

Need to register apartment association

R.L. NARAYANAN

Many take a conscious decision not to register an association but this will have an adverse impact

Needs to be done: There is a necessity to register the association for the benefit of the apartment.

Various issues arise in managing the affairs of an Association of Apartments Owners or Occupants. Many a time, the flat occupants fail to pay the maintenance. At times, the defaults are issue-based. Members form groups and conducting meetings becomes a difficult process. Voting and issues of proxies attending meetings are marked by confusion. A single recalcitrant member can throw things out of gear.

When an issue arises, members of the flat try to sort it either by approaching the Courts or through an arbitration process. As the consultation progresses suddenly the members realise that their Association is not registered. Filing Court cases may be difficult in such matters especially, if it relates to large complexes. Many flat owners consciously take a decision of not registering the Association. This may have an adverse impact on the functioning of the Association at a later date. What are the issues involved? Is the registration a very difficult process?

An Apartment Owner is a person owning an apartment and an undivided interest in common areas and facilities or limited common area and facilities.

An occupant of an apartment need not be an apartment owner. Such a person can be a tenant or other permissive occupant. An "Association of Apartments Owners" means the owners of apartments acting as a group in accordance with byelaws of the Association. At times, even the occupants can be made as members of Association. In such an event, the Association will mean owners or occupants acting as a group in accordance with the byelaws of the Association.

Byelaws

"Byelaws" would mean the byelaws for the time being in force of the Society or Association of Apartments Owners and includes amendments that may be made to the byelaws.

An Association may or may not be registered. However, in respect of Association of Apartments Owners or owners and occupants as the case may be, registration is contemplated. Such associations can be registered under the Tamil Nadu Societies Registration Act, 1975 or the Tamil Nadu Co-operative Societies Act, 1983.

It is fairly simple to register a Society. One of the formalities is that a Memorandum containing the name of the Society, objects of the Society, names and addresses and occupations of the members of the Committee, has to be made and filed. In addition, the byelaws have to be filed. Certain names are treated as undesirable and if there is any objection to the name of the Society on this ground, then the same has to be changed. There are certain prescribed forms and matters to be included both in the Memorandum as well as the byelaws and it is advisable to conform to the requirements.

The subject matter of byelaws has to be properly framed. Generally, besides names and other details, the business hours, objects and activities have to be specifically provided for. The name of the person or officer who can institute or defend suits on behalf of the Society can be provided. Similarly, the officer who is empowered to give directions with regard to the business of the Society can be given.

Other details will include enrolment of members, qualification, fee and subscriptions, date of payments, levy of penalties, fines, etc on defaulters, removal of members and circumstances under which members can be removed, rights, obligations and privileges of members, can also be specified.

Filing of records

Byelaws to the effect as to how the Society is to transact business, constitution of Committee generally known as Executive Committee or Governing Body, preparation and filing of records, audit of accounts, supply of copies of byelaws, funds specifically provided for certain purposes, etc have to be given in detail.

Making an apartment association workable

R.L. NARAYANAN

Associations may function with good intentions but non-registration could become an issue

Necessity: There is need to register the association.

A number of persons have various doubts on the drafting of byelaws relating to Apartment Owners Association and the registration of such byelaws. We can look at the issues that may arise in this regard. I am also giving the essentials for drafting the byelaws and the procedure for registration to facilitate an understanding of the process.

Generally, it is seen that many of the Associations have a framework in the form of memorandum of objects and byelaws. However, most of these Associations are not registered. Such associations function as a loose body and few persons who are actually interested in the affairs run the same in such manner as they think fit. To be honest, many such associations are functioning well with good intentions. However, issues arise when the association is confronted with the problem. During those times, the non-registration of an Association, particularly, if it is large, may become a major issue. Apart from the fact that in many cases, there is a legal necessity to register the Association, the pursuit of legal remedies also becomes difficult.

One of the frequent questions asked is under what Act is the Association of Apartment Owners to be registered. Some persons are of the view that it has to be registered under the Tamil Nadu Apartment Ownership Act, 1994. This is not correct and there is no provision in the said Act to register an Association under the said Act. All associations are to be registered either under the Tamil Nadu Co-operative Societies Act, 1983 or the Tamil Nadu Societies Registration Act, 1975. The competent authority having jurisdiction in respect of the associations which are registered will depend on which of the above said Acts are registered. At present, there is no practice of either executing or registering the Deed of Apartment prescribed under the Tamil Nadu Apartment Ownership Act, 1994. There is also no procedure for registering the same.

The registration of an association involves the drafting of memorandum and byelaws. The memorandum shall contain the name of the Association and the objects of the Association besides the names and addresses and occupations of the members of the Committee which is the governing body .

Byelaws are the rules which contain provisions in respect of matters relating to the affairs of the Association.

Details

The byelaws have to contain certain details like name of the Association, address, date of formation, jurisdiction aspects, etc. These are basic particulars relating to the Association. The byelaws will also have to contain particulars relating to the business hours of the Association, the objects and the activities of the Association in furtherance of its objects.

The byelaws will include the names of persons or officers who can sue or be sued on behalf of the Association and particulars of the person or officer who can give directions with regard to the business of the Association.

The provisions relating to enrolment of members, qualification for membership, restrictions and other conditions, the entrance and other fee or subscriptions to be collected from the members and the dates by which the amounts have to be collected have to be included. Provision has to be made for delayed payments, penalties, etc. An important matter will be the removal of members and the circumstances under which members can be removed, particulars of rights, obligations and privileges of members have to be specified.

The byelaws should also contain particulars relating to the manner in which the business of the Association has to be conducted. This is generally conducted by a governing and constitution of the

governing body has to be specified. The qualifications of members to hold office, the term and other conditions for appointment and reappointment have to be clearly furnished.

Records

Any Association will have to maintain records, accounts, etc. Provisions relating to the same have to be made. Members would also need copies of byelaws and the statement of accounts, etc. The rules for the same have to be given. Penalties, fines, etc leviable on an officer for breach of the provisions are also included.

There should be clear provisions to deal with the funds of the Association. If funds are earmarked for any specific purposes, like provision for a dependant of a deceased or a disabled member, then such particulars also have to be included. The manner of transaction of day-to-day affairs, expenses which can be sanctioned and particulars relating to employment of staff and conditions of service of employees can also be included.

The members get a chance to voice their views in general meetings of the Association. Particulars with regard to conducting of Annual General Meeting, Extraordinary General Meetings have to be included. Matters which require special resolution have to be specifically mentioned.

Transparency

Finally, transparency should be maintained throughout. For this purpose, suitable byelaws for exhibition of register of members or other books like books containing minutes, books of accounts, etc have to be kept at the registered office of the Association during business hours, which can be inspected by the members during working hours, have to be incorporated.

The above said requirements are the minimum to be included while drafting the byelaws. Other matters which are not covered by the requirements need to be included in most cases. These have to be decided on a case-to-case basis.

The memorandum and byelaws can be amended in the manner set out in the byelaws. Hence, it is advisable to include the rule as to how the byelaws have to be amended. Matters such as the constitution of a Quorum in a meeting, particulars relating to maintenance, repairs, replacements, etc, collection of common expenses, removal of staff or other employees, restrictions of usage relating to common areas and facilities so as to prevent unreasonable interference with the use of their respective apartments and common areas and facilities or other facilities by the Apartment owners also have to be included. The same has to include provisions relating to sale or transfer of apartments, leasing and such other matters to avoid issues arising in this regard. It is also advisable to include particulars relating to dissolution or winding up of the Association.

In order to settle disputes, it is advisable to have a simple process. Considering that in many cases, there could be practical difficulties in taking the matters to Courts, it is advisable to have a procedure for settlement of disputes by the process of arbitration.

The minimum number of persons required to form an Association otherwise is seven, but as per the provisions of the Tamil Nadu Apartments Ownership Act, 1994, the minimum number has been brought down to five persons. A registered Association can be sued or sue on behalf of the Association of the Apartment Owners. One member can proceed against the Association or vice versa, notwithstanding the fact that such a member is also a part of the Association. The nominated office bearer can have access to the other apartments for the purposes of maintenance, repairs or replacement of common areas and facilities, etc and for making emergent repairs.

The process of actual registration is also a simple process and application in prescribed format has to be made to the Registrar of Societies or Co-operative Societies as the case may be. As already seen, there are many advantages in registering the Association and in many matters, the Association by itself can take up the issues which can be addressed effectively by using the collective strength of members rather than leaving it to individuals to espouse important causes.

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An FAQ on apartment owners association

Issues of maintenance, accounts, errant owners and tenants continue to confront the association. How to address them? answers R.L.Narayanan

Know your way: Apartment associations need to understand issues before tackling them.

Apartment owners often face doubts about apartment associations, their functions and powers. Issues of maintenance, accounts and errant owners and tenants daunt them. How to allot car parking? Can amenities be terminated? Such queries recur and require clarification. Some of the important issues are compiled here and addressed in the form of Frequently Asked Questions (FAQ).

How is a Society formed and registered?

To form a Society, a minimum of seven members are required. A memorandum has to be made. The memorandum will provide for the name of the Society, the objects, names and addresses and occupation of the members of the committee. In addition, the bye-laws or rules regulating the conduct of the affairs of the Society also have to be made. The said memorandum and bye-laws have to be filed with the Registrar of Societies concerned by a member of the committee of the Society or any other person duly authorised by the Society. If the memorandum and bye-laws are in accordance with the legal requirements, then the same can be registered. The memorandum and bye-laws have to be printed or typewritten and have to be signed by the members. The registration charges are nominal.

Can the name of a Society be changed? Can amendments be made to memorandum and bye-laws?

It is possible to change the name where the name is identical with any other society or if the name causes confusion by resembling the name of any other society. In the change of name, other matters or affairs relating to the society will not be affected. Insofar as memorandum and articles are concerned, the same can be amended by a special resolution. If the Registrar is of the view that the amendments can be accepted, the amendments can be registered and certified by the Registrar. The amendments would be allowed, if it is for the purpose of carrying on the administration in a better manner or for achieving the objects or for amalgamation with any other society or for a division of one or more societies.

What is meant by "Common Areas and Facilities"?

"Common Area" would mean the land on which the building is located - foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, terrace, compound walls, fire escapes, wells, sumps, entrances, exits, basements, cellars, yards, gardens, parking areas, storage spaces, premises for lodging of caretakers or persons employed for maintenance of property. It would also include water supply, sewerage and drainage connections, installation of central services such as power, light, gas, hot and cold water provisions, heating, refrigeration, air-conditioning, incineration, elevators, tanks, pumps, motors, common amenities like fans, compressors, ducts and others of common use, fire detection, alarm facilities and all others meant for common use.

What are the common expenses for apartment complex?

"Common expenses" would mean expenses of administration, maintenance, repair or replacement of common areas and facilities; all legal expenses incurred by the Society for enforcement of lawful claims of the apartment owners; expenses allocated as such by the bye-laws or by statute; expenses so reserved by the Society and all sums lawfully assist against the apartment owners by the Society.

How is the levy of maintenance charges to be calculated?

The maintenance charges and expenses have to be calculated on the basis of undivided percentage of interest of the apartment owners in the common areas and facilities. There is also a practice of levying the charges on the basis of a number of units owned even though the units may be of different sizes. The acceptance by a owner for payment on the basis of a number of units owned regardless of size, will not prevent the owner concerned to claim that the owner should be charged on the basis of the

undivided interest held by such owner. The charges are payable by a tenant or occupant, if the owner is not in occupation of the premises.

Can amenities be cut or terminated, if a particular apartment owner does not pay the maintenance charges?

The Society cannot cut or terminate any facility enjoyed by the owner. The Society can only initiate legal proceedings for recovery of the outstandings and can also seek other reliefs as may be permissible under the law.

How can proceedings be initiated in matters relating to unregistered Associations?

In such matters, the persons claiming relief should figure individually as Plaintiffs (Claimants). The persons against whom the reliefs are claimed should be shown as Defendants. All individual members of the Association regardless of the size of the members shall figure either as Plaintiffs or as Defendants.

Which is the Forum for instituting the proceedings?

The proceedings have to be instituted before a Civil Court or before the Arbitrator as provided by the bye-laws. The Society has to be represented by the officer concerned, who is authorised to institute or defend proceedings as provided by the bye-laws. Individual members, though being members of the Society, can be shown as Defendants for the purposes of obtaining suitable relief. In cases where certain actions may amount to or involve offences, criminal complaints or proceedings can be initiated against the persons concerned.

If the affairs of the Society are carried in a whimsical or a motivated manner, what is the procedure for obtaining relief?

In such cases also, suitable proceedings have to be initiated before a Court or the Arbitrator concerned, for obtaining proper relief.

How is car park allotment to be made?

As parking area falls under common amenities and facilities, this has to be made on the basis of undivided percentage holdings. In practice, allotment is made as covered car park, open car park, etc for each of the apartment owners, even though owner concerned may not have immediate use for the same. There are many cases where the car park is inadequate. In such cases, it has to be seen as to whether it is part of the agreement or otherwise to work out a suitable relief.

Can certain facilities be restricted to certain owners only?

This can be done. In many apartments, special or specified parking area, terrace gardens, private gardens and other facilities or amenities can be designated as reserved for certain apartment or apartments to the exclusion of all other apartment or apartments.

Is Deed of Apartment prescribed under the Tamil Nadu Apartment Ownership Act, 1994 being registered?

Even though the Act provides for registration of Deed of Apartment, this is not being registered as the authority has not been constituted and the practice is also not followed till date.

Is it possible to register a Society under the Tamil Nadu Apartment Ownership Act, 1994?

There is no provision for registering an apartment under the Tamil Nadu Apartment Ownership Act, 1994. It is sufficient if the apartment is registered under the Tamil Nadu Co-operative Societies Act, 1983 or under the Tamil Nadu Societies Registration Act, 1975. The provisions applicable to Societies are also applicable to Associations of owners.