

Insights on the Tamil Nadu Apartment Ownership Act, 2022

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The State Government notified the Tamil Nadu Apartment Ownership Act, 2022, vide G.O (MS) no. 566 dated 23.12.2022, post receipt of the presidential assent and Tamil Nadu Apartment Ownership Rules, 2024, vide G.O(MS) no. 171 dated 24.09.2024 ('TNAOA').

TNAOA is a statute that repeals and completely overhauls the three-decade-old Tamil Nadu Apartment Ownership Act, 1994. The primary focus and object of TNAOA is safeguarding the interests of the apartment owners as well as improving the administration of common areas and facilities. TNAOA has been given effect to and is in force from 06.03.2024.

In this primer, we have set out an overview of TNAOA along with our insights on some of the common queries raised about the said Act.

ON APPLICABILITY

1. Whether TNAOA is applicable for all buildings?

   TNAOA is applicable for all buildings having four or more apartments.

2. Whether TNAOA is applicable for residential and commercial buildings?

   TNAOA is applicable for both residential and commercial buildings having four or more apartments.

ON DECLARATION

3. Whether filing of a 'declaration' is mandatory for all buildings which are falling within the purview of the TNAOA?

   Yes, filing a declaration is mandatory for all buildings having four or more apartments. This also includes the existing buildings and buildings under construction.

4. Whether 'declaration' has to be submitted in a specific form?

   Yes, the declaration has to be submitted as prescribed in Form A.

5. Who is responsible for filing the 'declaration'?

   Promoter in cases of on-going projects and for projects where common areas are not handed over to the association; existing society for projects where the existing registered society is managing the maintenance of the common areas; and majority of

apartment owners for projects where there is no registered society, however, the common areas are being maintained by all the apartment owners collectively.

6. Is there a time limit prescribed in TNAOA for filing a declaration?

   For buildings that are in existence on the date of commencement of the Act – a 'declaration' in Form A has to be submitted within 365 days from the date of commencement of the Act.

   For other buildings – a 'declaration' in Form A has to be submitted within 365 days from the date of the completion certificate. For buildings where the completion certificate is not applicable, the date of obtaining a permanent power connection from TANGEDCO shall be construed as the date of the completion certificate.

7. Who has been notified as the Competent Authority for filing the 'declaration'?

   The respective District Registrars of the Registration Department have been notified as the Competent Authority for filing the declaration, vide GO (MS) no.172 dated 24.09.2024.

8. Whether a person owning multiple units in the same project will be treated as one apartment owner for the purpose of filing a declaration?

   For the purpose of computing the 'majority' of apartment owners for filing declarations, a person owning multiple apartments in the project shall be deemed to be one apartment owner.

9. What is the consequence of non-filing of 'declaration'?

   Submission of 'declaration' is mandatory under TNAOA, any person who is in contravention of the provisions of TNAOA, on conviction, shall be liable to a fine which may extend to Rs. 1,00,000/- and, in case of continuing contravention, to an additional fine which may extend to Rs. 500/- for every day during which such contravention continues.

10. Whether 'declaration' has to be registered with the concerned Registration Department?

    No, the declaration is not required to be registered with the Registration Department.

11. If the project is developed in phases, whether an independent declaration has to be filed for that specific phase of the project that has been developed?

Yes, if the project is developed in phases, the declaration in Form A has to be filed for the particular phase by the respective registered society.

12. Is there a possibility to amend the declaration accepted by the competent authority?

Yes, the declaration can be amended by filing an application in Form E with the competent authority in cases of bona fide mistake, changes in the project description, or redevelopment.

ON RECOGNITION OF EXISTING RESIDENT WELFARE ASSOCIATIONS

13. Subsequent to the enactment of TNAOA, what is the status of the Resident Welfare Association that has already been registered under the Tamil Nadu Societies Registration Act, 1975, or the Tamil Nadu Co-operative Societies Act, 1983?

The TNAOA recognises the existing RWAs registered under the Tamil Nadu Societies Registration Act or Tamil Nadu Co-operative Societies Act. However, the RWAs need to submit their bye-laws to the Competent Authority within 180 days from the acceptance of the declaration. However, if the existing bye-laws are in contravention to the provisions of TNAOA, the same needs to be amended, and two copies of the bye-laws authenticated by the Notary Public have to be submitted to the Competent Authority together with the details of the office bearers in Form G. Pursuant to acceptance of bye-laws, the Competent Authority shall issue an acknowledgement in Form H

14. Pursuant to the enactment of TNAOA, whether RWAs can be registered under the provisions of the Tamil Nadu Societies Registration Act and Tamil Nadu Co-operative Societies Act?

No, pursuant to the enactment of TNAOA, all owners' associations formed with respect to a building have to be registered and governed under the provisions of TNAOA.

15. Whether formation of a rival association is possible for the same project?

No, under the provisions of TNAOA, only one recognised association can be formed for a project.

ON FORMATION OF ASSOCIATION

16. At what time does the association under TNAOA have to be formed?

There shall be a minimum of 4 apartment owners to mandate the formation of an association. The majority of owners shall register the bye-laws with the Competent Authority within 180 days, from acceptance of the declaration, in line with the Model Bye-laws prescribed in the Rules.

17. Is there any specific manner prescribed under the Rules for submitting the bye-laws with the Competent Authority for registration?

Yes, specific provisions have been provided wherein the bye-laws have to be on the lines of the model prescribed under the Rules. Upon verification of the bye-laws, the Competent Authority shall issue a Certificate of Registration of Bye-laws in Form F.

18. Whether a person owning multiple units in the same project will be treated as one apartment owner for the purpose of formation of an association?

For the purpose of formation of association, a person owning multiple apartments in the project shall be deemed to be one apartment owner.

19. Who are the Board of Managers?

The Board of Managers are the office bearers of the association and consists of the President, Vice President, Secretary, Treasurer, and the members of the Board.

20. Does the TNAOA provide for the number of board of managers?

Yes, the Board of Managers shall be a minimum of 1/3rd of the number of apartment owners, but not exceeding 21.

21. Who is notified as the Competent Authority for registration of bye-laws?

The respective District Registrars of the Registration Department is notified as the Competent Authority for registration of bye-laws, vide GO (MS) no.172 dated 24.09.2024.

22. If the Board of Managers is not acting in the interest of the association or homebuyers, whether the aggrieved party has the right to challenge the actions of the said Board?

Yes, the aggrieved party has the right to file a petition in Form N before the Competent Authority under Section 25 of the TNAOA.

ON FEDERATION

23. If multiple Associations are formed in a complex developed in phases where each phase is registered as an independent project under the provisions of RERA, is it mandatory for such Associations to form a Federation?

Yes, pursuant to an independent 'declaration' filed by such associations for individual projects, all the constituent associations are mandatorily required to register a Federation as per the provisions of TNAOA by filing an application in Form B.

24. What is the objective of forming a federation?

The objective of the Federation is to ensure that all the constituent societies and associations acknowledge and declare the rights of all apartment owners on the 'collective common areas and facilities' that have been provided in common to all the phases developed.

25. What is meant by collective common areas and facilities?

Collective common areas and facilities shall mean the common facilities that have been provided for the 'common' use and enjoyment of the property, such as common passages, driveways, pathways, water treatment plants, sewage treatment plants, power backups, clubhouses, and convenience stores.

26. Whether a certificate of registration of the Federation will be provided?

Yes, the Competent Authority after scrutiny of the application for formation of federation filed in Form B, shall provide a certificate of registration of the Federation in Form C.

27. Whether a separate declaration is required to be filed for federation?

Yes, consequent to the registration of the Federation, a separate declaration providing the details of collective common areas and facilities has to be submitted by the Chairman of the Federation to the Competent Authority in Form D.

28. Who shall constitute the federation?

The President and Treasurer of each constituent association shall be the members of the Federation representing the interests of the apartment owners of the corresponding association.

29. If in projects where the right of future development has been retained by the promoter on the undeveloped lands, whether such promoter shall be a part of the federation and share the common expenses?

Yes, the promoter shall also be a member of the federation, representing the proportionate interest of the future associations with respect to the portion of the property that is under development or to be developed.

30. Who has been notified as the Competent Authority for registration of federation?

The respective District Registrars of the Registration Department have been notified as the Competent Authority for registration of federation, vide GO (MS) No. 172 dated 24.09.2024.

ON COMMON EXPENSES & PROFITS

31. How is the percentage of undivided interest arrived for the respective apartment in a complex?

The percentage of undivided interest corresponding to each apartment unit has been arrived at based on the proportion of carpet area of the apartment to that of the total carpet area of the project.

32. On what basis are the common expenses and profits distributed between the apartment owners?

The common expenses and profits are distributed to the apartment owners in proportion to the percentage of undivided interest corresponding to the apartment.

33. Whether any apartment owner can deny sharing the common expenses for the reason that specific facility has not been utilised by the said owner?

No, regardless of the utilisation of the common amenities by the apartment owner, the apartment owner is liable to share the common expenses in proportion to the percentage of undivided interest corresponding to the apartment.

34. Whether non-payment of maintenance due shall create a charge on the apartment under the provisions of the TNAOA?

Yes, non-payment of maintenance due shall constitute a charge on the apartment.

35. Can the association claim interest on delayed payments?

Yes, the association is empowered to claim interest at the State Bank of India's highest Marginal Cost of Lending Rate plus 2 percent on delayed payments.

ON REDEVELOPMENT

36. Who can initiate the process for redevelopment?

1/4th of the apartment owners or the Board of Managers may initiate the discussion for redevelopment.

37. What are the conditions to be satisfied for the implementation of redevelopment?

For implementation of redevelopment scheme, a minimum of 2/3rd apartment owners' consent is required, or the building has to be certified to be in ruinous condition by the appropriate authority.

38. Whether a person owning multiple units in the same project will be treated as an independent owner for each unit owned for the purpose of 2/3rd consent?

For the purpose of 2/3rd consent, each apartment shall be treated as a separate and distinct unit, irrespective of any person owning multiple units in the project.

39. Who is the Authority prescribed for redevelopment under Section 13 of TNAOA?

The following are the authorities notified for redevelopment vide GO (MS) No. 173 dated 24.09.2024:

AREA	***PRESCRIBED AUTHORITY***
Chennai Metropolitan Area	*Chief Planner, Area Plan Unit of Chennai Metropolitan Development Authority*

Planned area	*Member Secretary of Local Planning Authority*
Other areas	*Assistant Director/Deputy Director/Joint Director of Directorate of Town and Country Planning*

40. Whether the apartment owners can challenge the decision of redevelopment?

If due process as prescribed under TNAOA has not been followed in obtaining 2/3rd consent, the dissenting apartment owner shall have the right to challenge such decisions before the concerned Authority.

41. Whether the Association is empowered to sign the Redevelopment Scheme on behalf of all apartment owners?

Yes, consequent to 2/3rd consent and authorisation from the apartment owners in Form J, the Association shall be empowered to sign the Redevelopment Scheme with the promoter.

42. Whether independent power of attorney is required to be obtained from each of the apartment owners for execution of the redevelopment scheme?

No, pursuant to obtaining 2/3rd consent from the apartment owners in Form J, the Association is empowered to sign the redevelopment scheme.

43. Whether the Redevelopment Scheme entered into between the association and the promoter will bind all the apartment owners of the complex?

Yes, since the Redevelopment Scheme is to be signed by the association only after obtaining 2/3rd consent following the process as prescribed under TNAOA, all the apartment owners are bound by actions of the association taken in accordance with the provisions of TNAOA.

44. Whether the Redevelopment Scheme has to be registered with the concerned Registration Department?

Yes, the Redevelopment Scheme has to be registered with the Registration Department within 90 days from the date of authentication of the executed Redevelopment Scheme by the concerned Authority.

45. What is the stamp duty and registration fee applicable to the Redevelopment Scheme?

The stamp duty and registration fee for the Scheme shall be as applicable to the joint development agreement.

46. How will the existing apartment owner establish their marketable title to the redeveloped unit under the Redevelopment Scheme?

The registered Redevelopment Scheme with the Registration Department together with the Handover Certificate in Form M would substantiate the ownership and title of the apartment owners on the redeveloped unit.

47. Whether an amended 'declaration' is required to be filed with the Competent Authority after implementation of redevelopment?

Yes, an amended declaration in Form E has to be filed upon implementation of redevelopment.

48. If 100% of owners decide to redevelop the project, is it mandatory to follow the process of redevelopment as prescribed under TNAOA?

No, if 100% owners decide to redevelop, there are at liberty to demolish and reconstruct, in that case, there is no mandatory requirement to follow the process prescribed under TNAOA.

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