



GOVERNMENT OF KERALA

Abstract

Housing Department - Kerala Apartment Ownership Act, 1983 - Judgment of Hon'ble High Court in WP(C) Nos. 34824/2014, 9317/2021, 18667/2022, 20630/2021 & 21317/2021 - Complied with- Orders issued.

HOUSING (A) DEPARTMENT

G.O.(Ms)No.10/2025/HSG Dated, Thiruvananthapuram, 11-12-2025

- Read:-
1. Common Judgment of Hon.High Court dated 06.02.2024 in WP(C) Nos.34824/2014, 9317/2021, 18667/2022, 20630/2021 & 21317/2021
 2. Order of Hon'ble High Court dated 10.04.2025 in IA.No.1/2025 in WP(C) No.9317 of 2021 (L)
 3. Order of Hon'ble High Court dated 17.07.2025 in IA.No.2/2025 in WP(C) No.9317 of 2021 (L)
 4. G.O.(Ms)No.6/2025/HSG dated 27.07.2025

ORDER

The hon'ble High Court in its Judgment read as first paper above directed the petitioners in above cases to appear before the Committee which was constituted by Government to examine and find out the discrepancies between Kerala Apartment Ownership Act, 1983 and Real Estate (Regulation and Development) Act, 2016 and present their suggestions before it. The above said Committee was directed to submit a final report in this regard, containing their recommendations before the Government within a period of three months from 22.02.2024 and Government, on receiving the recommendations from the committee, will consider the same and take a final decision, including as to the amendment to be carried out with respect to the relevant legislations, or to any modifications/requirements to be brought in, leading to appropriate action being completed on it, as expeditiously as possible, but not later than three months thereafter. In the event any amendment is found warranted, action for the same shall be completed; for which purpose, an additional two months is granted.

2. The Committee constituted by the Government to examine and find out the discrepancies between Kerala Apartment Ownership Act, 1983 and Real Estate (Regulation and Development) Act, 2016 heard the stakeholders as directed by Hon'ble High Court. The Committee, after thorough examination of both legislations and the representations of the stakeholders, found out the following discrepancies;

(a) "As per Section 11(4) and Section 17(1) of the RERA Act, 2016, the promoter shall execute registered conveyance deed of undivided proportionate title in the

common areas to the association of allottees or competent authority as the case may be.

But as per the definition of 'apartment owner' in sub-section (b) of section 3 of Kerala Apartment Ownership Act, 1983, 'apartment owner' means the person or persons owning an apartment and undivided interest in the common areas and facilities in the percentage specified and established in the declaration. The Committee finds that as per section 2(n) of the RERA Act, 2016 which define the common area of the real estate project, the entire land of the project is included in the common area.

These provisions of KAO Act, 1983 and RERA Act, 2016 are conflicting:

(b) As per section 13(2) of the Real Estate (Regulation and Development) Act, 2016, a form is prescribed in Rule 10 of the Real Estate (Regulation and Development) Rules, 2018 for Agreement for sale as Annexure A. In clause 20 of the above form, the promoter has to assure the allottees that the project in its entirety is in accordance with the provisions of Kerala Apartment Ownership Act, 1983. Hence both the above discrepancies between the two Acts has to be resolved.

(c) As per RERA Act, 2016, Association of allottees shall be formed within a period of three months of majority units are booked. As per definition of association of apartment owners in section 3(d) of the Kerala Apartment Ownership Act, 1983, association of apartment owners means all of the apartment owners acting as a group in accordance with the bye laws and declarations. Hence as per the Kerala Apartment Ownership Act, 1983, the association can be formed only after the promoter handing over the apartment."

3. Citing the above discrepancies the committee reached the conclusion that the existing Kerala Apartment Ownership Act need to be repealed and a comprehensive legislation has to be enacted in conformity with RERA Act 2011. The report of the Committee was received in Government on 22.06.2024. Based on the Committee recommendation remarks of the stakeholder Departments were sought in this regard. As deliberations are necessitated prior to arriving at a final decision and to have an evaluation of this difficulties faced in the implementation of the Act and the limitations existing in this matter, a preliminary consultation was done with the Competent Authorities appointed as per the Act through an online meeting conducted on 13.02.2025 along with Secretary RERA. The authorities of CREDAI, Kerala were also heard on 18.03.2025. They have also submitted suggestions regarding amendments/modifications needed in the Apartment Ownership Act.

4. As the time frame set by hon'ble Court, expired on 21.11.2024, Government filed affidavits for the extension of time limit. The hon'ble High Court, as per the order read as 2nd paper above, extended the time limit till 22.05.2025 and further extended up to 23.11.2025 as per the order read as 3rd paper above.

5. Government examined the acts and findings and the recommendation of the committee and the suggestions received in detail and after that expert legal opinion was sought regarding the inevitability of repealing/modifying Apartment Ownership Act. *As per legal opinion obtained, even in the absence of direct conflict, if Parliament has made a law for the entire area implementing a comprehensive or complete code, the State law in that area is repugnant and in-operative. But on examining the provisions of RERA, it is seen that*

*the said law is protective of the state laws. This is clear from the provisions of sections 88, 89, 11(4) (e) and 17 of the Act. Also, Article 254 of the Constitution provides that where a law passed by Parliament and a law passed by a State Legislature on the same subject are in force at the same time, and there is any conflict between the provisions of the said laws, the provisions of the Central law shall prevail in respect of such conflict. A similar provision has been included in Section 89 of The Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016). Therefore, it can be seen that there is no direct conflict between the provisions of the said Acts, namely, Sections 3(b) and 3(d) of the Kerala Apartment Ownership Act, 1983 (Act 5 of 1984) and Sections 2(n) and 11(4)(e) of The Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) respectively, as pointed out by the Committee, as RERA has overriding and preservative provisions. In particular, Sections 88 and 89 of RERA ensure that its provisions prevail in case of any inconsistency with the State laws, while making it clear that **it is an addition to the existing laws and not a substitute for them.** The provisions of the Central Act will be applicable to the State without making amendments, even on the basis of the provisions of Section 89 of the Act. Moreover, inclusion of the provision, Clause 20 of Annexure-A Standard format for "Agreement for Sale" which says that the promoter shall give an assurance to the allottees that the project is being implemented in full compliance with the provisions of the Kerala Apartment Owners Act, 1983, is also an evidence for the fact that RERA is being implemented by protecting the laws of the State.*

6. Since there may be more than one apartment in a building, the Kerala Apartment Ownership Act of 1983 (Act 5 of 1984) provides for the establishment of individual ownership rights over their specific apartment and the management of other properties including common areas as a whole. The owners can avail the benefits, perform the duties and give legal validity/support under the said Act by making a declaration to the effect that their apartment is subject to its provisions and by registering it as such. Section 2 of the Act is intended to provide for the above matters. It is legal that the Act applies only to those who register as such.

7. However, under The Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016), in the Kerala Real Estate (Regulation and Development) Rules, 2018, the State Government has included a provision in Clause 20 of Annexure-A "Agreement for Sale" which says that the promoter shall give an assurance to the allottees that the project is being implemented in full compliance with the provisions of the Kerala Apartment Owners Act, 1983, and the procedures under Section 2 of the Kerala

Apartment Ownership Act, 1983 (Act 5 of 1984) shall become a mandatory condition. Therefore, compliance with the provisions of KAOA has become mandatory for all projects registered with RERA. It is clear from the above provisions that RERA has been implemented by protecting local laws as well.

8. In compliance of the Interim Order of hon'ble High Court dated 10.12.2024 in WP(C) No.15166/2024 & 42279/2024, as per Government Order read as 4th paper above, the Chairman, Kerala Real Estate Regulatory Authority is directed to take all necessary steps to ensure that Clause 20 of Annexure A under the Kerala Real Estate (Regulation and Development) Rules 2018 is strictly complied by all the registered Promoters of the Apartment Buildings.

9. Based on the above facts, it is clear that no amendment is found warranted or to repeal the existing Act at present since the RERA Act & Rules are protective of the State Law. In the context of above findings, on re-examination of the various provisions, Government have come to the decision that amendment/repealing of Kerala Apartment Ownership Act, 1983 is not warranted now. The Judgment of the hon'ble High Court read as first paper above is thus complied with.

(By order of the Governor)
M G RAJAMANICKAM
SECRETARY

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Local Self Government Department

Taxes Department

Law Department

Local Self Government Department

Housing Commissioner, Thiruvananthapuram

Secretary, Kerala State Housing Board, Thiruvananthapuram

Inspector General of Registration, Office of the Inspector General of Registration,
Thiruvananthapuram.

Competent Authorities appointed as per S.R.O.No.261/2014 dated 29.04.2014

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Section Officer