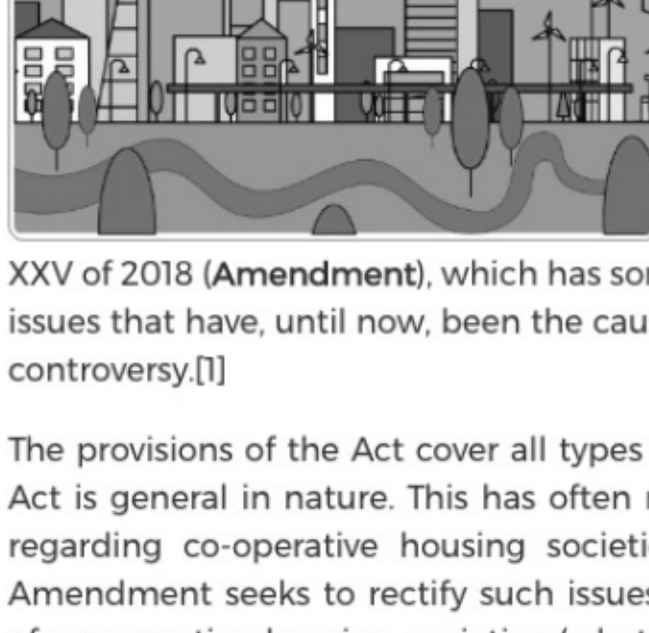


Housing Societies in Maharashtra: A New Chapter



XXV of 2018 (**Amendment**), which has some far reaching consequences on issues that have, until now, been the cause of much debate, litigation and controversy.[1]

The provisions of the Act cover all types of co-operative societies and the Act is general in nature. This has often resulted in certain specific issues regarding co-operative housing societies being left unaddressed. The Amendment seeks to rectify such issues and streamline the functioning of co-operative housing societies (whether comprising residential units, commercial units or both).

Some provisions of the Amendment that have the most far-reaching impact on society members are detailed below.

MANAGING COMMITTEE ELECTIONS FOR SOCIETIES WITH LESS THAN 200 MEMBERS

Cooperative housing societies with less than 200 members are now exempt from the requirement that the State Co-operative Election Authority (**SCEA**) mandatorily conduct the election procedures for their managing committees. Such societies will now be able to conduct their own elections internally in the manner prescribed by the State Government.

"the recent Amendment to the Act has dealt with several issues that have been the bane of many co-operative housing societies"

The requirement of SCEA supervision for the election process was incorporated in the Act in 2013, in an attempt to make the election process transparent and prevent inordinate delays caused by internal member conflicts. However, SCEA supervision was largely viewed as a time-consuming and expensive affair for co-operative housing societies.

This amendment will therefore likely reduce election costs significantly. However, it is unclear how the State Government will now ensure transparent and timely election proceedings. Until the State Government prescribes a specific process for this and amends or replaces the applicable bye-laws and rules, it is uncertain if this amendment is a step forward or two steps back.

RERA READY PROVISIONS

The Amendment has modified the Act in an apparent attempt to align it with certain provisions of the Real Estate (Regulation and Development Act), 2016 (**RERA**) and its rules.

Definitions of the terms "allottee" and "builder promoter" have been introduced and the minimum number of members required for formation of a co-operative housing society modified from 10 to 5 (each member being from a different family) or 51% of qualifying flat purchasers or intending members, whichever is higher.

The Amendment thus incorporates a minimum member number requirement that is similar to the requirement under RERA. However, the term "flat purchasers" mentioned in the Amendment is undefined, which may lead to some uncertainty and varied interpretations.

NOMINATION – CLARITY AT LAST

Possibly some of the most litigated and controversial provisions of the Act and the Maharashtra Co-operative Societies Rules, 1961 (**Rules**) were those relating to the rights of nominees or members nominated under the Rules versus the rights of legal heirs of deceased members of co-operative housing societies.

The Amendment finally puts these controversies to rest by clearly identifying nominees as "provisional members" and specifying that a nominee is to be admitted as a provisional member on the death of a member only until the legal heir or person entitled to the flat or shares under a will or succession law is admitted as a member in place of the deceased member. The Amendment also plainly provides provisional members with the right to vote, further clarifying the rights of such members.

Although the Amendment touches upon the procedure to be followed for transfer of interest on the death of a member, it leaves some ambiguity about the specific documents required by the society for such transfer (transfer is to be effected on the basis of "testamentary documents", "succession certificate", "legal heirship certificate" or "document of family arrangement"). This leaves some scope for the society to use its discretion and could result in confusion or in some variance in the documents required based on circumstances.

"the Amendment seeks to... streamline the functioning of co-operative housing societies (whether comprising residential units, commercial units or both)"

FAILURE TO FURNISH RECORDS – A PUNISHABLE OFFENCE

The Amendment incorporates a penalty (fine) of Rs. 25,000/- for a co-operative housing society's failure to furnish copies of certain records (such as bye-laws, books of accounts etc.) to members within one month of receiving a written application and the prescribed fees. The Amendment thus seeks to encourage complete transparency in the functioning of co-operative housing societies and to make certain important information easily accessible to all members.

REVAMPING THE TYPES OF MEMBERS

Besides introducing the concept of provisional members, the Amendment has added newly defined terms "joint member" and "associate member" to the Act.

The term "associate member" under the Act has been defined time and again on the basis of co-ownership rights in a flat. The new definition finally clarifies the meaning of this term. An "associate member" is defined as a person who exercises the rights and duties of a member on the basis of the member's written request, but whose name does not appear on the share certificate for the flat. The term "joint member" has been defined to mean a person (a) who is a member of the society, (b) holds share, right, title and interest in the flat i.e., is a co-owner, and (c) whose name does not stand first in the share certificate for the flat.

The Amendment clarifies the voting rights of joint members and associate members and prohibits associate members from contesting managing committee elections.

The concept of "active" members that was previously in the Act has been discarded by the Amendment; active participation in society affairs is no longer a pre-requisite for casting a vote.

The Amendment has also addressed another heavily litigated issue. It clarifies that when a majority of society members have approved the redevelopment of a building in accordance with the law, then minority members are obliged to and cannot refuse to vacate their flats.

TO TRANSFER OR NOT TO TRANSFER

The Amendment has dealt with a major grouse of many members, especially investors in real estate property, by doing away with the previous restriction on transfer of shares in a flat if they had been held for less than a year.

"the Amendment specifically mentions that rules, bye-laws, circulars etc. under the unamended Act shall continue to apply... until these are duly amended, co-operative housing societies will face problems with the implementation of the Amendment"

However, the amended Act now not only restricts the transfer of shares or interest in a flat but also the transfer of occupancy rights (except to an heir or nominee or to a tenant or licensee on leave and license basis) by members who have outstanding dues payable to the society. This gives societies the right to bar entry into flats of new purchasers who have bought flats from defaulting members; however, it is unclear how societies would effectively implement this provision.

The Amendment also specifically places restrictions on the transfer of units held on a leasehold basis. Such transfers will be subject to the master lease executed in respect of the land or building. This will impact the transfer of tenancies of units constructed on lands held under private leases and public leases (such as Collector land, land held by the Bombay Port Trust etc.) by requiring societies to ensure that such transfers abide by the terms of the master lease.

A new provision relating to transfer introduced by the Amendment that is extremely unclear is one that states that societies are required to make decisions about applications submitted by members seeking certificates for sale of their flats within a fixed time period. This suggests that members need to apply for such certificates before selling their flats. However, the Amendment is silent on whether such certificates are required in all cases and also on the precise nature of such certificates.

CONCLUSION

While the recent Amendment to the Act has dealt with several issues that have been the bane of many co-operative housing societies, it is apparent that certain issues and ambiguities still remain in the amended Act provisions. In addition, the Amendment specifically mentions that rules, bye-laws, circulars etc. under the unamended Act shall continue to apply to co-operative housing societies. Many of these rules, bye-laws etc. are in direct contradiction to the Amendment and, until these are duly amended, co-operative housing societies will face problems with the implementation of the Amendment.

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[1] The ordinance ought to be replaced with an act soon (see our earlier newsletter on ordinances at http://hariani.co.in/newsletters/65946_ORDINANCES_AND_THEIR_CONSEQUENCES.pdf). To this effect, the Maharashtra Co-operative Societies (Third Amendment) Bill, 2018 has been introduced in the Maharashtra Legislative Assembly on 22 November 2018. The status of this bill is unclear. The provisions of the bill may be amended before passage and the final amendment act may therefore differ significantly from the Amendment ordinance.

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