

The overhaul of the law relating to apartment ownership in Tamil Nadu

The law relating to the ownership and maintenance of apartments in Tamil Nadu was earlier governed by the Tamil Nadu Apartment Ownership Act, 1994 (“**1994 Act**”) read with the Tamil Nadu Apartment Ownership Rules, 1997 (“**1997 Rules**”). However, the authorities under the 1994 Act and 1997 Rules were not notified. Consequently, the said law was not implemented in letter and spirit, and it remained as a dead letter.

Subsequently, the Government of Tamil Nadu enacted the Tamil Nadu Apartment Ownership Act, 2022 (“**2022 Act**”). However, the 2022 Act remained unnotified for the last 2 (two) years. Recently, the Government of Tamil Nadu notified March 6, 2024¹ as the date on which the 2022 Act has come into force. Accordingly, the 1994 Act stands repealed.

Also, on September 24, 2024, the Government of Tamil Nadu enacted the Tamil Nadu Apartment Ownership Rules, 2024 (“**2024 Rules**”) prescribing the form and manner of compliance under the 2022 Act and notified the district registrars of the registration department as ‘Competent Authorities’ and the Inspector General of Registration Department as ‘Appellate Authorities’ as defined under the 2022 Act. Further, the 2024 Rules provides for authorities under the town and country planning department as the ‘Appropriate Authorities’.

Therefore, the earlier law governing the ownership and maintenance of apartments in Tamil Nadu, i.e., the 1994 Act and 1997 Rules, which remained unimplemented for 3 (three) odd decades has now been completely re-jigged by the 2022 Act and 2024 Rules.

The salient features of the 2022 Act and 2024 Rules are summarised below:

1. **It’s declaration – not deed of apartment:** The 2022 Act mandates the submission of a declaration by the promoter or a majority of the apartment owners, as opposed to the 1994 Act, which mandated the registration of a deed of apartment by each individual apartment owner.
2. **Redevelopment of the existing project:**
 - a) the redevelopment of existing project can be initiated under any of the following circumstances:
 - i) the association either *suo moto* or on request of 1/4th of the apartment owners, will convene a special general meeting, and with the consent of 2/3rd of the apartment owners; or
 - ii) on certification by the Appropriate Authorities that the apartment is in a ruinous condition or poses risk to its residents or the public, the association will convene a special general meeting and pass a resolution for redevelopment;

¹ G.O. Ms. No. 62, HUD Department, GoTN

- b) pursuant to any of the above, the association will engage a promoter/consultant and prepare a detailed redevelopment report (“**DRR**”), which will contain details such as the carpet area, alternative accommodation, security deposit etc.;
- c) the DRR will be placed before the association for its consideration. Upon approval of the DRR, the association will finalise the commercial terms of redevelopment with the promoter and obtain the written consent of not less than 2/3rd of the apartment owners confirming the terms of redevelopment;
- d) after obtaining such written consent, the association will enter into an agreement for redevelopment with the promoter, i.e., Detailed Redevelopment Scheme (“**DRS**”) which details the timelines for redevelopment, revision in undivided share of land, procedure for allocation of units etc.;
- e) the DRS will be submitted to the Appropriate Authorities for its verification and authentication. Within 90 (ninety) days from the date of obtaining such authentication, the DRS will be registered with the jurisdictional sub-registrar office. Simultaneously, within 30 (*thirty*) days from the date of obtaining such authentication, the association will serve notice to the existing apartment owners for the handover of vacant possession of their apartments; and
- f) thereafter, the promoter will obtain the necessary planning approvals, building approvals and sanctioned plan from the Appropriate Authorities. Upon obtaining the sanctioned plan, the association and the promoter will allocate the units to the existing apartment owners and the promoter. The details of allocation will be submitted to the Appropriate Authorities, who will verify and acknowledge the same. Upon completion of the redevelopment, the redeveloped apartments will be handed over to the existing apartment owners by issuing a handover certificate.

3. Codification of the prevailing market practices:

- a) hitherto, the law relating to ownership, maintenance and conveyance of apartments was not extensively codified, but rather guided by the principles propounded by the Transfer of Property Act, 1882, other property related legislations and the jurisprudence set out by the courts. While the 1994 Act recognised an apartment to be a heritable and transferable asset, all other aspects related to apartments was not adequately dealt with thereunder;
- b) with the change in trend and economic prosperity, the nature of development, the facilities and amenities of apartments were continuously evolving but unfortunately the law relating to apartments was not dynamic to keep in pace with the changing trends. The 2022 Act comes as a relief, which has codified the prevailing practices of purchase, sale and maintenance of apartments, such as:
 - i) the common areas and facilities available in the project, for example car parking, balconies etc. can be limited to the possession, control and maintenance of certain apartments;
 - ii) if a project has multiple phases, each phase will have their own association, and all such associations will form a federation of association for the purposes of maintenance and management of areas common to the entire project;
 - iii) the ownership of undivided share in the project land and common areas in the project will be in proportion to the carpet area of that particular apartment. To state it otherwise, the ownership of built-up area cannot be disproportionate to that of underlying land and common areas;
 - iv) each apartment along with its undivided share in the land and common areas will be deemed to be a separate property for the purposes of tax assessment on the land and building;
 - v) the 2022 Act provides for dealing with delinquent apartment owners. The association can initiate action against them to claim damages or injunctive relief;
 - vi) the 2022 Act provides for a grievance redressal mechanism to the apartment owners. It provides for filing a complaint against the association or the office bearers for non-performance of their functions and non-adherence to the law;

- vii) all common expenses assessed but unpaid by the apartment owners will constitute a charge on their respective apartments. Such charge is subject to the claims of land revenue, land taxes payable to government and mortgages, if any; and
- viii) if any apartment is conveyed, then the vendor and purchaser of such apartment will be jointly and severally liable for the payment of any unpaid common expenses till the date of conveyance.

4. The other salient features of the 2022 Act and 2024 Rules are as follows:

- i) the definition of apartment owners is inclusive of a person who has taken an apartment on lease for a period exceeding 30 (thirty) years. Additionally, the 2022 Act is also binding and applicable to the tenants, employees of apartment owners and any other person using the apartment or part thereof;
- ii) the definition of apartment includes both residential and commercial apartments;
- iii) the common expenses will be charged to the apartment owners in accordance with the undivided share owned by them in the common area and the facilities;
- iv) the 2022 Act provides for a penal provision, i.e., any contravention of the provisions of the 2022 Act will result in the imposition of a penalty in the form of a fine; and
- v) the 2024 Rules mandates for the creation of a web portal for the filing of all relevant documents and forms.

Conclusion

The 2022 Act is a progressive legislation, which has brought certainty and clarity to various aspects of apartment ownership. This will benefit all the stakeholders such as developers, promoters, landowners and homebuyers, in terms of development, acquisition, maintenance and conveyance of apartments. The concept of redevelopment of old apartments is a novel approach and has unlocked an ocean of opportunities for the existing apartment owners and the developers.

The 2022 Act has covered a wide field and encompasses various aspects of apartments, but missed a critical one, i.e., a resolution mechanism to resolve the disputes arising *inter-se* the apartment owners. Hopefully the same is addressed by way of an amendment in near future.

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