDCO expressed the view that since as per the provisions of the Bill transfer by way of mortgage and gift will be by endorsements, which have to be compulsorily registered, the said provision would make the housing loan more expensive. When asked for the comments of Union Ministry, they have stated that as per the provision contained in Clause 46 of the Bill, the Central Government has powers to reduce or remit stamp duty relating to registration of the documents or to court fee which the Central Government is competent to levy.

2.23 While endorsing the provision relating to compulsory registration of endorsements, the Committee recommend that necessary facilities should be provided to the Registrar to dispose of the applications within the prescribed period so that no harassment is caused to the public. Besides, they also urge the Government to carefully consider the concerns expressed by HDFC and HUDCO so that the housing loan does not become expensive in view of the aforesaid provision and people have to pay more resulting in a negative impact on the house building sector.

Clause 9 (b) regarding registration of undertaking to comply with the covenants conditions and restrictions, subject to which such apartment is owned by the apartment owner

2.24 Clause 9 of the Bill provides that where an apartment is acquired, the person acquiring such apartment by gift, exchange, purchase or otherwise shall give an undertaking to comply with the covenants, conditions and restrictions subject to which such apartment is owned by the previous apartment owner. Such an instrument is to be compulsorily executed and registered within three months. Concerns were expressed by various representatives of associations etc. who appeared before the Committee, that the said provision would unnecessarily burden the transferee and official agencies.

2.25 As per the Clause 13(4) of the Bill, any person acquiring any apartment shall be deemed to have notice of the contents of the Deed of Apartment and the endorsement, if any, thereon as from the date of its registration.

2.26 The Committee agree with the concerns expressed by the various interested groups. They feel that the intended purpose of the said clause could be served by enforcing the provisions statutorily. They further note that clause 13(4) of the Bill takes care of this aspect. In view of what has been stated above the Committee urge the Government to reconsider the said provision.

To execute a Deed of apartment

(a) particulars required

Clause 12(1)(b)(viii)

2.27 The said Clause provides for certain particulars required to execute a Deed of apartment. One of the particulars included is value of the property and of each apartment, and a statement of encumbrances, if any, on the apartment and the undivided interest on the date of execution of the Deed of apartment. Concerns were expressed by some interested groups that the said provision will be problematic and it was suggested that the actual sale price of the apartment instead of value of the property should be included in the Deed of apartment. The Ministry in their comments have stated that the suggestion is worth considering.

2.28 The Committee find that calculating value of the property is fraught with complications and as such they recommend that instead of the value of property, the actual price of the apartment should be included in the Deed of apartment. They urge the Government to make suitable changes in the Bill in this regard.

(b) Proviso 1 to Clause 12

2.29 As per the proviso to the said Clause where an apartment has been constructed on a leasehold land, and the lease Deed in relation thereto is executed after the date of allotment, sale or other transfer, the promoter shall execute the Deed of apartment within the period of three months of the execution of such lease Deed. HUDCO expressed concerns that although the execution of Deed of apartment becomes conditional upon execution of lease Deed for land, there is no limitation of time within which the lease Deed for land is to be executed. Thus the promoter may not execute the lease Deed for land and escape giving the Deed of apartment to the apartment owner. They suggested that the promoter should be made to execute the lease Deed before making the allotment. The Government have stated that the suggestion merits consideration.

2.30 The Committee note that although the period for execution of Deed of Apartment has been prescribed, there is no limitation for execution of lease Deed for land. They agree with the apprehensions expressed by HUDCO that the promoter may not execute the lease Deed for land and escape giving the Deed of Apartment to the apartment owner. In view of this situation, they recommend that the promoter should be liable to execute the lease Deed before making the allotment. They urge the Government to make suitable provisions in the Bill in this regard.

Clause 14

Association of apartment owners and by-laws relating thereto

2.31 As per the proposed legislation all the Cooperative Housing Societies, especially Group Housing Societies registered under the Delhi Cooperative Societies Act, 1972 would be controlled and governed by the provisions of Delhi Apartment Ownership Bill, 2001.

Clause 14(6) provides that where a promoter, being a Cooperative Society registered under Delhi Cooperative Societies Act, 1972, has filed an application under sub-section (2), the competent authority shall, after satisfying itself that the proposed association meets the requirement of the provision of the Act, shall pass an order that such society shall be an association for the purposes of this Act. The Registrar Cooperative Societies of NCT, Delhi in their Memorandum as well as the views expressed before the Committee suggested that Group Housing Societies should be exempted from the provisions of the said legislation. It may be applicable in DDA and other apartments. Since the Cooperative Societies are already governed by Cooperative Society Act, 1972, the provisions of the proposed legislation would result in multiplicity of authorities and confusion. It was also expressed that the Registrar of Cooperative Society is under the Delhi Government and the competent authority under the said legislation would be appointed by the Central Government and hence there may be Centre State clashes.

2.32 The Secretary further explaining the position regarding the Cooperative Societies under the proposed legislation during the course of oral evidence stated as below:-

“The competent authority under this Bill will also exercise the powers of the Registrar of the Cooperative Societies. Under the Cooperative Societies Act, most of the powers are vested with the Registrar of the Cooperative Societies. So, the competent authority here will exercise all powers and perform the functions of the Registrar of the Cooperative Societies also under this Bill. Otherwise, a situation may arise that an apartment owner of a building which was constructed under the Cooperative Societies Act may resort to the provisions of the Cooperative Societies Act and say that a different provision is applicable to him. To overcome that possibility, we have said that the competent authority under this Bill will also be the Registrar under that Act. He will perform all the functions. But as I stated just now, all the problems of Cooperative Societies arise only till the buildings are constructed and the apartment is occupied. If you see in Delhi, almost all the problems of the Group Cooperative Housing Societies are before the construction, during the construction and soon after the construction, like taking occupation certificate, electricity, water and sewerage connections etc. Once all those things are there and people occupy it, then they have hardly any dealings with the Registrar of the Cooperative Societies. Then, they have dealings only amongst themselves about the maintenance of the common areas, if a building is to be repaired or if somebody dies, then who will inherit his property and so on. This Bill will take care of all these things. Where the Cooperative Societies Act ends, this Bill starts. That is the practical position.”

On a query whether the position as stated by the Secretary as given above that where the jurisdiction of Cooperative Societies Act ends, the proposed legislation would take care is explicitly made clear in the Bill, the Secretary further stated as below:

“This cannot be clearly defined because of the difficulty to envisage as to what problems would arise. Therefore, to overcome those problems, we have said that the competent authority will perform all the functions and duties and exercise all powers of the Registrar of the Cooperative Societies. This provision will take care of that.” x x x It is in addition to the Cooperative Societies Act.

On another query whether there would be no *locus-standi* of the Cooperative Group Housing Society after the association is formed, the Ministry has stated as below:-

“Clause 14(10) indicates that the framing of bye-laws will be in addition to and not in derogation of the provisions of the Delhi Cooperative Societies Act. Hence the control of the Registrar, Cooperative Societies would not come to an end, e.g. expulsion of a member of a Group Housing Society will be governed by the provisions of the Delhi Cooperative Societies Act.”

2.33 After going through the written information as well as what was stated by the representatives of the Ministry during the course of oral evidence, the Committee find that after the enactment of the proposed legislation, two laws i.e. the Delhi Cooperative Societies Act, 1972 and the Delhi Apartment Ownership Act, (when enacted) would be applicable to take care of the position of common areas in the multi-storeyed building. They also note that conflicting views have been expressed by the Ministry with regard to the role of Registrar, Cooperative Society after the association is formed. On the one hand, they have stated that the role of Registrar Cooperative Society ends once the association is formed. On the other hand, it has been mentioned that the control of Registrar would not come to an end. In view of this dichotomic scenario, the Committee urge the Government to reconsider the above provision carefully with a view to ensure that there is no overlapping of the powers of two authorities i.e. Registrar, Cooperative Societies and the competent authority under the proposed legislation and there is no further harassment to the public.

Collection of taxes by associations – Clause 22(3)

2.34 As per Clause 22(3), every association shall collect taxes imposed by the Government or by a local authority from the apartment owners and shall remit the same to such authority within the period and in the manner as may be prescribed. Further, Clause 22(4) provides that any amount payable towards any tax imposed by the Government or a local authority shall be recoverable as an arrear of land revenue from the association or the apartment owners jointly or severally.

2.35 Various associations and NDMC expressed their concerns about the provisions made under the aforesaid Clauses of the Bill. The main issues raised are as below:

- (i) Whereas the association has been authorised to collect taxes imposed by the Government or by local body, no teething provisions have been made

to enable associations to enforce payment towards common expenses and taxes etc.;

- (ii) The provision regarding taxes to be collected by associations should be clear as to which of the taxes are to be collected;
- (iii) How the society will collect the taxes like house tax etc. In case of house tax some rebate is provided, if it is paid within the prescribed period. In case associations collect taxes from each and every individual and the taxes in respect of an individual house is deposited not in time, it will create problems.
- (iv) In case of calculating the value of property, notice will go to individual, then how the association will come into picture?
- (v) If one house owner is the defaulter, how the society could be penalised. Besides how the society would be able to collect the taxes, assessment has to be made in the name of individual owners.
- (vi) In case of individuals, certain rights have been given to the authority concerned to attach bank accounts or other moveable property. How the society would be able to enforce this? It was suggested by NDMC that responsibility of collecting property tax should be entrusted to local bodies instead of vesting this responsibility to associations as stipulated in the Bill. They contended as associations are not equipped with necessary legal powers, it would be difficult for them to collect property taxes and regulate it.

2.36 The Ministry have stated that suggestions of NDMC merits consideration. The responsibility of property tax could remain with the local bodies. For other activities/measures, the associations may be given more legal powers regarding collection of funds from its members so that they may function smoothly. As regards details of the taxes to be collected by associations, it has been stated that details of the taxes have not been specified in the Bill. The associations should be in charge of collection of non-divisible portion and not individual property taxes. However, such taxes may include the property tax, service tax charges, non-agricultural assessment (if levied) etc.

2.37 The Committee after considering the concerns expressed by the various interest groups and the views of the Union Ministry recommend as follows:

- (i) As suggested by the Ministry the associations should be in charge of collection of non-divisible portion and not individual property taxes. This should be made clear in the Bill.**
- (ii) As regards the responsibility of property tax, the individual owner should be responsible for paying tax to the local bodies as is the existing position. The proposed legislation should not be involved in this.**
- (iii) The associations should be equipped with certain legal powers so as to make them really effective and enable them for collection of funds from members for repair, maintenance and carrying out other functions and performing the responsibility entrusted under the provisions of the proposed legislation.**

The Committee would like that the relevant provisions of the Bill may be amended in this regard.

Miscellaneous

(i) Completion Certificate

(ii) Comprehensive legislation containing provisions in respect of builders

2.38 Various organisations, experts, etc. who appeared before the Committee felt that the said legislation do not propose any penalty for the builder who violates provisions contained in building by-laws. It was suggested that some provision should be made whereby the apartment constructed by the builder etc. could not be transferred unless Completion Certificate is made available. It will safeguard the interests of the purchaser. While expressing the similar concerns, the Delhi Municipal Corporation in their memoranda suggested that no apartment should be registered in case the Completion Certificate of the building is not produced by the buyer. The Government has submitted that in the existing Bill, there is no specific provision regarding Completion Certificate. This is essential ingredient of Municipal Act and building bye-laws and guided by their provisions. However, Clause 12(1)(b)(iii) provides that the promoter shall execute a Deed of apartment containing various details including set of plans approved by the local authority. For regulating the Real Estate Industry, the Government is proposing another legislation i.e. 'The Real Estate Management (Regulation and Control) Bill, 2001. As per Andhra Pradesh Apartment Act, there is a comprehensive Act relating to the provision of maintenance of common areas, and duties and liabilities of promoters. It was suggested by the experts that on Andhra Pradesh line, the proposed Bill should also contain the provision relating to the liabilities of the builders since the issues are co-related.

2.39 The Committee note that the issues regarding provision of (i) maintenance of common area and (ii) duties and liabilities of promoters are closely related. They also find that whereas Andhra Pradesh has a comprehensive legislation to deal with the two issues, the Union Government has proposed two separate legislations for NCT of Delhi. Before endorsing the position of Union Government for having two separate legislations, the Committee urge the Government to carefully analyse the experience of Andhra Pradesh and decide the issue accordingly.

2.40 Subject to amendments/observations made in the preceding paras, the Committee approve The Delhi Apartment Ownership Bill, 2001.

*NEW DELHI;
16 December, 2002
25 Agrahayana, 1924 (Saka)*

*(CHANDRAKANT KHAIRE)
Chairman,
Standing Committee on Urban
and Rural Development*

STATEMENT OF OBSERVATIONS/RECOMMENDATIONS

Sl.No. Para		Observation/Recommendation
1	2	3
1.	2.11	<p>The Committee examined in detail the issues raised by various interested groups regarding the applicability of the provisions of the Act as contained in Clause 2 of the Bill according to which the applicability is compulsory for a building having four or more apartments and for two or three apartments, provision is optional. After considering the clarifications given by the Union Ministry, they find that for a building having only two apartments, no meaningful purpose will be served by forming an association and as such the provision of making the law optional in respect of two or three apartments is alright and they in view of this, endorse Clause 2 of the Bill.</p>
2.	2.12	<p>While endorsing Clause 2 of the Bill, the Committee make the following general observations/recommendations:</p> <ul style="list-style-type: none">(i) As suggested by the Ministry, it should be made explicitly clear in the Bill that an apartment owner would include his duly constituted General Power of Attorney duly registered and further linkage should be established between the original allottee and all the subsequent GPA holders.(ii) The rate of stamp duty in Delhi is much higher as compared to other States. The Government should consider reducing the stamp duty so as to encourage sale/transfer by registration.(iii) The Government should ensure a single window system for the conversion of leasehold property to freehold and all the applications in this regard should be disposed of within the prescribed period.
2.	2.15	<p>The Committee feel that there is no clarity of law so far as the ownership of the roof / terrace is concerned. Besides there is no uniformity too on this point. In some of the multi-storeyed flats, the legal right of roof/terrace has been given to the</p>

owner of the top flat, whereas in some of the proprieties the roof/terrace is considered as a common property. In view of the apprehensions expressed by certain interested groups, the Committee urge the Government to indicate roof/terrace explicitly as common area suitably in the Bill, after taking into account the legal position in this regard.

3. 2.19

The Committee find that the prescribed period of three months for (i) execution of Deed of sub-lease (Clause 8(1)(a) and 8(1) (b), (ii) execution of Deed of apartment (Clause 12(1) (a)) and (iii) formation and registration of association (Clause 14 (2) (a) and (b)), is not sufficient as several formalities are required to be completed. Taking a balanced view in this regard, they recommend that the prescribed period of three months in all the above mentioned cases should be increased to six months. After the said six months, a provision should be made whereby the competent authority should be empowered to relax the period for further six months. After the extended period of six months as relaxed by the competent authority is over, the penalty provision wherever applicable, should apply.

4. 2.19 (a)

The Committee further find that Clause 12 (1) (a) and (b) provides for the period for execution of a Deed of Apartment by the promoter. In the case of the allotment, sale or other transfer made after the commencement of the Act, the period prescribed is three months, whereas in the case of allotment, sale or other transfer made before the commencement of the Act such period is within one year from the date of commencement. They further note that proviso two of the said Clause provides for relaxation of the aforesaid period by the competent authority. In the said proviso the period indicated is three months or six months. The Committee feel since proviso relates to Clause 12 (a) & (b), the period indicated should be as given in said Clause i.e. three months (12(1) (a)) and one year (12(1)(b)). They urge the Government to review the said position and rectify the mistake in the said proviso so that it reflects the position given in the main Clause.

5. 2.23

While endorsing the provision relating to

compulsory registration of endorsements, the Committee recommend that necessary facilities should be provided to the Registrar to dispose of the applications within the prescribed period so that no harassment is caused to the public. Besides, they also urge the Government to carefully consider the concerns expressed by HDFC and HUDCO so that the housing loan does not become expensive in view of the aforesaid provision and people have to pay more resulting in a negative impact on the house building sector.

6. 2.26 The Committee agree with the concerns expressed by the various interested groups. They feel that the intended purpose of the said clause could be served by enforcing the provisions statutorily. They further note that clause 13(4) of the Bill takes care of this aspect. In view of what has been stated above the Committee urge the Government to reconsider the said provision.
7. 2.28 The Committee find that calculating value of the property is fraught with complications and as such they recommend that instead of the value of property, the actual price of the apartment should be included in the Deed of apartment. They urge the Government to make suitable changes in the Bill in this regard.
8. 2.30 The Committee note that although the period for execution of Deed of Apartment has been prescribed, there is no limitation for execution of lease Deed for land. They agree with the apprehensions expressed by HUDCO that the promoter may not execute the lease Deed for land and escape giving the Deed of Apartment to the apartment owner. In view of this situation, they recommend that the promoter should be liable to execute the lease Deed before making the allotment. They urge the Government to make suitable provisions in the Bill in this regard.
9. 2.33 After going through the written information as well as what was stated by the representatives of the Ministry during the course of oral evidence, the Committee find that after the enactment of the proposed legislation, two laws i.e. the Delhi Cooperative Societies Act, 1972 and the Delhi

Apartment Ownership Act, (when enacted) would be applicable to take care of the position of common areas in the multi-storeyed building. They also note that conflicting views have been expressed by the Ministry with regard to the role of Registrar, Cooperative Society after the association is formed. On the one hand, they have stated that the role of Registrar Cooperative Society ends once the association is formed. On the other hand, it has been mentioned that the control of Registrar would not come to an end. In view of this dichotomic scenario, the Committee urge the Government to reconsider the above provision carefully with a view to ensure that there is no overlapping of the powers of two authorities i.e. Registrar, Cooperative Societies and the competent authority under the proposed legislation and there is no further harassment to the public.

10. 2.37

The Committee after considering the concerns expressed by the various interest groups and the views of the Union Ministry recommend as follows:

- (i) As suggested by the Ministry the associations should be in charge of collection of non-divisible portion and not individual property taxes. This should be made clear in the Bill.
- (ii) As regards the responsibility of property tax, the individual owner should be responsible for paying tax to the local bodies as is the existing position. The proposed legislation should not be involved in this.
- (iii) The associations should be equipped with certain legal powers so as to make them really effective and enable them for collection of funds from members for repair, maintenance and carrying out other functions and performing the responsibility entrusted under the provisions of the proposed legislation.

The Committee would like that the relevant provisions of the Bill may be amended in this regard.

11. 2.39

The Committee note that the issues regarding provision of (i) maintenance of common area and (ii) duties and liabilities of promoters are closely related. They also find that whereas Andhra

Pradesh has a comprehensive legislation to deal with the two issues, the Union Government has proposed two separate legislations for NCT of Delhi. Before endorsing the position of Union Government for having two separate legislations, the Committee urge the Government to carefully analyse the experience of Andhra Pradesh and decide the issue accordingly.

12. 2.40

Subject to amendments/observations made in the preceding paras, the Committee approve The Delhi Apartment Ownership Bill, 2001.
