

AZAD GOVERNMENT OF THE STATE F JAMMU AND KASHMIR
LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD

Dated the 27th Nov. 1985.

No. 2290/LD/Leg(A)/85. The following Act of the Assembly received the assent of the President on 25th November, 1985, is hereby published for general information:

(ACT XXVIII OF 1985)

AN
ACT

to provide for regulation of the Planning, Construction, control and demolition of buildings and disposal of buildings and plots in Azad Jammu and Kashmir.

WHEREAS it is expedient to provide the law relating to the building control in Azad Jammu and Kashmir and to provide for certain matters connected therewith;

It is hereby enacted as follows: -

1. Short title and Commencement. - (1) This Act may be called the Azad Jammu and Kashmir Buildings Control Act, 1985.

(2) It shall come into force at once and shall be deemed to have taken effect on and from 5th day of November, 1985,

2. Non application of law.- Nothing contained in any other law for the time being in force shall apply to any matter regulated by this Act,

3. Definition: (1) In this Act, unless there is any thing repugnant in the subject or context,-

(a) "Architect" means an architect who has been granted a licence under this Act;

(b) "Authority" means the Authority appointed under section 4;

(c) "Builder" means a person or body of person, including a society engaged in construction of 2 building on contract, or as owner or agent of the owner for the purpose of transferring such building on hire or by sale or on the basis of ownership, but does not include a person or persons engaged as mason or such other artisan;

(d) "Building" means a building or part thereof and includes all fittings, fixtures, installations and display structures of the building, but does not include any building

notified by the Authority;

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“Building Designer” mean a building designer who has been granted a licence under this Act;

“Building Supervisor” means a building supervisor who has been granted a licence under this Act;

“Developer” means a person or body of persons including a society, engaged in developing a plot for any kind of building activity, for transfer by allotment to the members if the developer be a society, or to other persons on the basis of ownership or by sale;

“Fund” means the fund of the Authority, constituted under section 7;

“Government” means the Azad Government of the State of Jammu and Kashmir;

“Inspecting Architect” means an inspecting architect who has been granted a licence under this Act;

“Inspecting Engineer” means an inspecting engineer who has been granted a licence under this Act;

“Prescribed” means prescribed by rules or regulations made under this Act;

“Private Building” means a residential building of not more than two floors including ground floor constructed on a plot of any size or a commercial building of not more than two floors including ground floor constructed on a plot not exceeding four hundred square yards (367 sq: meters) not meant for transfer by sale or on the basis of ownership and does not include a building like a mosque, auditorium, cinema or such other building;

“Proof Engineer” means a structural engineer whose name is borne on the panel of proof engineers maintained by the Authority;

“Public Building” means a building other than a private building;

“Quality control” means the standards fixed or any code of practice of quality control recognized by the Authority for construction of buildings or development of plots;

“Regulations” means the regulations made under this Act;

“Rules” means rules made under this Act;

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“Society” means a society which directly or indirectly deals with providing plots to its members for housing, commercial or industrial purposes;

- (t) "Structural Engineer" means a structural engineer who has been granted a licence under this Act;
- (u) "Surveyor" means a surveyor who has been granted a licence under this Act;
- (v) "Town Planner" means a town planner who has been granted a licence under this Act;

Authority.- (1) Government may, by notification, appoint any body corporate or council, or any department of Government or functionary or any organization to act as Authority for such area as may be specified in the notification.

(2) Where a body corporate, a council, or an organization, or any Government department is appointed as Authority, the officer incharge of such body corporate, or council or organization or department as the case may be, shall act as Officer Incharge of the Authority.

(3) The Authority for any area shall be known after the name of that area and shall sue and be sued in such name. Officer_and Servants of the Authority. (1) The Authority may appoint such officers, advisers, experts, consultants, and employees for efficient performance of its functions and on such terms and conditions, as may be prescribed.

(2) All officers, advisers, experts, consultants and employees appointed under sub-section (1) shall be deemed to be public servants within the meaning of Section 21 of the Azad Jammu and Kashmir Penal Code (Act XLV of 1860) and shall be subject to such disciplinary action as may be prescribed.

Supervision over the Authority. Government may appoint a Committee which may, subject to the control and direction of Government, oversee the functioning of an Authority.

Fund. (1) There shall be a fund of the Authority to be known by its name.

(2) The fund shall consist of:-

- (i) grant-in-aid made by Government or received from any other source including foreign aid;
- (ii) Loans raised or obtained by the Authority;
- (iii) Fees and other sums received by the Authority under this Act.

(3) All the moneys in the fund shall be kept in a Bank approved by the Authority.

(4) The Authority may invest its funds in any security of the Government or any other security approved by the Government.

(5) The fund shall be utilized for carrying out the purposes of this Act.

(6) The Authority shall maintain or cause to be maintained complete and accurate accounts of the funds in such manner and form as may be prescribed by rules.

(7) The accounts of the Authority shall be audited at least once in every financial year by such auditors or accountants, as may be approved by the Government.

Sale of plots.- (1) No developer shall transfer any plot or plots on the basis of ownership or by sale or advertise such transfer, without obtaining a no objection certificate from the Authority in the manner and on payment of such fee as may be prescribed.

(2) Where the Authority is satisfied that the development of the plots made or proposed to be made, are below the standard laid down by the Authority, it shall refuse to give the no objection certificate under sub-section (1).

(3) Where the developer has failed to deliver the possession of the plot mentioned in sub-section (1) by the date specified in the agreement with the transferee, he shall, unless the date has on his application been extended by the Authority, pay such surcharge as may be prescribed on the amount paid by the transferee.

(4) The provisions contained in sub-section (1), (2), (3), (4), (5) and (8) of section 18 shall mutatis mutandis, be complied with by the developer in respect of the plot or plots mentioned in sub-section (1).

Approval of Plan. (1) No building other than a private building as defined under Section 3(m) shall be constructed before the Authority has, in the prescribed manner, approved the plan of such building and granted no objection certificate for the construction thereof on payment of such fee as may be prescribed.

Provided that in the case of a building, the construction whereof has commenced before coming into force of this Act, the Authority's approval of the plan and no objection certificate shall be obtained not later than six months after the enforcement of the Act.

Explanation:- The word "construct" with all its variations used in this section and hereafter shall include 'reconstruct' with all its variations and additions or alteration.

(2) No building mentioned in subsection (1) shall be occupied by any person or shall be allowed by the builder to be occupied, before the Authority has, on application of the occupant or owner, issued occupancy certificate in such manner as may be prescribed.

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(3) No building mentioned in subsection (1) shall, except with the permission of the Authority, be used for the purpose other than that for which its plans were approved.

(4) Where the authority is satisfied that the purpose for which the building is desired to be used is consistent with the approved plans of the building, it may grant the permission under subsection (3) on such conditions and on payment of such fees as it may fix.

Information for No Objection Certificate. A builder or developer shall for the purpose of obtaining no objection certificate under section 8 or as the case may be, under section 9 furnish full and true information as to the following duly attested in the manner as may be prescribed:

(a) his own title, and title or interest of any other person or any encumbrance such as mortgage or lease of licence in respect of the land on which a building is to be constructed or which is to be developed into plots;

(b) Plans, specifications, designs, and materials to be used, as approved by the Authority;

(c) All money payable under any law for the time being in force in respect of the building or plot as the case may be, which include taxes, ground rent, revenue assessment, electricity and water charges;

(d) such other information and documents as may be specified by the Authority.

Preparation of plans. (1) The plan submitted to the Authority under section 9 shall be prepared by and under the supervision of and signed by such person or persons referred to in subsection (1) of section 13 as may be prescribed:

Provided that a structural engineer shall be associated with the architect to prepare the structural designs and drawing and sign them if the building:

(i) is sixteen meters or more in height from the plinth level;

(ii) consists of five or more storeys, in addition to

the ground floor;

(iii) consist of two or more storeys, in addition to the ground floor, situated in the coastal areas

notified by the Authority;

(iv) is considered by the Authority to be of special nature;

Provided further that a town planner shall, in addition to structural engineer, be associated to assist to architect in preparation of the plan if the building is constructed on a plot of two acres or more and the Authority deems that association of town planner is necessary and in that case the plan shall be signed also by the town planner.

(2) An inspecting engineer shall be engaged for supervision of construction of a building other than a single or double storied building on an area not exceeding four hundred square yards the construction whereof may, instead of inspecting engineer, be entrusted to the supervision of a building supervisor, and the inspecting engineer or as the case may be the building supervisor shall sign the plan of the building.

(3) The builder and any person or persons associated in any manner with the building including its plan and construction shall be liable for the defects in the structure, plan and construction thereof to such extent and manner as may be determined by the Authority.

(4) The Authority may, for the reasons of safe and sound construction, refer the structural design of any building for further examination to a proof engineer who shall scrutinize the design and, if necessary, modify it and the fees or any charges in connection therewith shall be borne by the builder.

Violation of certain provisions.- Where the provisions of sub section (1) of section 9 are violated the building may without prejudice to any other action including sealing of the building or ejection of the occupants be ordered by the Authority or any officer of the Authority authorized in this behalf, to be demolished, at the cost of the builder in the case of public buildings and the owner in other case;

(1) No person or body of persons shall act as architect, building designer, inspecting engineer, inspecting architect building supervisor, structural engineer or town planner except with a licence granted by the Authority in the manner and on the terms and conditions as may be prescribed.

Provided that any licence granted under any other law for the time being in force shall expire after six months from the date of the coming into force of this Act.

(2) No licence under subsection (1) shall be granted unless an architect, building designer, inspecting engineer inspecting architect, building supervisor, structural engineer or town planner possesses such qualifications as may be prescribed.

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(3) The functions of and remuneration payable to an architect, building supervisor, structural engineer or town planner shall be regulated in such manner as may be prescribed.

Grant of Licence to Builder or Developer.- No builder or developer shall engage in construction or transfer of a building or, as the case may be development or transfer of a plot, or plots except with a licence granted by the Authority in the manner and on the terms and conditions including fees as may be prescribed.

Licensing Board.- (1) Notwithstanding any other provision of this Act, Government may by notification published in the official gazette, constitute a Licencing Board for the whole of Azad Jammu and Kashmir to grant licences to the persons referred to in subsection (1) of section 13.

(2) Where a Board has been constituted under subsection (1) the Authority shall cease to exercise the powers under section 8 and to frame regulations in respect of the matters specified therein and in that case all such matters shall be regulated in the manner prescribed by rules.

The Authority may appoint committees or sub-committees which shall, subject to control and directions of the Authority, exercise such powers and perform such functions as may be assigned to them by the Authority.

Inspection of building or plot.- (1) The Authority may authorize any officer not below the basic pay scale No. 17 to inspect any building under construction or any plot developed or being developed in any locality or localities or as may be assigned to such officer for the purpose of quality control.

(2) If in the opinion of the officer authorized under subsection (1) the construction of any building is not in accordance with the plan or the specifications approved by the authority or any material used in the construction is of substandard or is not of the quality or type mentioned in the advertisement under section 18, such officer may by order in writing issue any direction, and it shall be the responsibility of the builder and all those concerned with the construction of the building to carry out such direction or he may require that the construction be suspended until any further direction is issued either by him or by the Authority, or order that the construction which in his opinion is defective be demolished at the cost of the builder.

Sale of Building.- (1) No builder shall sell or, advertise for sale any building through any audiovisual adds or any other means before he has obtained approval in writing of the Authority and he shall mention such fact in the advertisement which will further specify all such details about the building as may be prescribed.

(2) The approval granted by the Authority under subsection (1) shall be displayed at a conspicuous place in the office of the builder, if any, and at the site of the building.

(3) The builder shall not entertain and register any application in response to the advertisement under sub section (1), if it is in excess of the number of housing units provided in the building.

(4) Where an application is made in response to the advertisement, an agreement shall be executed between builder and the applicant for construction and transfer of the building and the agreement shall inter alia, specify the date by which the construction shall be completed and possession of the building shall be delivered and the total price to be paid in lumpsum or in installments and also the interest payable by either party in the event of default;

Provided that the payment if any made by the applicant before the execution of the agreement shall not exceed such percentage of the total price as may be specified by the authority.

(5) Notwithstanding the agreement mentioned in sub-section (4) no builder shall cancel the transfer by sale or otherwise without observing the prescribed procedure.

(6) No builder shall without approval of the Authority make any alterations.

(7) The builder shall take out in contract all Risk Insurance Policy in respect of the building which shall also cover losses arising out of defects in design and earthquake.

(8) The builder shall maintain a list of buildings already constructed or transferred by him with full particulars as may be specified by the Authority including the names, and addresses of the transferees, and the terms and conditions on which the buildings were transferred and shall, on demand of the authority furnish a copy of such list or part thereof.

(9) Where any structural defect in the building or the material used in construction thereof or any unauthorized change therein brought to the notice of the builder within a period of one year in respect of structure and six months in respect of the fixtures, from the date of offering physical possession to the transferee such defect or unauthorized change shall be removed without any additional cost from the transferee or appropriate compensation be paid to him, and in the case of dispute as to the defect or change or quantum of compensation the decision of the Authority shall be final.

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Increase of sale area.-(1) The sale price of a building/plots advertised under section 18, or agreed upon between the parties for sale before the commencement of this Act shall not, after the advertisement or agreement, be increased except with approval of the Authority who may, after taking into consideration the rise in cost of building material and wages of the labour and such other expenditure allow such increase as the Authority deems fit.

(2) Where a building cannot be completed by the date mentioned in the advertisement or offer, the Authority may on application made in this behalf, extend the period for completion of the building.

(3) Where a building has not been completed by the date mentioned in the advertisement or offer and the application under subsection (2) has been rejected, the builder shall be liable to pay interest at such rate not exceeding the rate charged by a scheduled Bank and in such manner as may be prescribed, to the buyer of the building, on the amount of the sale price paid by such buyer for the period by which the completion of the building has been delayed.

Formation of co-operative societies.- Where a building, after its completion, is transferred to such number of persons who can

form a cooperative society, all such persons shall, for the purpose of maintenance of building, form such society.

Dangerous buildings.-(1) If it comes to the notice of the Authority that a building is in dangerous condition, the Authority may, after such enquiry as it deems fit order for carrying out the specific repairs or demolition of the whole or part of the building.

(2) Where the specific repairs are to be carried out the Authority may, by notice, require the owner of building or, in the event of his failure, the occupier thereof, to carry out such repairs within such period as may be specified, or the Authority may, notwithstanding any other law for the time being in force, proceed to have the building demolished and the cost of demolition staff be recovered from the owner as arrears of land revenue.

(3) Where the whole or a part of the building is to be demolished, the Authority may, by notice, require the occupier or occupiers thereof to vacate the building within the period specified in the notice and if the building has not been vacated within such period, the Authority may, notwithstanding any other law for the time being in force order that occupier or

occupiers of the building be ejected, if necessary, by force.

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Surcharge _on_un-paid_installments.- Where a person has purchased a building on installments in response to the advertisement under section 18, and has failed to pay any installment in time, he shall be liable to pay surcharge on the amount of the unpaid installment, as may be prescribed.

Appeal.- An appeal from an order under this Act may, in the prescribed manner, be preferred within thirty days of such order to:-

(a) The Government in the case of the order made by the Authority, and

(b) The Authority, in other case.

Disposal application or Appeal.- An application or appeal made under this Act shall be disposed within thirty days of the receipt thereof unless this time limit is extended by Government on the request of the Authority.

Delegation of Powers.- Government may, by notification published in the official gazette, delegate any of the powers vested in it or the Authority to any officer or Authority.

Penalty.- (1) Whoever contravenes any provision of this Act, shall be punished with simple imprisonment for a term not exceeding two years or with fine not less than twenty thousand rupees or with both and if the offence is a continuing one, further fine not exceeding five hundred rupees for each day after the date of the first commission of the offence.

(2) The Authority or any person authorized by it in this behalf may compound any offence under this Act on such terms and conditions as may be prescribed.

(3) No court shall take cognizance of an offence under this Act except on a complaint in writing made by the Authority or any person authorized by it.

Indemnity.- No suit or legal proceeding shall lie against Government or the authority or any person in respect of anything done or intended to be done in good faith under this Act.

Notice for Institution of suit.- No suit shall be filed against the Authority or any of its employees in respect of anything done or purported to be done by the Authority or such employee under this Act except after expiration of sixty days next after notice in writing has been delivered to or left at the office of the Authority or employees as the case may be.

Power to make rules.- Government may make rules for the purpose of giving effect to the provisions of this Act.

Regulations.- (1) The Authority may, frame Regulations not inconsistent with the provisions of this Act and the rules made there under, for carrying out the purposes of this Act.

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In particular and without prejudice to the generally of the

foregoing powers, such regulations may provide for:-

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the recruitment, tenure of office, terms and conditions of service of the officers, advisers, experts, consultants and employees appointed by the Authority and disciplinary action against them;

the manner of approval, grant of no objection certificates to builders or developers and rates of fees therefore;

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he manner of grant of occupancy certificate and fees therefore;

the manner of attestation of documents or information;

the manner of preparation, supervision and submission of building plans;

The qualifications, manner of grant and terms and conditions of and fees for licences to architects, building designers, inspecting engineers, inspecting architect, building supervisors, structural engineers or town planners and regulation of their functions and

remuneration;

the manner of grant and terms and conditions of licence to builders or developers and fees for such licences;

Procedure for cancellation or transfer or sale;

the details of the building or plot required to be mentioned in the advertisement for its sale by the builder or developer, as the case may be;

rates of fees for supplying copies of any documents or information;

terms and conditions of compounding of offences;

rates of Surcharge payable under this Act.

Sd/-

(Syed Shakir Shah)

Section Officer Legislation