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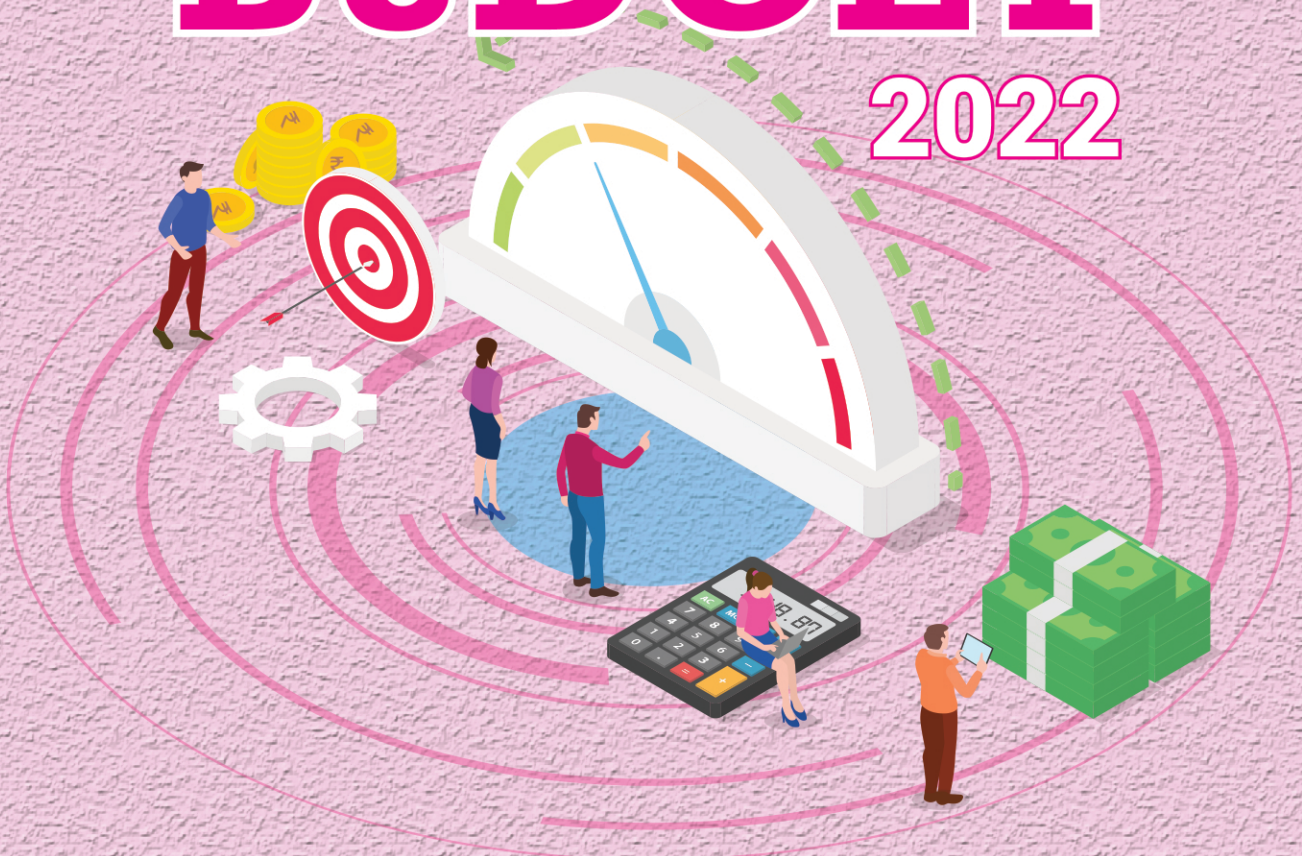
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**Apartment Owners Association
And Post RERA Practices
(Part – 9 of RERA Series)**

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APARTMENT OWNERS ASSOCIATION AND POST RERA PRACTICES

(PART - IX OF RERA SERIES)

Adequate housing is not merely a desired goal; it is a basic human right of all human beings. This has been affirmed by the Universal Declaration of Human Rights in 1948, which recognizes the right to adequate housing as an integral component of the human right to an adequate standard of living.

- o However, will it be a reality for everyone, whose responsibility is to provide housing for all? Is it Government? If so, how effective is delivering these responsibilities?
- o It is not only the housing, but it also comes with various factors of infrastructure development to make it habitable. Is it possible to achieve by the Government alone?
- o Hence the government thought to include and invite the private players to deliver the Housing, So the concept of Real Estate.
- o Globalisation, technology made humans flexible, mobile. Esp., migration of people for the purpose of employment made it mandatory to deliver more houses in urban areas/cities.
- o However, Land is limited and scarce as the city grows. To effectively use the limited land, the concept of community living gained importance, wherein common facilities, amenities be shared, maintained by the group of owners/residents in a housing project.
- o In legal, it is called a group housing project. The Group housing may be horizontal (Rowhouses) or Vertical (Apartment) development of a Real Estate Project. Owners in the group housing project have common ownership, common interest in entire project land and common areas, common assets in a project.
- o Community living has its own pros and cons. There are many communities which are large and like a

town itself. In order to maintain these larger areas in a community living, require an agency to monitor, maintain, supervise and service the communities.

- o In traditional living (independent houses) in a government-formed/developed layout, all the facilities or amenities are maintained by the local municipality or corporation. Viz., roads, parks, water supply, waste segregation, sewer lines, electricity, upkeeping of roads, parks, maintenance of electricity, water lines, etc
- o However, in privately developed projects Eg., In an Apartment Project, Villa Projects, Row Housing projects, there would be common amenities, facilities, common areas, common equipment's, common assets for the use of the residents of the project, these shall be maintained by the respective project residents.
- o Generally, the promoter of the projects maintains these common assets, areas, facilities, amenities, etc till the completion of the entire development of the project and the sale of all units in the project. Once all units are disposed of, there exists no interest for the promoter to associate with the project/owners.
- o While the promoter of the project moves out and he shall enable the formation of the association of owners and handover the entire common areas, common assets apart from property documents, various approvals, NOC's, drawings, copies of the invoices of the assets, etc.,
- o The association is responsible for managing the day-to-day affairs of the residents, organizing events, managing facilities in the apartments and complexes, and safeguarding the rights of the owners or residents in a project.
- o If so, let us understand the prevailing legislation that enables the formation of the Association, govern,

regulate and the functioning of the Apartment owners Association.

- o Land-related laws are state subject, hence respective states have adopted statutes respectively. In the state of Karnataka, the following are the specific statutes that were notified way back in 1970's –

1. THE KARNATAKA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT, 1972.

- a. The Objective of this Act was – Separate law is being made to declare that flats or apartments in multi-storeyed buildings may, for all purposes, be heritable and transferable immovable property. Owners of such flats or apartments enjoy exclusive ownership of their flats or apartments while retaining an undivided interest in the common areas and facilities which are to be used and owned by all such owners jointly. An enterprising individual or group of individuals may either construct out of his or their own funds multi-storeyed buildings consisting of a number of self-contained flats or apartments and sell them to individuals on an ownership basis, or construct such buildings after collecting contributions from intending purchasers of such flats or apartments. In the interest of the intending purchasers who advance funds, it is necessary to regulate the construction, sale, management and transfer of flats or apartments by individuals or groups of individuals who construct such multi-storeyed buildings.
- b. Section 10 of this Act states that the Promoter to take steps for formation of a co-operative society or company as soon as a minimum number of persons required to form a cooperative society or a company has taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organization of persons who take the flats as a co-operative society, or as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company.

2. THE KARNATAKA APARTMENT OWNERSHIP ACT, 1972 –

- a. Consequent upon the shortage of lands in urban areas, the majority of the citizens of urban areas of the State cannot think in terms of owning houses on an individual basis. Though there is a tendency to construct multi-storeyed flats, apartments and the like on an ownership basis, intending persons cannot purchase flats, tenements, or apartments in multistoried buildings as they will not have a marketable title thereto and cannot obtain any loan by mortgaging such flats, tenements, etc. Consequently, tenements constructed by the Housing Board for example cannot be sold to the tenants who cannot raise any loan on the security of 2 such tenements with the result that an enormous amount of capital will be locked up, which can be utilized for new constructions to meet the increasing demands for housing. It is, therefore, considered expedient that each apartment should for all purposes constitute a heritable and transferable immovable property, and that suitable legislation should provide for all matters connected therewith. It is felt that such a measure will not only enable many a person to own his apartment but it will at the same time enable institutions like Housing Boards to utilize their locked up capital in the construction of new buildings. The following notes on causes explain the important provisions in the Bill.
 - i. Clause 2 - By this clause, the provisions of the Act are made applicable only to property, the sole owner or all of the owners of which submit the same to the provisions of the Act by duly executing a Declaration as provided in the Act.
 - ii. Clause 4 - Under this clause, each apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment is constituted for all purposes a heritable and transferable immovable property.
 - iii. Clause 5 - By this clause, the owner of each apartment is given exclusive ownership and possession of his apartment and he is required to execute a Declaration that he submits his apartment to the provisions of the Act and a Deed of Apartment in relation to his apartment;
 - iv. Clause 6 - This clause specifies the common

areas and facilities to which each apartment owner shall be entitled, and prohibits an apartment owner from bringing any action for partition or division of any part of such common areas unless the property has been removed from the provisions of the Act. The clause further provides for carrying out the work of maintenance, repair, and replacement of the common areas and facilities as provided in the bye-laws. Clause

- v. Clause 7- This clause puts an obligation on each apartment owner to comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto and with the covenants, conditions, and restrictions set forth in the Declaration or in the Deed to his apartment:
- vi. Clause 8 - This clause prohibits the apartment owner from doing any work which would jeopardize the soundness or safety of the property or reduce the values thereof, or from adding any material structure or excavating any additional basement or cellar without the unanimous consent of all the other apartment owners being first obtained.
- vii. Clause 9 - This clause indicates to what extent encumbrances against apartments and property can arise or be created.
- viii. Clause 10 - This clause provides for the sharing of the common expenses by the apartment owners.
- ix. Clause 11 - This clause mentions the particulars to be included in a Declaration.
- x. Clause 12 - This clause mentions the particulars to be included in a Deed of Apartment.
- xi. Clause 13 - This clause provides for the registration of Declarations, Deeds of Apartments and copies of floor plans.
- xii. Clause 14 - This clause provides for the removal of property from the provisions of the Act. Clause 15 - This clause provides that removal is no bar to subsequent resubmission of property to Act.
- xiii. Clause 16 - This clause provides for bye- laws and their contents.

- xiv. Clause 17 - This clause prohibits waiver of the use or enjoyment of any common areas and facilities by apartment owners to avoid liability to contribute towards the common expenses. 3
- xv. Clause 18 - This clause provides for a separate assessment of each apartment.
- xvi. Clause 19 - This clause constitutes all sums assessed by the Association of Apartment Owners in respect of any apartment but unpaid, a charge on such apartment.
- xvii. Clause 20 - This clause provides for insuring the property against loss or damage by fire and such other hazards in certain circumstances.
- xviii. Clause 22 - This clause provides for the disposition of property in certain circumstances.
- xix. Clause 24 - Under this clause, the Act is made binding on apartment owners, tenants of such owners, employees of owners and tenants or any other person who may in any manner use property or any part thereof submitted to the provisions of the Act.
- xx. Clause 25 - This clause confers rule - making power on the State Government.
- xxi. Clause 26- This clause provides that the Transfer of Property Act shall apply to every apartment as they apply to any immovable property and contracts to the contrary are over-ridden.

- 3. As such there is no competent agency to administer KOFA or KAOA in the state of Karnataka.

When the owners in a project for any reason cannot be registered under the above forms of entities, the housing projects also be managed by forming the following legal bodies -

- 1. Partnership firm under Indian Partnership Act, 1932
- 2. Limited Liability Partnership
- 3. Private Limited Company
- 4. Association of persons

Post RERA requirements and practices -

Section 11(4) the RERA Act 2016, states that the promoter of the project shall enable the formation of an association

or society or co-operative society, as the case may be, of the allottees, or a federation of the association of allottees in accordance with the applicable laws shall be formed within a period of three months of the majority of allottees having booked their apartment or building or plot, as the case may be, in the project.

- A. Formation of association of allottees is mandatory
- B. Such association of allottees shall be formed within 3 months of the majority of bookings in the project (i.e., 51%). Please note it is on booking and need not wait till registration of sale deeds to the allottees.
- C. Such association formation shall be in accordance with the applicable local laws.
- D. Act recognizes the concept of a federation of the association. This means multiple associations come together and form the federation to maintain the larger projects.

Promoter or allottees shall consider the following important aspects while deciding the form of association –

- a. Shall be separate legal entity
- b. Charter for the entity – Byelaws
- c. Registration of the association -simple, easy, recognised
- d. Involvement / Participation of all owners of the project
- e. Existence of regulator or mechanism to regulate the functioning of the association
- f. Enable the Management to maintain the Association
- g. Dispute resolution mechanism
- h. Accountability and responsibility of the management committees
- i. Income Tax, GST, etc optimization
- j. Equal rights, the equal obligation of the owners/ members.
- k. Large projects, having development in phase wise
- l. Individual association of phases and Federation/ Apex Association to maintain the larger projects.

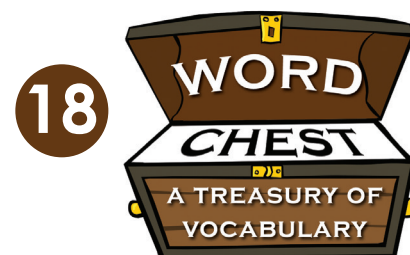
Presently there are no directions from the Government / RERA for type or form of association to be formed for the purpose of Maintenance of common areas, common assets in the group housing projects.

Based on the Survey by an independent agency the majority of the Associations were formed under KAOA 1972 Act (Bangalore city). This means the promoter has drafted and registered the Deed of Declaration and a Bye-Laws of the Association.

In our opinion based on experience over the years, we recommend the promoter to register the Deed of Declaration with Sub-registrar and comply with the provisions of KAOA Act 1972 and the bylaws in accordance with the Co-operative Society Act. Register the Association under the Co-operative Society Act.

We wish and hope the appropriate government or the government agency notify or issue guidance or directions or instructions to the promoter to follow the uniform practices to achieve the objectives of the Act and to protect all the stakeholders.

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Finance Tech Term of the Month:

Insurtech

What is this?

Insurtech refers to the use of technology innovations designed to squeeze out savings and efficiency from the current insurance industry model. Insurtech is a combination of the words “insurance” and “technology,” inspired by the term fintech. Insurtech is a term, similar to fintech, for a company using technology to disrupt the insurance industry.

Insurtech is exploring avenues that large insurance firms have less incentive to exploit, such as offering ultra-customized policies, social insurance, and using new streams of data from Internet-enabled devices to dynamically price premiums according to observed behaviour.

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