CHAPTER 5

LAW AND PRACTICE

Law is a Social Science and is closely linked with the Society. The Societies which go on developing and changing keeping pace with the times, economic need and technology, are regarded as ‘progressive’ and need the dynamics of law. The law in order to respond to social changes should go on changing. A gradual moulding of law to meet the changing Social needs fulfils the aspiration and the cherished dream of the framers of the constitution.

The constitution is not merely a legal or political document, it is first and foremost a Social document whose primary goal is to establish an order of socio-economic justice, social and economic uplift of the masses as its avowed objectives, better distribution of the resources of the community to sub serve the common good and to check the evils of concentration of wealth and means of the production to the common detriment. The socio-economic goal and the founding faiths of our nation were incorporated in the constitution. It enjoined the law the function to make environmental adaptations of the existing legal system, feeling the needs and the mores of the people, evolving principles of law and legislative formulations and statutory institutions which will harmonize with the urgencies of our times, and translating into action the mission of constitution. Under the constitution the meaning of ‘other authorities’ occurring under Article 12 has been considerably widened to cover more and more institutions and organizations with the term ‘State’ and thus to prevent them from acting in violation of Fundamental Rights. Law may again set up new public bodies and authorities, which in turn bring about significant social and economic changes.
Under the principle of federalism, the matters of urban Development and Housing has been allocated to the State Government by the Constitution of India through its device of distribution of legislative power. Various urban local bodies which are of statutory origin are primarily responsible for the task of urban development as well as urban governance. The Constitution (Seventy Fourth Amendment) Act, 1992 has been enacted with a view to make urban local bodies as vibrant self governing institution, sufficiently empowered to respond to the desired goal of achieving sound, systematic and spatial development on the line of scientific social progress. Article 47 of the constitution of India enjoins the State the duty to raise the standard of living and the improvement of public health, which if properly interpreted cast a positive duty upon the urban local bodies to maintain a hygienic living condition in an Urbanized Society by ensuring sufficient open space to maintain ecological equilibrium.

International law enjoins the nation to offer due regard to protection of environment based on the maxim 'sic uter tuo ut alienum non lead as' or 'principles of good neighbourliness'. In India, the corpus of environmental law can be seen in the Environmental Impact Assessment (EIA), Draft Notification of Ministry of Environment and Forest, judgments of the Supreme Court and High Courts. Their Central theme is the concern of Environmental issues. One of the aim of the International Society of City and Regional Planets (ISoCaRP) headquartered at the Hague, is to remind the future generations about the significance of neighbourhood, the need for personal involvement in community policy making, the fragile nature of the environment, and the necessity to consider future impacts on community and Regional Development. The relevance of the town planning is very much felt in the use of land especially in urban areas.
In India during colonial rule most of the laws were little responsive to the social needs. The British Rules were rather interested in the perpetuation of their rule than in the development of law. The establishment of legislatures in the Country did not much improve the position for the reason that its powers were restricted and secondly it was not representative. However, the post independence period is notable for rapid urbanization unlike British period. The post independence period saw the beginning of city planning in India. The 1960's saw the emergence of town planning departments in different States in the Country. The Town and Country Planning Organization established by the central government prepared model legislation for town planning for State Governments to enact. The Calcutta Metropolitan Development Authority Act, 1972 had been enacted on this lines which now has been repealed and substituted by The West Bengal Town and Country (Planning and Development) Act, 1979. Subsequently, The West Bengal Metropolitan Planning Committee Act, 1994 and The West Bengal District Planning Committee Act, 1994 were enacted to promote the Developmental Activities through systematic planning and by coordination between different Developmental Authorities constituted or to be constituted under those Acts. In the matter of Building legislations in particular, the Calcutta Municipal Corporation Act, 1980, The West Bengal Municipal Act with its latest Amendment Act, 2002. The Kolkata Municipal Corporation Building Rules, 1990 and the West Bengal Municipal Building Rules, 1996 are among the existing laws.

The concept of property has undergone a sea change in recent decades from exclusive ownership of immovable property comprising both land and building to the common occupancy of a flat/multistoreyed building comprising high priced land and structures built on it with all its common facilities with an exclusive possession and ownership of a unit known as Apartment. This change
of concept of property is due to population explosion and shortage of land for housing activities which gives rise to the Promoters/Builders new and lucrative opportunity to enter into a new avocation/business which obviously need regulation and control mechanism through laws and regulations. Therefore, the law regulating the enterprise of promoters has been a recent phenomenon in our country. It originates from the Apartment ownership law which is of the early seventies. As this new thought of occupancy and ownership of a dwelling unit involves so many legal complicacies, it needed thorough analysis in our context and the enterprise of Promoters/Builders activity is more lucrative which demands control through legislation. Therefore, The West Bengal (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 is the present legal position to see the ongoing practices.

But to enact law and to implement the law is completely two different job of different dimension. One is the reflection of the social need of the hour and the other is the translation that into action. The ultimate aim of law is to do justice and the government while acting administratively or exercising a discretionary power must act fairly. In the new phase of urban development particularly in the expanding constructional activities for housing in and around the metropolitan city and its suburban areas, the haphazard and unplanned growth of buildings remains unchecked and it is at the cost of environmental quality and ecological equilibrium. The cities and towns are losing gradually its greenery and landscape. In absence of any comprehensive legislation Indian Judiciary has so far interfered into the matters and developed new vistas of environmental jurisprudence. Considering the durability and safety of the structures as well as the safety of the inhabitants of those multistoreyed building the National Building Code, 2005 along with different codes has been enacted prescribing the standard of various constructional practices required for safety of the building by
Bureau of Indian Standard. In terms of those prescribed standards of BIS Codes and National Building Code, the Municipal Laws and Building Rules have been modified through amendments of those Acts and Rules made there under.

In this Chapter, the existing laws and their compliance or deviations if any noticeable have been discussed with proper fact findings by field study. Different Photographs have been taken from different municipal areas mentioned therein and some important aspects of building activities were raised as questions before the promoters/builders and residents of flat where I came to the following findings.

Where laws, rules and regulations act as tool to check any social evil the machinery to enforce those laws are required provided the machinery should be adequate and effective. Such a measure is required to deal with the situation which calls for collaborative effort from all the legal institutions of the system: the legislative, the judiciary and the administrative machinery. Therefore, the compliance or deviations with/from any existing laws depends on the executive action which is also subject to the present study.

5.1 International Conventions on Environment Development

The Stockholm Conference, 1972:

The first international conference on human environment was held in the Stockholm, capital of Sweden (June 5-16, 1972) where more than 107 States participated. At the end of the conference, twenty six principles were agreed and declared by the participating States. These principles are known as Magna Carta on human environment. The Stockholm Declaration (1972) was the first holistic approach to deal with the problems of environment. The conference adopted an
action plan relating to natural resources, human settlement, human health, territorial eco system, environment and development etc.

Principles 1&2 have enunciated the principle of Sustainable development. Thus it was cautioned that the non-renewable resources of the earth must be employed in a way so as to guard against the danger to the future generation. It also advocated establishing national institutions with the task of planning, managing, or controlling the environmental resources with a view to enhance the environmental quality.

**Principle-1:** Man has the fundamental right to freedom, equality and adequate condition of life in an environment of quality that permits a life of dignity and well being; and he bears a solemn responsibility to protect and improve the environment for present and future generation.

**Principle-2:** The natural resources of the earth including air, water, land, flora and fauna and especially representative samples of natural eco-systems, must be safe guarded for the benefit of present and future generations through careful planning or management, as appropriate.

**Principle-15:** Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect, projects which are designed for colonialist and racist domination must be abandoned.

**Convention on Wetlands of International Importance 1971 & 1982 (RAMSAR):**

The main objective of this convention is to conserve the Wetlands and their flora and fauna by combining far-sighted national policies with
coordinated international action. It also recognizes that Wetlands constitute a resource of great economic cultural scientific and recreational value, the loss of which would be irreparable and that it is a regulatory of water regimes and as habitats supporting characteristic flora and fauna, especially waterfowl.

The convention provides that the Contracting parties shall:

a) Designate such lands as, Wetlands with precise boundaries which have international significance in terms of ecology, botany, limnology or hydrology.¹

b) Formulate and implement planning to promote the conservation of the Wetlands and their wise use.²

c) Establish ‘nature reserves’ on Wetland and to compensate for any loss of Wetland resources, increase Waterfowl population through management, promote training of personnel competent in the Wetland research management and Wardening.³

d) Consult each other about implementing obligations arising out of the convention especially when Wetland extends over territories of more than one contracting party.⁴

The World Commission on Environment and Development was established by the UN General Assembly in 1983 for ‘a global agenda for change’. Gro Harlem Brundtland, the then Prime Minister of Norway, was appointed as Chairperson of the Commission to reexamine the critical environmental and

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¹ Article 2 of the said convention.
² Article 3, Ibid.
³ Article 4, Ibid.
⁴ Article 5, Ibid.
developmental problems on the planet and to formulate realistic proposals to solve them and to ensure that human progress is sustained through development, without bankrupting the resources of future generations. The report was presented by the commission in 1987 which is known as ‘our common future’.

The report advocated for sustainable development and gave its definition as ‘development that meets the need of the present without compromising the ability of future generation to meet their needs’. The report has been divided into three parts—(1) Common Concern, (2) Common Challenges and (3) Common endeavours. In Part II, Common Challenges, problematic issues on population, food security, species and ecosystem, energy, industry and urban challenges have been discussed. The commission recommended that human laws must be formulated to keep human activities in harmony with the unchanging and universal laws of nature. The commission suggested institutional sand legal changes at international, national and regional levels to make a transition to ‘sustainable development’.

The Report has provided a list of twenty two principles—‘legal principles’ for environmental protection and sustainable development. Principle 1 declares that “all human beings have the fundamental right to an environment adequate for their health and well being” and principle of ‘intergenerational equity’ has been enunciated under Principle 2.

The definition of ‘Sustainable Development’ given by the commission in its Report has meant by the word ‘need’ to say the need of the World’s poor, to which overriding priority be given. Therefore, the goal of economic and social development must be defined in terms of sustainability in developing and
developed countries. The World's nation aims to achieve sustainable development instead of destructive process of growth which includes over exploitation of natural resources.

Another major contribution of this World Commission Report is that it introduced the concept of 'Polluter Pays Principles' and 'Precautionary Principle' which are essential features of the concept of Sustainable Development. The Supreme Court of India has adopted these principles in various cases.

**World Charter for Nature, 1982:**

The Charter consisting of twenty four principles was adopted by the UN General Assembly. The charter emphasizes that man must acquire the knowledge to maintain and enhance his ability to use natural resources in manner which ensures the preservation of the species and ecosystem for the benefit of the present and future generation. The charter has thus given priority to conserve the natural resources.

Under the charter various functions have been provided to be performed by the States. Such functions include planning and implementation of the Social and economic activities with due care for conservation of nature, formulating long term plans for economic development, population growth and improvement of standards of living, using the natural resources in a restraint manner and prohibiting their wastage, maintaining to productivity of soil, reusing and recycling natural resources, exploiting non renewable resources with restraint, controlling activities which might have an impact on nature and usage of best available technologies that minimize significant risk to nature;
United Nations Conference on Environment and Development (UNCED) Known as Earth Summit:

The idea for the convening the United Nations conference on Environment and Development was approved by the General Assembly on December 22, 1989 by a resolution which called for a global summit on environment and development as a response to, and to build upon, the Brundtland Report. Accordingly the conference known as Earth Summit was held in Rio de Janerio (Brazil) from June 3 to 14, 1992, wherein delegates from 182 nations participated. It was the largest inter-governmental meeting ever held. The conference adopted two major international documents i.e., Agenda 21 and the Rio Declaration on Environment and Development, and a non-binding Statement on Forest Principles and two international conventions.

a) **Agenda21**: It is a comprehensive plan of action which lays down future course of action in relation to environment and development. The Agenda 21 sets out Specific programmes to make long term changes in the development activities of all people in order to put an end to ecological destruction and economic inequity. Agenda 21 placed emphasis on issues such as poverty, consumption pattern, health, human settlements, technological transfer etc. Other provisions for quality supply of fresh water resources, management of land resources sustainable development of rural agricultural areas have been provided in the Agenda 21. It is in the legal sense, not binding on the States but it will imply strong political commitments. States at the time of making their policies and programmes are required to be guided and influenced by the well defined goals laid down in Agenda 21.
b) **Rio Declaration on Environment and Development**: The various Principles of the Declaration emphasize on 'Sustainable Development' to equitably meet developmental and environmental needs of present and future generations.

   a. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.\(^5\)

   b. In order to achieve Sustainable development environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.\(^6\)

   c. To achieve sustainable development and a higher quality of life for all people, States shall reduce and eliminate unsustainable pattern of production and consumption and promote appropriate demographic policies.\(^7\)

**Second United Nations Conference on Human Settlements (Habitat-II), 1996:**

On the recommendation of the Stockholm conference on Human Environment 1972 the second United Nations Conference on Human Settlements referred to 'City Summit' or 'Habitat II' was held in Istanbul (Turkey) from June 3 to June 14, 1996. The conference adopted the final documents referred to 'Habitat Agenda' was intended as a global call to action at all levels and a guide towards the achievement of sustainable development of the World's Cities, Town and Villages into the first two decades of the next century. The Habitat Agenda contains a preamble, a statement of goals and principles and a set of six

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commitments to be undertaken by governments in support of the objectives of Habitat II. The fourth part contains strategies for implementation of the global plan of action.

Preamble:

The preamble of 'Habitat II' recognizes the imperative need to improve the quality of human settlements which profoundly affects people’s daily lives and well beings. Preamble stresses that the Habitat II deals with all settlements—large, medium and small and reaffirm the need for universal improvements in living and working conditions. It affirms that everyone has the right to adequate standard of living for themselves and their families including adequate food, clothing, housing, water and sanitation and to continuous improvement of living conditions.

Principles of the Habitat Agenda:

The conference adopted goals and principles of adequate shelter for all and sustainable development in an urbanizing world. The 10 goals and principles include interalia, a discussion on equitable human settlement, sustainable development, physical conditions, spatial characteristics of settlements, etc.

Commitments:

The Agenda contained six commitments of the States one of such commitments is as follow:

a) The conference reached consensus on the issue of right to adequate housing. It stated: "we reaffirm our commitment to the progressive realization of the right to adequate housing. In this context, we recognize the fundamental
obligation of governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods."

Global Plan of Action:

The plan elaborates on action to be taken to achieve adequate shelter for all, sustainable human settlements development in an urbanizing World; capacity building and institutional development; It describes ways to promote efficient land markets and sustainable land use mobilize sources of financing and facilities, access to land and security of tenure. It proposes actions that governments can take to integrate shelter policies with macro-economic, social and environmental policies and to improve shelter delivery systems.

5.2 Constitutional Provision for Urban Development and Right to Housing:

In the federal structure of the Indian Polity, the matters pertaining to the housing and urban development have been assigned by the constitution of India to the State Governments. The constitution (74th Amendment) Act have further delegated many of the functions to the urban local bodies.

The constitution (74th Amendment) Act, 1992 has added to the constitution Part IX-A, by way of inserting eighteen new Articles and Twelfth Schedule, whereby constitutional sanction has been given to urban local bodies to play vital role in the developmental process of the urban infrastructure and economic activities through a three-tier system of administration—Nagar Panchayat,

  2. Environmental law - P.S. Jaswal.
Municipal Council and Municipal Corporation. A district planning committee at
district level in every state, and a Metropolitan Planning Committee in every
Metropolitan area have been provided for, in order to prepare a 'draft
development plan' for their respective areas, having regard to the integrated
development for infrastructure and environmental conservation. Twelfth
Schedule enables the State legislatures to empower the Municipalities to function
as institution of self Government.

The Twelfth Schedule of the constitution has listed the following functions
of the urban local bodies:

- Urban planning including town planning.
- Regulation of land use and construction of buildings.
- Planning for economic and social development,
- Roads and bridges,
- Water supply for domestic, industrial and commercial purposes,
- Public health, sanitation, conservancy and solid waste management,
- Fire services,
- Urban Forestry, protection of the environment and promotion of ecological
  aspects.

Right to Housing under the Indian Constitution:

There is nothing about housing directly in List-I, II and III of schedule VII of
the constitution of India. Even our noble Laureate has been silent about
housing in India. But item no.5, 6 and 18 of List-II may give rise to the

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8. Article 243-ZD, clause (3) and Article 243-ZE(1) of the constitution of India.
9. Article 243W of the constitution of India.
interpretation that 'housing' may be treated as State subject. Item No.6, 8, 17A, 17B, 20, 34, 42 of List-III may be interpreted so as to include the housing as a subject in the concurrent list too\(^{10}\).

Of late, the Apex court through its activist role, has made an attempt to locate a fundamental right to housing (shelter) through expansive interpretation of the constitution, more particularly, the provision of Article 21, wherefrom the right to dignified living and an hygienic living condition have been surfaced as fundamental right under that Article, as emanating from 'right to life'\(^{11}\). The Supreme court in *State of Karnataka Vs Narashima Murthy*\(^{12}\) held that Article 19(1)(e) which guarantees to citizens the freedom of residence is the basis of right to shelter. In *Ahmedabad Municipal Corporation Vs Nawab Khan Gulab Khan*\(^{13}\) and, *Maha Gujarat Hawkers Vyapar Mahajan etc. Vs Ahmedabad Municipal Corporation*\(^{14}\) the Supreme Court has endorsed the mandate of human right to shelter and read it into Article 19(1)(e) and Article 21 of the Indian constitution.

The court observed that state has constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and creation of shelter over their heads to make the right to life meaningful. However, judicial recognizing of this right to housing is obviously a difficult task in the absence of any express constitutional provisions. Anyway, The Apex Court through expansive interpretation of fundamental rights and reading directive principles into fundamental rights created new fundamental

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11. Olga Tellis AIR 1986 SC 180; Francis Coralie Vs the Union Territory of Delhi, AIR 1981 SC 746.
14. SLP NO 47-51 of 1996 Sup. Court.
rights such as right to food, livelihood and housing in some specific circumstances.

The Supreme Court in its judgment in *Francis Coralie Vs The Union Territory of Delhi*, deliberated that the right to life and personal liberty includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life, such as adequate nutrition, clothing and shelter.

The basic constitutional obligation of the State to provide housing (Shelter) to every Indian cannot be ignored. The constitution envisages that it is the duty of the State to promote “Welfare of the people by securing and protecting as affectively as it may, a social order in which justice Social, economic and political shall inform all the institutions of national life15.

The State is enjoined to strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations16.

The State’s obligation to provide housing (Shelter) for poor and other weaker sections of the Society is implicit in those provisions. However, as these provisions are found in Part-IV of the Indian Constitution (The Directive Principles of State Policy) and they being non-justifiable, the implementation of those provisions remain non-fulfilled. But regard must be had to the ultimate object of the Directive principles which is to liberate the Indian masses, free from centuries old coercion, ignorance, abject conditions and to prevent exploitation.

15. Article 38(1) of the Indian Constitution.
16. Article 38(2) of the Indian Constitution.
The Apex Court in *Chameli Singh Vs State of UP* held that right to Social and Economic Justice conjointly commingles with right to shelter as an inseparable component for meaningful right to life.

5.3 Building Legislations

i) The West Bengal Municipal Act 1993

This Act is to consolidate and amend the law relating to urban municipal affairs in West Bengal extending to the whole of West Bengal except, Calcutta and Howrah and such other area as may constitute the territorial jurisdiction of the municipal corporation established by any law for the time being in force. Every municipality under this Act has some obligatory functions and some Discretionary functions. State Government may also transfer any of the functions of it to a Municipality relating to urban affairs. The State Government is also empowered by the provision of this Act to make rules regarding the probable aspects of constructional activities. The Board of Councilors of a Municipality is also empowered by this Act to regulate future construction of building in particular street or locality. The Act has provided for the approval of building sites and sanction of plan for erection of building, prohibition of building without sanction and provided for the penalty in case of contravention of the provisions of the Act and rules made thereunder. The Act has mentioned

18. As defined in clause (9) of Section 2 of the Calcutta Municipal Corporation Act, 1980.
19. As defined in clause (15) of Section 2 of the Howrah Municipal Corporation Act, 1980.
20. The West Bengal Municipal Act, 1993, Section 63.
21. Ibid, Section 64.
22. Ibid, Section 65.
23. Ibid, Section 198.
24. Ibid, Section 199.
25. Ibid, Section 204 A.
that the permission granted for the construction of building shall remain valid for one year and sanction granted may also be refused on certain grounds.

The Act has provided that Every person submitting an application with building plan, after the completion of erection of such building send a notice in writing of such completion accompanied by a certificate to the Municipality and shall give to the municipality all necessary facilities for inspection of such building or work and permission for occupying such building shall be granted only after such inspection being completed by the Municipality and granting permission as per rules and regulations made under the Act\textsuperscript{26}. The Chairman of the Municipality or any person authorized by him in this behalf may, at any time, and without notice, inspect any such building or work while the work is in progress, in order to conform that whether the construction of such building is in conformity with the approved plan or there is any contravention of any of the provisions of this Act or the rules made thereunder\textsuperscript{27}. The board of Councilors is empowered to cancel any building sanction or provisional sanction if he is satisfied that such sanction was given in consequence of any material representation or fraudulent statement contained in the plans, elevation, sections or specifications or land or any material particulars submitted in respect of such building\textsuperscript{28}. The chairman has the power to stop an unauthorized construction and in doing so he may seek the assistance of the police or any employee of the Municipality and of course in doing so he follows the principle of natural justice\textsuperscript{29}. The Board of Councilors may pass, after going through a process of complying the natural justice principle, an order of demolition or alteration of

\textsuperscript{26} The West Bengal Municipal Act 1993, Section 212.
\textsuperscript{27} Ibid, Section 215.
\textsuperscript{28} Ibid, Section 217.
\textsuperscript{29} Ibid, Section 220.
building in certain cases where the Board of Councilors is satisfied that the erection of any building has been commenced without any sanction or otherwise than in accordance with the particulars on which such sanction was based or in breach of any provision contained in this Act, any rules or regulations made thereunder.\(^{30}\)

**Obligatory Functions of a Municipality:**

Every municipality has the obligatory duty to make reasonable and adequate provision, within the territorial limits of the municipal area and the financial means at its disposal, for means for supply of water for public and private purpose; construction, maintenance and clearing of sewers and drains, sewerage and drainage works; means of supply of water for fire fighting purpose (in the sphere of public works); collection, removal, disposal of solid wastes including filth, rubbish and other obnoxious or polluted matters; disposal of solid and liquid wastes consistent with efforts to cause recovery and reuse of all that can be salvaged; maintenance of all public tanks and regulating the re-excavation, repair and upkeep of all private tanks, wells and other source of water supply etc. (in the sphere of public health and sanitation); devising town planning within the limits of the municipal area in accordance with the laws relating to town planning for the time being in force; planned development of the borders of the municipal area; control of all building operations and regulation of building areas; laying out and maintenance of public parks, squares, gardens or recreation areas; re-development of congested areas for providing better living conditions; planned development of new areas for human settlement; preservation of monuments and places of historical, artistic and other

\(^{30}\) The West Bengal Municipal Act 1993, Section 218.
importance; measures for beautification of the township by setting up fountains and statues, providing recreational areas, improving river banks, landscaping and the like; (in the sphere of town planning and development); survey of buildings and lands and preparation and maintenance from time to time of survey maps and plans of the town and other records relating to survey; removal of unauthorized encroachment on or obstruction and projections in or upon streets, bridges and other public places; securing or removal dangerous buildings and places; checking the construction of unauthorized buildings and pulling down unlawful constructions, measures as may be required for fire prevention and fire safety under the West Bengal Fire Services Act, 1950 and the rules made thereunder (in the sphere of administration).

Discretionary functions of the Municipality:

A municipality may at its discretion, provide either wholly or partly, out of the municipal property and fund, within the limits of its area, in the sphere of development, for shelter for the homeless, undertake manufacturing of building materials and their distribution at fair prices; reclamation of waste lands and promotion of social forestry; promotion of greenery through mass participation; encouraging formation of cooperative societies and in particular, housing cooperative societies and assistance to such cooperative societies in construction of residential buildings; integration of development plans and schemes of the town with the district or regional development plan, if any, etc.\(^{31}\)

Transfer of Functions of State Government to a Municipality:

The State Government may, upon condition set by it, transfer, by an order, published in the Official Gazette, to a Municipality any such functions and the

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\(^{31}\) Clause (5) of Section 64 of the West Bengal Municipal Act, 1993.
duties relating to Government under any law which the State Legislature is competent to enact, and the State Government may also transfer to the Municipality such functions and duties as are performed by the departments of the State Government on the matters relating to-

_TOWN AND COUNTRY PLANNING;
URBAN DEVELOPMENT;
WATER SUPPLY AND SANITATION;
TRANSPORT SYSTEM INCLUDING REGULATION OF THE TRAFFIC TERMINUS;
PUBLIC WORK INCLUDING HOUSING;
FIRE PROTECTION AND FIRE FIGHTING;
ENVIRONMENTAL SAFETY AND IMPROVEMENT;
SOCIAL FORESTRY AND PLANTATION PROGRAMME ETC_.\(^{32}\)

The Municipality may transfer any such function or functions to any individual or organization including a government organization on such terms and conditions, determined by the Board of Councilors, subject to the prior approval of the State Government, if it is of the opinion that it is necessary so to do in the public interest\(^{33}\).

**Fire Prevention and Fire Safety Provisions in the Act, 1993:**

On the coming into force of the West Bengal Fire Services Act, 1950, in any municipal area, the Municipality shall, in consultation with the Director of Fire Services or any officer authorized by him in this behalf by general or special order, require the owner or the occupier of all or any of the premises in the municipal area to make, or to carry, such arrangements as may be necessary for fire prevention and fire safety in the municipal area, and issue a fire safety

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32. *The West Bengal Municipal Act 1993, Section 65 (1) and 65 (2).*
33. *Ibid, Section 66.*
certificate on such conditions as the State Government may prescribe from time to time\textsuperscript{34}.

**Role of a Municipality in Urban Planning and Regional Development:**

The Board of Councilors shall prepare a draft development plan for the municipal area or notified area, in consultation with the District Planning Committee for a period of five years and shall submit to the Urban Development Sub Committee at least one year before completion of the term of the preceding Draft Development Plan\textsuperscript{35}.

The Draft Development Plan for any municipal area or notified area shall include\textsuperscript{36}

- The scheme of that municipality or notified area for the development and other use of land for the improvement of its physical environment; existing land use pattern in maps or documents; the schemes for future land use control by way of -

i) Identification and preservation of open spaces;

ii) Prohibition of filling up of tanks or water courses;

iii) Filling up of insanitary water courses;

iv) Protection of land surface through which subsoil water sources are recharged;

v) Provision of dumping grounds for solid waste disposal;

vi) Regulation and restriction of sites for construction of buildings;

\textsuperscript{34} The West Bengal Municipal Act 1993, Section 285A.

\textsuperscript{35} Ibid, Section 297.

\textsuperscript{36} Ibid, Clause (2) of Section 297.
vii) Reclamation of waste lands;

viii) Scheme for environmental improvement by way of restriction on felling of trees, planting of new trees and flowering plants in public places and adding of house greenery and the like;

ix) Scheme for acquisition of land for the purpose of ensuring that the benefits of developmental activities are reaped by public institutions for community-welfare and not for speculative gains by private individuals.

The Board of Councilors may propose to the District Planning Committee any revision or modification of the Draft Development Plan but this may be done not more than once in every three years37.

The Board of Councilors shall prepare an Annual Development Plan for a period of one financial year, covering only the relevant portions of the Draft Development Plan for the concerned period in consultation with the District Planning Committee and submit the same to the State Government within the last week of the month of October of the Year preceding the period for which the Annual Development Plan shall be prepared38.

**Power of the State Government to make Building Rules under the Act, 1993:39**

This Act has empowered the State Government to make rules to provide for the regulation or restriction of the use of sites for building and the regulation or restriction of building. Such rules may provide for-

- Requirements of sites;
- Land use classification and uses;

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38. *Ibid, Section 300.*

- Open space, area and height limitation;
- Parking spaces;
- Provision for lifts;
- Fire protection requirements including materials and design for interior decoration;
- Structural design;
- Quality of materials, methods of design, construction and tests;
- Compliance with the provisions of urban land (Ceiling and Regulation) Act, 1976 relating to land and building;
- Compliance with the provisions of the West Bengal Town and Country (Planning and Development) Act, 1979 and such other Act or rules made thereunder as the State Government may direct and
- Any other matter considered necessary in relation to building activities etc.

**Power of a Municipality to regulate future construction of building in particular street or locality:**

The Board of Councilors may, by giving a public notice of its intention, declare that the division or subdivision of building plots in a particular locality shall be of a specified size; or that in any locality specified in the notice, the construction of more than a specified number of building on each acre of land shall not be allowed; or that in any street, portion of street or locality specified in such notice, the construction of any one or more of the different classes of buildings like residential, commercial, business, assembly, mercantile, industrial, institutional, storage or hazardous building, shall not be allowed without the special permission of the Board of Councilors.\(^{40}\)

\(^{40}\) The West Bengal Municipal Act 1993, Clause (1) of Section 199.
And after publication of such notice the Board of Councilors shall consider all the suggestions and objections received by it and thereafter may confirm the declaration or modify it and thereafter publish such declaration and after the publication of such declaration no person shall erect or re-erect any building in contravention of such declaration. The Board of Councilors shall, in doing so, ensure that such declaration is in conformity with the provisions of any Development Plan, if in force, under the West Bengal Town and Country (Planning and Development) Act, 197941.

**Penalty for contravention of the provisions of the Act and rules made thereunder:**

Notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person, who being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act or the rules made thereunder as endangers or is likely to endanger human life shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees42.

The ‘person’ in this section shall include inter alia, ‘promoter’ or ‘financier’ or agent of a promoter or financier too. The offence under this section shall be cognizable and non-bailable within the meaning of the code of criminal procedure, 1973.

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41. The West Bengal Municipal Act 1993, Clauses (2),(3),(4) & (5) of Section 199.
42. Ibid, Section 204A.
ii) The Calcutta Municipal Corporation Act, 1980:

The right to build or rebuild upon one's own land is a common law right which is part of the incident of ownership. Such right of ownership cannot be curtailed by any municipal Statute save by express grant of powers to authorities made in body of the said municipal Statute itself. No person can be deprived of his property by not permitting him to use the law and to construct the building without the authority of law. The law requires that every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner along with such documents and plans as has been prescribed by the Act. The Municipal Commissioner shall sanction the erection or re-erection of a building or the execution of a work unless such building or work would contravene the provision of the Act and rules and regulations made there under subject to prior approval of the Mayor-in-council except incase of a residential building proposed to be erected or re-erected on a plot of 500 sq.mt. or less of land. On receiving sanction construction may be proceeded with.

Authority to Sanction a Building Plan

Prior to the Calcutta Municipal Corporation (Amendment) Act, 1990, the Municipal Commissioner was the proper authority either to sanction or refuse to sanction a building plan.

From the commencement of the Calcutta Municipal Corporation (Amendment) Act, 1990, it is not the Municipal Commissioner who is the

45. Ibid, Section 396.
46. Ibid, Section 398.
47. Ibid, Section 398.
authority to sanction or to refuse to sanction a building plan. The Building Committee with the Municipal Commissioner as its chairman makes a recommendation and the said recommendation is approved by the Mayor-in-Council and as such it reaches its finality as decision making process is complete and the Commissioner has to communicate the sanctioning of the plan to the applicant.

**Authority of Municipal Commissioner to Pass Demolition Order of Unauthorized Construction:**

Municipal Commissioner may make an order directing that unauthorized construction or erection shall be demolished subject to following the natural justice principles i.e. giving hearing opportunity to the aggrieved party to show the justification of his work\(^48\).

The power of the Commissioner in launching a proceeding for demolition is a quasi-judicial power\(^49\).

The Calcutta Municipal Corporation Authority can stop any work of construction of a building which has been commenced or is being carried on without or contrary to the sanction referred to Section 396 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or rules made thereunder\(^50\).

**Completion Certificate:**

Every person, be he owner, promoter, developer, lessee, or financier or agent of all those persons, after the completion of the work or building, is

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\(^49\). Commissioner of Corporation of Calcutta Vs Sallendra Nath Banerjee, (1977)2, Cal. LJ. 505.

required to give a notice of such completion to the Municipal Commissioner along with a certificate of such completion so as to facilitate the authority to inspect such building or work51.

**Inspection of Building:**

The Municipal Commissioner may make an inspection of a building or the execution of any work during the erection or re-erection of it without giving any previous notice of his intention to so to do52.

**Power to Regulate Future Construction of Building in Particular Street or Locality:**

The Municipal Commissioner has such a special power, subject to the prior approval of the Mayor-in-Council and giving public notice in official Gazette to declare that in particular street or locality there shall be certain specification as regard to the particular architectural design, minimum of building plot, a minimum number of buildings on each acre of land beyond which the construction of building would be prohibited and the concentration of different classes of buildings such as residential, commercial, educational, mercantile etc. so as to maintain a balanced growth of development and ecological balance53.

**Technical Personnel to be Engaged for Building Plan:**

Every person intending to erect, re-erect add to or alter any building shall engage such technical person as enrolled and licensed by the Municipal Authority54. If such technical person is held responsible for any loss of life or

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52. Ibid, Section 413.
53. Ibid, Section 408.
54. Ibid, Section 414.
property by reason of his misconduct, he shall be punishable with imprisonment as well as with fine as prescribed in the Act and such offence shall be cognizable and non-bailable within the meaning of the Code of Criminal Procedure, 1973. 55

Restriction on Some Non-Residential Use of Building in a Certain Locality:

The Municipal Commissioner, with the Prior approval of the Mayor-in-Council and by notification in the Official Gazette, may by declaring, restrict or prohibit or many refuse to give permission for establishing or altering or extending the use of any such premises for non-residential purpose like institutional, commercial, mercantile, industrial, business etc. in order to take into account the density of population in the neighbourhood, to avoid traffic constrains in the vicinity, to prevent any fire hazards, to reduce the noise pollution and environmental pollution, to remove nuisance to the inhabitants of the neighbourhood56.

Rule Making Power of the State Government: The Sate Government has the Power to make rules-

a) for the regulation of the use of sites for building and
b) for the regulation or restriction of building and the rules made thereunder may provide, inter alia, for requirement of sites, land use classification and uses, open space, area and height limitations, parking space, provision of lifts, fire protection requirements, quality of materials, structural design, alternative materials, construction and tests, etc57.

55. The Calcutta Municipal Corporation Act, 1980, Section 401A.
56. Ibid, Section 424.
57. Ibid, Section 404.
Building Materials not to be Deposited on the Street without permission:

No person other than the Municipal Corporation, or an officer or other employee of the corporation shall without the written permission of the Municipal Commissioner or without lawful authority deposit any building materials in any street or setup in any street any temporary erection for the purpose of any work whatsoever or any post, bars, rails, boards or other things by way of an enclosure for the purpose of making mortar, or depositing bricks, lime rubbish or other materials.

The Municipal Commissioner may without notice cause to be removed anything which he has deposited in the street without any permission.

The person to whom any permission is granted under section 377, shall at his own expense cause the place where he has deposited building materials to be properly fenced and guarded, to prevent any accident and shall cause such place to be well lighted during the night.

iii) The West Bengal Panchayat Act 1994 Regarding Control of Building Operation in Panchayat Areas:

The disciplined construction of building has now become very much important keeping view on illegal construction beyond the sanctioned plan and indiscriminate construction, if allowed the environmental atmosphere would be in a State of turmoil. Indiscriminate construction of house may prevent passing and repassing of air and light which is an easementary right of an owner of the house/premises and the interference with the easementary right to air and light may cause health hazards. The value of a piece of land has been increased
by leaps and bound due to population explosion by way of natural process as well as migration for the economic causes. The Metropolitan area and cities proper has now become congested and polluted at the same time. Therefore, reverse migration has become a new phenomenon of human settlement process. The land situated within the vicinity of an urban area, has become target for the developers or promoters for the purpose of housing construction. These trends of urbanization and the extension of urban line have effect on the agricultural land. The agricultural lands are therefore being rapidly converted to non-agricultural and bastu land. Therefore, procedure should be laid down to control the building operation in order to prevent illegal construction and indiscriminate building activities in non-municipal urban areas.

The citizen has the right to carry on construction but this right should be exercised in a prudent manner, maintaining the building rules and regulations in order to maintain the ecological balance and the comfort of living of every owner of the neighbouring land or premises, therefore, regard must be had to the easementary right to the air and light of the adjacent land owners. Section 23 of the West Bengal Panchayat Act, 1973 and Rules 17 to Rule24, made there under are the relevant provisions regarding control of building operations in any area within the jurisdiction of a Gram.

Under the West Bengal Panchayat Act, 1973, a Gram Panchayat is the authority to give a per-mission in writing to a person willing to construct or erect any new structure or building in any area within the jurisdiction of that Gram Panchayat subject to compliance with the rules made by the State Government, i.e. West Bengal Panchayat (Gram Panchayat Administration) Rules 2004, provided the said authority on receipt of an Application made by the person
intending to construct a building makes an enquiry to that end and considers it necessary to grant such permission61.

And no such permission is necessary for erection of any new thatched structure, tin shed or tile shed without brick wall covering an area not exceeding 18sq.mt where such structure or shed does not cover more than three fourths of the total area of the land (including appurtenant land) and there is a set back of not less than nine tenth metre on the road side62.

In case of failure to comply with the requirements stated under Section 23 of the Act, the Authority may make an order directing the demolition of the building subject to following the principle of natural justice i.e. providing hearing opportunity to the defiant63.

Any person intending to erect a new structure or a new building within the jurisdiction of a Gram Panchayat, is required to make an application to the Gram Panchayat, along with a plan of the proposed structure or building or site plan, copy of records of right and copy of such other records showing title and interest of the applicant in respect of the land as may be necessary64. Therefore, permanent construction should not be made in violation of Rule17 of the Rules and the construction will not be allowed which is unauthorized and that such construction is dangerous. Hence Rule17 is of wide dimension as to the bringing control over building operations.

63. Ibid, Section 23 (6).
Construction Proposal is to pre Suppose Civic Amenities:65

Every construction proposal is to augment civic amenities and therefore, a plan for new structure or building within the jurisdiction of a Gram Panchayat shall have reasonable provision for,-

a) Adequate drainage facility by means of access and passage leading to existing public drains or drainage channels or by means of Soak-Pit having adequate capacity.

b) Sanitary facilities including garbage disposal facility, and
c) Access road or passage to the plot.

Every structure or building shall have an approach road or passage from a public road and the minimum width of such passage or road shall be one and eight-tenth metres66.

Construction over tank and water body is restricted67.

Maximum coverage of residential building and construction of residential building has been prescribed in the Rules whereby two-third of the total area of an individual plot shall be restricted for residential building68 and Rule 24 is explicit about the construction of residential building.

In addition, the State Government may, by notification, entrust a Gram Panchayat or a Panchayat Samiti, with powers and duties to enforce all or any of the provisions of the W.B. Municipal Act 1993, for regulation of Urban growth in any non-municipal urban area, identified as such in the latest census Report on matters relating to-

67. Ibid, Rule 22.
68. Ibid, Rule 23.
i) Building regulations,

ii) Conversion of land and building from one use to another, and

iii) Public Safety and nuisance


The Engagement of Technical Personnel and their duties and Responsibilities.

The Calcutta Municipal Corporation Building Rules 1990 shall apply to all building activities in Calcutta. And the West Bengal Municipal Corporation Building Rules 1996 shall apply to buildings in the municipal areas, notified areas and industrial townships in West Bengal.

The Act has laid down detailed provision for procedure for sanction for construction of a building. It has emphasized on maintaining Aesthetic quality of Urban Environmental design.

The Rule provides for issuing of occupancy certificate on completion of building work and on satisfaction after inquiry/inspection by the Municipal Commissioner. The validity of plan is dependent on the engagement of an Architect or a licensed building surveyor in association with an empanelled Structural Engineer. The Rules have provided for engagement of Technical personnel. e.g. For all buildings below 11.00m. in height, a Technical personnel not below the rank of a licensed Building Surveyor and for all buildings of 11.00m to 14.50 m. in height, a licensed Building Surveyor and/or Architect, a

Structural Engineer and for all buildings above 14.50 m. in height a licensed Building Surveyor and or/an Architect, a Structural Engineer, a Geo-technical Engineer for Planning, Design and Construction of building. The licensed Building Surveyor, the Architect, the Structural engineer, the Geo-Technical Engineer, in association with one another will be individually/collectively responsible for ensuring the safety of the building and its foundation\textsuperscript{71}.

The said Rules cast duties and responsibilities on Structural Engineer that he shall not accept any request/engagement for preparation and submission of structural plans, if the same are found to be in contravention of the provisions of the Act. He shall be fully responsible for quality control of materials and workmanship. He shall submit a certificate that the structure has been constructed as per submitted Structural Plan and the building is safe for occupation along with the application for occupancy certificate after the completion of the building\textsuperscript{72}.

**Preparation of Plan and Supervision of Execution of Work:**

Every proposed building must have to get its plan prepared and structural work designed and supervised by an Architect/structural Engineer/licensed building Surveyor and while submitting the plan the Architect/licensed building Surveyor/Structural Engineer should certify to the effect that the site has been personally inspected while planning the building and/or designing the structural members, as well as has taken into account the findings of/or recommendations of Stability analysis as well as soil tests performed as and where necessary under this rule\textsuperscript{73}. In all such cases, the licensed building

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\textsuperscript{72} The K.M.C. Building Rules 1990, Rule 47A.

\textsuperscript{73} The W.B.M. Building Rules 1996, Rule 16(1).
surveyor, structural engineer or geo-technical engineer shall have to be empanelled with the municipality\textsuperscript{74}.

**Action to be Taken While a Building is Under Construction:**

One copy of the sanctioned building plan shall be kept at the site of the building at all times, when building operations are in progress and such plans shall be available at all such times for the inspection of the Municipality or of any officer authorized by it in that behalf\textsuperscript{75}.

**Notice to be given to the Board of Councilors before Commencement of Work:**

The Rules insisted on giving a notice in writing to the Chairman of the municipality by any person intended to erect a building, specifying the date on which he proposes to commence the work\textsuperscript{76}. After the completion of the Structural work upto the plinth level or upto one metre above ground level, whichever is higher the applicant shall give a notice to the Board of Councilors to enable him to inspect such work. On receipt of such a notice within fifteen days from then, an officer of the municipality duly authorized in this behalf shall inspect the work at the site and within seven days of such inspection issue necessary direction if any\textsuperscript{77}.

**Procedure to be followed in case of any deviation during Construction:**

Generally no deviation should be made during erection or execution of any work. But during erection or execution of work if any deviation i.e. any

\textsuperscript{74} The W.B.M. Building Rules 1996, Rule 16(2).
\textsuperscript{75} Ibid, Rule 19.
\textsuperscript{76} Ibid, Rule 28.
\textsuperscript{77} Ibid, Rule 29.
internal alteration within the sanctioned covered space is intended to be which does not violate the provisions of the Act or these Rules such deviation shall be incorporated in the completion plan.\textsuperscript{78}

If during the erection or execution of the work external deviation beyond the Sanctioned Covered Space is intended to be made and which does not violate the provisions of the Act or these rules, a revised plan incorporating the deviations intended to be carried out shall submit for obtaining necessary sanction therefor.\textsuperscript{79}

**Demolition of unauthorized construction:**

If the erection of any building is being carried on or has been completed in breach of any provision of the Act or these rules or any condition, modification, direction lawfully given, the Board of Councilors may order for demolition or alteration of such building.\textsuperscript{80}

If any material alteration of or addition to any building has been commenced or is being carried on or has been completed in breach of any provision of the Act or these rules, the Board of Councilors may make an order directing that such erection, alteration, or addition, as the case may be, which has been executed unlawfully, be demolished by the person erecting such building to the satisfaction of the competent authority.\textsuperscript{81}

\textsuperscript{78} The W.B.M. Building Rules 1996, Rule 30(2)(a).
\textsuperscript{79} Ibid, Rule 30(2)(b).
\textsuperscript{80} Ibid, Rule 31(1)(a).
\textsuperscript{81} Ibid, Rule 31(2)(a).
Stoppage of Work in Certain Cases:

In any case, in which the erection of building is being carried on unlawfully, the chairman may, by written notice, require the person so erecting to discontinue the work and in case the notice is not duly complied with by such person, the competent authority may, with the assistance of the police, if necessary, takes such steps as it may deem needful in order to stop the continuance of the unlawful work\textsuperscript{82}.

Completion of Work:

After the completion of the erection of a building the person erecting such building shall submit a notice of such completion accompanied by building plan (three sets) marked as 'Completion Plan' duly signed by the applicant and the concerned technical personnel\textsuperscript{83}.

Occupancy Certificate:

Within fifteen days of receipt of the notice of completion of building work, the Board of Councilors or the authorized representative in this behalf shall inspect the building or work and after being satisfied as to the compliance with the sanctioned plan, the Board of Councilors, shall, within fifteen days from inspection issue an occupancy certificate\textsuperscript{84}.

The Board of Councilors may, upon a written request from an applicant and on his furnishing an indemnity bond undertaking to indemnify the Board of Councilors against any risk, danger or damage to any person whether an

\textsuperscript{82} The W.B.M. Building Rules 1996, Rule 32(1) and (2).
\textsuperscript{83} Ibid, Rule 33.
\textsuperscript{84} Ibid, Rule 34(1) and (2).
occupier or nor and on his giving an undertaking to ensure public safety issue a partial occupancy certificate provided the Board of Councilors is satisfied that the portion for which such partial occupancy is solicited is in habitable condition  

**Prohibition for use of building without Occupancy Certificate:**

The Rules provide that no person shall occupy or permit to be occupied a building erected or re-erected or altered under the Act in respect of which an occupancy certificate or a partial occupancy certificate under these rules has not been issued by the Board of Councilors.

**Rules Regarding Structural Design:**

The structural design of foundation, masonry, plain concrete, reinforced concrete and structural Steel should be in accordance with the provisions of the latest edition of the National Building Code of India and relevant codes of practice of the Bureau of Indian Standards meant for that.

All materials and workmanship shall be of good quality conforming generally to the accepted standards of the Public Works Department of the Government of West Bengal or Indian standard specifications as included in Part-V on Building Materials and Part-VII on constructional practices and safety of the latest edition of the National Building Code of India.

86. Ibid, Rule 36.
87. Ibid, Rule 81.
88. Ibid, Rule 82.
Provision as to Building Site\textsuperscript{89}:

The Rule states that no piece of land shall be used as a building site in Municipalities unless the Board of Councilors is satisfied that -

\begin{itemize}
  \item[a)] Land record is in conformity with the proposed construction;
  \item[b)] The level of the land is not lower than the level of the crown of the nearest public street;
  \item[c)] The land is capable of being well drained by means of drainage facilities leading to existing public drains or drainage channels;
  \item[d)] The soil of the site is likely to sustain the construction of the building thereon;
  \item[e)] Where the site is within 5.00 meters of any side of a tank, the owner will take such measures as shall prevent any risk of drainage from such building passing into the tank.
\end{itemize}

The building site should not be a filled up tank and it shall be permitted for development by the Municipal Commissioner if he be satisfied on a Soil Investigation Report from a Geo-Technical Engineer as to the condition of soil at site and as to the design parameter on that basis, as accepted by Structural Engineer, from the engineering point of view provided that no such Soil Investigation Report is required in the case of building not exceeding 11.50 meters in height and having no basement, foundation not involving piling work or deep foundation on a plot of land not exceeding 300 sq.mt. in area\textsuperscript{90}.

\textsuperscript{89} The W.B.M. Building Rules 1996, Rule 4(1).
\textsuperscript{90} Calcutta Municipal Corporation Building Rules 1990, Rule 49(a).
**Height of Building:**

Under both the Act the Maximum permissible height of a building depends on the relation between the height of the proposed building and the width of the means of access to which the building abut.\(^{91}\)

No new building shall be allowed on a plot unless the plot abuts a street which is not less than 10 meters in width at any part or there is access to the plot from any such street by a passage which is not less than 10 meters in width at any part\(^{92}\).

In any case of a residential building with other occupancies if any, on less than 10% of the total covered area of the building the width of such street or passage shall not be less than 2.40 meters at any part\(^{93}\).

Notwithstanding anything contained in Rule 46 (2)(a) as stated above, residential building upto a maximum height of 7 meters may be allowed on a plot abutting a means of access not less than 1.20 metres provided such means of access is in long existence and is recorded in the settlement records and/or municipal records accordingly\(^{94}\).

**Maximum Permissible Height of a Building (Table No. 2):**

Following table displays the maximum permissible height of a building on a plot in relation to width of means of access\(^{95}\).

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93. Ibid, Rule 46 (2) (a) (i).
94. Ibid, Rule 46 (2) (b).
95. Ibid, Rule 48 (3).
### Table No. 2

<table>
<thead>
<tr>
<th>Width of means of access (in Meters)</th>
<th>Maximum Height Permissible (in Meters)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) 2.40 to 3.50</td>
<td>8.00</td>
</tr>
<tr>
<td>b) above 3.50 to 7.00</td>
<td>11.00</td>
</tr>
<tr>
<td>c) above 7.00 to 10.00</td>
<td>14.00</td>
</tr>
<tr>
<td>d) above 10.00 to 15.00</td>
<td>18.00</td>
</tr>
<tr>
<td>e) above 15.00 to 20.00</td>
<td>24.00</td>
</tr>
<tr>
<td>f) above 20.00 to 24.00</td>
<td>36.00</td>
</tr>
<tr>
<td>g) above 24.00</td>
<td>1.5 x (Width of the means of access + required width of front open space)</td>
</tr>
</tbody>
</table>

The Board of Councilors may if necessary restrict the height of building in any area within the municipal area, below that provided under Rule 48(3) for reasons to be recorded in writing.

**Rules Regarding the Height of Tall Buildings (Exceeding Fourteen and Half Meters in Height):**

In Municipality the building height shall not normally be more than 14.50 meters (fourteen and a half meters). But in case of any building exceeding 14.50 meters in height, the Board of Councilors for reason to be recorded in writing and with the previous approval of the State Government may sanction those schemes as special case if not otherwise covered by any law for the time being in force. In such cases some special rules are applicable in addition to other rules under the Act.

**The Special Rules are as Follows:**

No building exceeding fourteen meters and a half in height shall be allowed on private or public street of not less than 10.00 meters in width;

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97. Ibid, Rule 51(1).
Every building exceeding fourteen meters and a half but not exceeding eighteen meters in height shall have a rear open space at ground along the entire width of the building forming an integral part of the site of a minimum width of five meters;98

Every building exceeding eighteen meters but not exceeding twenty four meters in height shall have a rear open space at ground along the entire width of the building forming an integral part of the site of a minimum width of eight metres99.

Every building exceeding fifty meters in height shall have a rear open space at ground along the entire width of the building forming an integral part of the site of a minimum width of twelve meters;100.

Every building exceeding fifty meters in height shall have a rear open space at ground along the entire width of the building forming an integral part of the site of a minimum width of twelve meters;101

The minimum side open space of a building exceeding 14 meters and a half but not exceeding eighteen meters in height shall be 3 meters and 50 centimeters on either side or more;102

The minimum side open space of building exceeding eighteen meters in height shall be 20% of the height of the building subject to the minimum of 5 meters and 50 centimeters on either side;103

100. Ibid, Rule 51(3)(c).
102. Ibid, Rule 51(4)(a).
103. Ibid, Rule 51(4)(b).
In the case of a building of more than 24 meters in depth and not exceeding 18 meters in height, one of the side shall be at least 4 meters in width\textsuperscript{104}.

**Permissible Height of Building (as per the K.M.C. Building Rules 1990) (Table No. 3):**

Following table shows the permissible height of buildings on means of access of different widths\textsuperscript{105}

<table>
<thead>
<tr>
<th>Width of means of access (in Meters)</th>
<th>Permissible Height (in Meters)</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) 3.00 to 3.50</td>
<td>7.50</td>
</tr>
<tr>
<td>ii) above 3.50 to 5.00</td>
<td>9.50</td>
</tr>
<tr>
<td>iii) above 5.00 to 7.00</td>
<td>11.50</td>
</tr>
<tr>
<td>iv) above 7.00 to 10.00</td>
<td>14.50</td>
</tr>
<tr>
<td>v) above 10.00 to 15.00</td>
<td>18.00</td>
</tr>
</tbody>
</table>

**Table No. 3**

**N.B.** : No restriction is put on height above road width of 15.00 meters in the Kolkata Municipal Corporation Area.

And for a building on a plot of land having means of access more than 24 meters in width the maximum height of building shall not be more than 1.5 x (width of means of access + width of required front open space).

**Floor Area Ratio (Table No. 4):**

Maximum permissible Floor Area Ratio for every building exceeding fourteen meters and a half, shall be as specified in the table below\textsuperscript{106}.

\textsuperscript{104} The W.B.M.B. Rules 1996, Rule 51(4)(c).
\textsuperscript{105} The K.M.C. Building Rules 1990, Rule 64.
\textsuperscript{106} As laid down in Rule 51(6)(a) of the W.B.M.B. Rules 1996.
Table No. 4

Floor Area Ratio(as per KMC Building Rules 1990) (Table No. 5):

The maximum permissible Floor Area Ratio for the KMC areas has specified in the Rules, shown in the following table107.

<table>
<thead>
<tr>
<th>Width of Means of Access (Meters)</th>
<th>Residential building</th>
<th>Institutional Business Building</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Commercial Zone, if any</td>
<td>Other Zones</td>
</tr>
<tr>
<td>1. Above 14.5 to 20.0</td>
<td>2.25</td>
<td>2.50</td>
</tr>
<tr>
<td>2. Above 20.0 to 24.0</td>
<td>2.50</td>
<td>2.75</td>
</tr>
<tr>
<td>3. Above 24.0</td>
<td>2.75</td>
<td>3.00</td>
</tr>
</tbody>
</table>

Table No. 5

For plots measuring 5000 square meters or more in area, the maximum permissible floor area ratio of the building(s) shall be reduced by 10% from the

values prescribed for the particular occupancy shown in the table above mentioned\textsuperscript{108}.

If the buildings are not with the same occupancies, the maximum permissible floor area shall be reduced by 10\% from the values prescribed under the fourth column of the above mentioned table\textsuperscript{109}.

The Mayor-in-Council may determine with regard to any specification made in this behalf under the West Bengal Town and Country (Planning and Development) Act, 1979.

In calculating the Floor Area, certain structures mentioned in Rule 61(3)(a) to (f) shall not be included.

Floor Area Ratio means the quotient obtained by dividing the total floor area of all the floors of a building by the area of the plot, the formula being as follows :-

\[
\text{FAR} = \frac{\text{Total Floor Area of all Floors}}{\text{Area of the Plot}}
\]

\textbf{Open Spaces for Buildings}\textsuperscript{110}

The West Bengal Municipal building Rules, 1996 provides that every building shall have exterior open space comprising front open space, rear open space and side open space. The minimum width prescribed for front open space, rear space and side space shall be provided along the entire front, rear and side faces of the building respectively.

\footnotesize{\textsuperscript{108} The K.M.C. Building Rules 1990, Rule 61A(1).}

\footnotesize{\textsuperscript{109} Ibid, Rule 61A(2).}

\footnotesize{\textsuperscript{110} The W.B.M. Rules 1996, Rule 49.}
The Minimum Front Open Space shall be as Follows\(^{111}\):

i) Every residential or educational building shall have a minimum front open space at ground level of 1.20 meters at its narrowest part;\(^{112}\)

ii) For mixed use building, the minimum front open space shall be the one applicable for that particular occupancy which gives the highest provision of the minimum front open space in this rules;\(^{113}\)

The Minimum Rear Open Space shall be as Follows\(^{114}\):

Every building shall have a minimum rear open space at ground level of a width at its narrowest part of not less than that indicated below (Table No. 6):

<table>
<thead>
<tr>
<th>Height of building (meters)</th>
<th>Minimum Rear Open Space at its Narrowest Part (meters)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 8.00</td>
<td>2.00</td>
</tr>
<tr>
<td>Above 8.00 but not more than 11.00</td>
<td>3.00</td>
</tr>
<tr>
<td>Above 11.00 but not more than 14.50</td>
<td>4.00</td>
</tr>
</tbody>
</table>

Table No. 6

The Minimum Side Open Space shall be as follows (Table No. 7)\(^{115}\).

<table>
<thead>
<tr>
<th>Height of building (Meters)</th>
<th>Minimum side open space at ground level at its narrowest part (meters)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 11.00</td>
<td>Side 1 1.20  Side 2 1.20</td>
</tr>
<tr>
<td>Above 11.00 but not more than 14.50</td>
<td>1.20  2.40</td>
</tr>
</tbody>
</table>

Table No. 7

\(^{111}\) The W.B.M. Building Rules 1996, Rule 49 (2).
\(^{112}\) Ibid, Rule 49(2)(a).
\(^{113}\) Ibid, Rule 49(2)(h).
\(^{114}\) Ibid, Rule 49(3)(a).
\(^{115}\) Ibid, Rule 49(4)(a).
notwithstanding anything contained in clause(a) mentioned above, the minimum distance across the side open space from every new building to an existing building with a door or window opening shall be 1.80m.\textsuperscript{116}

In case of a building more than 24.00 m. in depth on plot abutting any street a passage along the entire depth of the building shall be provided and the maximum width of such passage shall be 4.0m.\textsuperscript{117}

**Open Spaces for Building (As Per KMC Building Rules 1990):**

The rules prescribed the open space (front, rear and side) required to be maintained as such as part of a building site, whereon no roof or weather shade or cornice more than 0.5 meters in width shall over hung or projected over that open space which must be kept open to sky. And such open space required under these rules shall not be taken into account in determining the area of any open space required for any other adjacent building\textsuperscript{118}.

**Front open space (for a building exceeding fourteen and a half meters in height):** For every category of building referred to in rule 54\textsuperscript{119} and exceeding fourteen and half meters in height there shall be a front open space of not less than 20% of the height of the building or 6 meters at its narrowest part whichever is less.

\textsuperscript{116} The W.B.M. Rules 1996, Rule 49(4)(b).
\textsuperscript{117} Ibid, Rule 49(4)(d).
\textsuperscript{118} The K.M.C. Building Rules 1990, Rule 53.
\textsuperscript{119} Residential, educational building, institutional or mercantile, Assembly, Hazardous, Industrial, or storage building etc. with a height of 14.5 meters or less.
Following Table shows the Minimum Front Open Space required to be kept in case of different categories of building mentioned in rule 54 of the Rules 1990 (Table No. 8):

<table>
<thead>
<tr>
<th>Category of Building with a Height of 14.5 meters or less</th>
<th>Front Open Space Required to be Kept Open</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) residential or educational building</td>
<td>Not less than 1.8 meters</td>
</tr>
<tr>
<td>ii) residential building on a plot of area not exceeding 200sq.mt. and not exceeding the height 9.50mt.</td>
<td>1.20 meters</td>
</tr>
<tr>
<td>iii) Institutional or mercantile or business building.</td>
<td>3.50 metres</td>
</tr>
<tr>
<td>iv) Assembly building.</td>
<td>4 meters</td>
</tr>
<tr>
<td>v) Hazardous building or Storage building or Industrial building.</td>
<td>5 meters</td>
</tr>
<tr>
<td>vi) Industrial or storage or mercantile or Institutional or business building on a plot of area of less than 300-square meters and not exceeding the height of 14.5 meters</td>
<td>2 meters</td>
</tr>
<tr>
<td>vii) Every residential building or educational building with other occupancy or occupancies of more than 20% of the floor area at ground floor in the building.</td>
<td>2.5 meters</td>
</tr>
</tbody>
</table>

**Table No. 8**

**N.B.**:

In measuring the minimum front open space required to be maintained regard shall have to the narrowest part of the building at ground forming an integral part of the site abutting a street or passage connected with such street.

**Rear Open Space:**

Following (Table No. 9) shows the minimum width to be maintained in relation to its height\textsuperscript{120}.

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\textsuperscript{120}. The K.M.C. Building Rules 1990, Rule 56.
<table>
<thead>
<tr>
<th>Height of the Building (in meters)</th>
<th>Minimum Width of a Rear Open Space (in meters)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Not exceeding 7meters.</td>
<td>2meters</td>
</tr>
<tr>
<td>2) Exceeding 7meters and not exceeding 11.7meters.</td>
<td>3meters</td>
</tr>
<tr>
<td>3) Exceeding 11meters and not exceeding 14.5meters.</td>
<td>4meters</td>
</tr>
<tr>
<td>4) Exceeding 14.5meters and not exceeding 18meters.</td>
<td>5meters</td>
</tr>
<tr>
<td>5) Exceeding 18meters and not exceeding 24meters.</td>
<td>8meters</td>
</tr>
<tr>
<td>6) Exceeding 24meters and not exceeding 50meters</td>
<td>11meters</td>
</tr>
<tr>
<td>7) Exceeding 50meters.</td>
<td>12meters</td>
</tr>
</tbody>
</table>

**Table No. 9**

**Side Open Space:**

Following (Table No. 10) shows the minimum width to be maintained as side open space depending upon the height of a building.\(^{121}\)

<table>
<thead>
<tr>
<th>Height of the Building (in meters)</th>
<th>Minimum Side Open Space (in meters)</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) Not exceeding 11.50meters.</td>
<td>Not less than 1meter 50 centimeters on either side.</td>
</tr>
<tr>
<td>ii) For residential building on a plot upto 200sq.mt. in area and height not exceeding 9.5meters.</td>
<td>Not less than 1.2meters on either side.</td>
</tr>
<tr>
<td>iii) Exceeding 11.50meters but not exceeding 14.5meters.</td>
<td>Not less than 1.80meters on one side and 2.5meters on other side.</td>
</tr>
<tr>
<td>iv) Exceeding 14.5meters but not exceeding 18meters in height.</td>
<td>Not less than 3.5meters on either side.</td>
</tr>
<tr>
<td>v) Exceeding 18meters in height.</td>
<td>Not less than 20% of the height of the building and subject to the minimum of 4meters on either side.</td>
</tr>
<tr>
<td>vi) In case of a building of more than 24meters in depth and not exceeding 18meters in height.</td>
<td>One of its sides shall be at least 4meters in width.</td>
</tr>
</tbody>
</table>

**Table No. 10**

\(^{121}\) The K.M.C. Building Rules 1990, Rule 57.
Joint Open Space\textsuperscript{122}:

Subject to the provisions of Rules 56, 57 the joint open space shall be provided in between two buildings, if the height of one of such building exceeds the height of 14.50 meters whether belong to the same owner or not as follows:

1) 7.00 mt. if both the buildings exceed 14.50 mt. in height.

2) 5.00mt. if one of the buildings exceeds 14.50mt. in height and other building is 11.50mt. or more but does not exceed 14.50mt. in height.

3) 4.00mt. if one of the buildings exceeds 14.00mt. in height and the other building is 9.50mt. or more but does not exceed 11.50mt. in height.

4) 3.00mt. if the other building exceeds 14.50mt. in height and the proposed building is within the height of 9.50mt.

5) If any of the buildings has a basement then the minimum joint open space against the basement line shall be kept as 7.00mt.

Exemptions Related to Open Space:

Every open space required under these rules shall be kept free from any erection there on and shall be open to sky and no cornice or weather shade or any features used to enhance the architectural quality and climatological consideration only more than 50centimeters in width shall be projected thereon.

These projections are not allowed for enhancement of floor space. Such projections shall not be allowed at a height less than 2meters and 30centi-meters over the ground level or at the finished level of any floor\textsuperscript{123}.

\textsuperscript{122} The K.M.C. Building Rules 1990, Rule 58.
\textsuperscript{123} Ibid, Rule 60.
Ground Coverage in respect of Building: [As per the W.B.M. Building Rules 1996] \(^{124}\)

The maximum permissible ground coverage for building when a plot contains a single building will depend on the plot size and the use of the building as given in following Table No. 11.

### Maximum Permissible Ground Coverage (Plot Containing a Single Building)

<table>
<thead>
<tr>
<th>Type of Building</th>
<th>Maximum Permissible Ground Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Residential and educational</td>
<td></td>
</tr>
<tr>
<td>a) Plot size up to 200sq.meters.</td>
<td>65%</td>
</tr>
<tr>
<td>b) Plot size above 500sq.meters or more</td>
<td>50%</td>
</tr>
<tr>
<td>2) Other uses including mixed use</td>
<td>40%</td>
</tr>
</tbody>
</table>

Table No. 11

When a plot contains more than one building, the maximum permissible ground coverage for the building shall be as follows:

For plots measuring 5,000sq.meters or more in area, the maximum permissible ground coverage shall be 45% for residential or educational building and 35% for buildings of other use groups or for buildings with mixed occupancies \(^{125}\).

And provided that the provisions of Rule 47 as mentioned in the above table, shall be applicable to plots measuring less than 5000sq. meters \(^{126}\).

**Ground Coverage in respect of Building:** [As per the K.M.C. Building Rules 1990] \(^{127}\)

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125. Ibid, Rule 52(2) and The K.M.C. Building Rules 1990, Rule 62(2A).
126. Substituted by clause (44)(iii) of the Notification No.99/MA/O/C-4/3R-6/95, dated 4.3.1999
For any building the area of the plot to be covered by such building shall be as given in the following (Table No. 12):

**Ground Coverage for Building**

<table>
<thead>
<tr>
<th>Occupancy or Use Groups</th>
<th>Maximum Percentage of Ground Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Plot Size upto 200 sq.mt.</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
</tr>
<tr>
<td>Residential</td>
<td>60%</td>
</tr>
<tr>
<td>Educational</td>
<td>60%</td>
</tr>
<tr>
<td>Institutional</td>
<td>40%</td>
</tr>
<tr>
<td>Assembly</td>
<td>40%</td>
</tr>
<tr>
<td>Mercantile (Retail/Wholesale)</td>
<td>40%</td>
</tr>
<tr>
<td>Industrial</td>
<td>40%</td>
</tr>
<tr>
<td>Storage</td>
<td>40%</td>
</tr>
<tr>
<td>Hazardous</td>
<td>40%</td>
</tr>
<tr>
<td>Business</td>
<td>40%</td>
</tr>
</tbody>
</table>

Table No. 12

**Provision of Parking Space:** [As per the W.B.M.C.B. Rules 1996 as well as the K.M.C. Building Rules 1990]

The minimum size of car parking space shall be 2.50 meters X 5.00 meters, excluding the area of circulation, internal roads, aisles and driveways. The minimum width of an internal circulation road shall be 3.50 meters for cars\(^{128}\). For plots with means of access of less than 3.50 meters in width, car parking space may not be provided\(^{129}\).

\(^{128}\) The W.B.M.B Rules 1996, Rule 50(1)(a) as well as Rule 67(1)(a) and (2) of the K.M.C.B. Rules 1990.

\(^{129}\) The W.B.M. Building Rules, 1996, Rule 50(1)(f).
The open spaces within the plot may be allowed to be utilized for car parking spaces open to the sky, provided that the minimum front, rear, and side open spaces prescribed in rule 49 shall be kept free from parking\textsuperscript{130}.

For areas with different occupancies in a building the number of parking space shall be worked out on the basis of each of the occupancies separately and such number will be added to find out the total number of parking spaces required for the building\textsuperscript{131}.

In case of a plot containing more than one building; parking requirement shall be calculated for each building separately, on the basis of use of each building;\textsuperscript{132}

**Parking Space Requirements for Different Occupancies or Use Groups:**

The requirement of Parking Space for motor cars depending upon the occupancies and floor area has been mentioned categorically in the W.B. Municipal Building Rules 1996\textsuperscript{133} and the K.M.C. Building Rules 1990\textsuperscript{134}.

Parking Space requirement for the Residential Occupancy only is mentioned herein bellows (Table No. 13):

<table>
<thead>
<tr>
<th>Occupancy</th>
<th>Car Parking Space Requirement</th>
</tr>
</thead>
</table>
| 1. Residential | (1) Buildings with single tenements  
(a) For a building having one tenement of less than 100sq.m. in floor area—no car parking space.  
(b) For a building having a tenement of 100sq.m. or more but less than 200sq.m. of floor area—one car parking space. |

\textsuperscript{130} The W.B.M. Building Rules, 1996, Rule 50(1)(d).  
\textsuperscript{131} Ibid, Rule 50(1)(e) as well as Rule 67(4) of the K.M.C.B. Rule 1990.  
\textsuperscript{132} Ibid, Rule 50(1)(f) as well as Rule 67(6) of the K.M.C.B. Rule 1990.  
\textsuperscript{133} The W.B.M. Building Rules, 1996, Rule 50(2) to (8)  
\textsuperscript{134} The K.M.C. Building Rules, 1990, Rule 68(1).
(c) For a building having one tenement of 200sq.m. or more of floor area—one car parking space of every 200sq.m.

(2) Buildings with multiple tenements

(A) Tenement with less than 50sq.m. of floor area—
   (a) Up to 5 such tenements—no car parking space.
   (b) For 6 such tenements—one car parking space.
   (c) For every additional 6 of such tenements—one additional car parking space.

(B) Tenement with more than 50 sq.m. but less than 75sq.m. of floor area—
   (a) Up to 3 such tenements—no car parking space.
   (b) For 4 such tenements—one car parking space.
   (c) For every additional 4 of such tenements—one additional car parking space.

(C) Tenement with more than 75 sq.m. but less than 100sq.m.—for every two such tenement one car parking space.

(D) Tenements with more than 100sq.m. floor area—one car parking space for 100sq.m. and one car parking space for every additional 100sq.m.

(E) Tenements of different sizes in a building—car parking space shall be calculated on the basis of each size-group, where no car parking space is necessary under (A), (B), (C) and (D) so, however, that at least one car parking space shall be necessary for more than 300sq.m. of the total covered area in the building irrespective of number of sizes of tenements.

Table No. 13
Distance from Electric Lines (Table No. 14):

No building, or verandah, or balcony or projection in any building shall be permitted to be erected, re-erected, added to or altered in any case where the distance between such construction and any overhead electric lines, in accordance with the provisions of the Indian Electricity Act, 1910, and the rules framed thereunder is less than that specified hereinafter.\(^{135}\)

<table>
<thead>
<tr>
<th></th>
<th>Vertical Clearance</th>
<th>Horizontal Clearance</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Low and medium voltage lines including service lines</td>
<td>2.5 metres</td>
<td>1.2 meters</td>
</tr>
<tr>
<td>b) High voltage lines upto and including 11,000 volts.</td>
<td>3.7 meters</td>
<td>1.2 meters</td>
</tr>
<tr>
<td>c) High voltage lines above 11,000 volts and upto and including 33,000 volts.</td>
<td>3.7 meters</td>
<td>2.0 meters</td>
</tr>
<tr>
<td>d) For extra high voltage lines beyond 33,000 volts.</td>
<td>3.7 meters plus 0.3 metre for every additional 33,000 volts or parts thereof.</td>
<td>2.0 meters plus 0.3 metre for every additional 33,000 volts or parts thereof.</td>
</tr>
</tbody>
</table>

Table No. 14

Control of Development in the Zone River:

In the case of building in the zone river (within 15 meters from river bank) or other water fronts of large water bodies (more than 1000 acres).\(^{136}\)

a) The maximum permissible height of a building in such zone shall be 5.00 meters. In the case of a building on Stilts, the maximum permissible height of the building shall be 6.50 meters including the stilts, the minimum height of which shall be 3.00 meters. In such building, the Stilted portion shall not be allowed to be walled up or covered along the sides;

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b) No building shall be more than 20.00 meters alongside the river or other water fronts. There shall be a clear linear gap of 50.00 meters between the two building alongside the river or other water front;

c) The maximum permissible covered area of such building shall be 200.00 sq.meters.

5.4 Planning Laws:

i) West Bengal Town and Country (Planning and Development) Act, 1979:

The West Bengal Town and Country (Planning and Development) Act, 1979 has been enacted with an object to prepare land use and Development Control Plan, for the planning area and for that purpose to constitute a Planning Authority or Development Authority, and to formulate the Policy and the General proposals including maps of the Planning Authority or the Development Authority in respect of the development and general use of land in that area including measures for the improvement of the Physical environment. The Act extends to the whole of West Bengal excluding any area to which the provisions of the Cantonments Act, 1924 apply. This present Act, 1979 has repealed the earlier the Calcutta Metropolitan Planning Area (Use and Development of land) control Act, 1965 and the Calcutta Metropolitan Development Authority Act, 1972. The Calcutta Metropolitan Development Authority which are constituted under the original Act i.e. The Calcutta Metropolitan Development Authority Act, 1972 is now regarded as the ‘Development Authority’ under the present Act, 1979. The Planning area under the present Act does mean the Calcutta Metropolitan Area137.

137. In reference to Section 16 of the Act 1979 and the First Schedule attached to the Act.
Powers and Functions of the Calcutta Metropolitan Planning and Development Authority:

The Planning Authority has the power, interalia, to prepare land use Map; to prepare and enforce a land use and Development Control Plan, to prescribe use of land within its area and to perform any other functions incidental to or prescribed by the Act. The Development Authority has the power to prepare a present land use map, to prepare and enforce a land Use and Development Control Plan, to prescribe use of land within its area; to prepare and execute development schemes, to coordinate development activities of all departments and agencies of the State Government or local authorities operating within the planning area; to carry out such works as are contemplated in the land use and Development Control Plans\textsuperscript{138}.

The Calcutta Metropolitan Development Authority is empowered, under the Act, to give such direction with regard to the implementation of any development project to any authority and to supervise such development project so as to ensure the execution of such project in the interest of the overall development of the Calcutta Metropolitan Area\textsuperscript{139}.

Every Planning Authority and Development Authority is obliged to prepare a present Land Use Map and a Land Register, indicating the present use of lands in the planning area\textsuperscript{140}.

Purpose of preparing Land Use and Development Control Plan:

It is the function of a Planning Authority or Development Authority to prepare a plan called land use and Development Control Plan for the Planning

\textsuperscript{138.} The West Bengal Town and Country (Planning and Development) Act, 1979, Section 13.
\textsuperscript{139.} Ibid, Section 24.
\textsuperscript{140.} Ibid, Section 28.
Area which is a written document, the copy of which is to be forwarded to the State Government. Such plan is prepared by the concerned Authority, formulating the policy and the general proposals including maps of the Planning Authority or the Development Authority in respect of the development and general use of land in that area including measures for the improvement of the physical environment; and for the development and general use of land in neighbouring areas which may be expected to affect the area; indicating areas or building requiring preservation or conservation for historical, architectural, environmental and ecological and religious purposes; allocating areas or zones of land for use for residential, commercial, industrial, agricultural, natural Scenic beauty, forest, wildlife, natural resources, fishery and landscaping for public and semi-public open spaces, parks and play-grounds. The plan include regulations to control within each zone the location, height, number of storeys and size of buildings and other structures, the size of yards, open spaces and the use of buildings, structures, constructional activities destroying natural scenic beauty etc.\textsuperscript{141}

**Use and Development of land to be in Conformity with Land Use and Development Control Plan:**

After the coming into operation of any Land Use and Development Control Plan in any area, no person shall use or permit to be used any land or carry out any development in that area otherwise than in conformity with such land use and Development Control Plan except with the permission of the Planning Authority or Development Authority on such terms and conditions as imposed by the Concerned Authority\textsuperscript{142}.

\textsuperscript{141} The West Bengal Town and Country (Planning and Development) Act, 1979, Section 31.
\textsuperscript{142} Ibid, Section 44.
Permission for Development:

Any person or body other than the Central or State Government or any local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority or Development Authority for permission and the Concerned Authority in dealing with the applications for permission shall have regard to the provisions of the land use and Development Control Plan and the regulations, if any, made under the Act and the Building rules if any, of a Panchayat or a Municipality.\(^{143}\)

Penalty for unauthorized development or for use otherwise than in conformity with the [Land Use and Development Control Plan]\(^{143A}\).

(1) Any person who, whether at his own instance or at the instance of any other person, commences, undertakes or carries out development, or changes use of any land or building -

a) in contravention of any [Land Use and Development Control Plan];

b) without obtaining a certificate regarding development charge under clause (a) of Section 45;

c) without permission as required under this Act;

d) in contravention of any condition subject to which such permission has been granted;

e) after the permission for development as has been revoked under Section 51; or

f) in contravention of the permission which has been modified under Section 51;

\(^{143}\) The West Bengal Town and Country (Planning and Development) Act, 1979, Section 46.

\(^{143A}\) Ibid, Section 52.
(2) Any person who continues to use or allows the use of any land or building in contravention of the provisions of a [Land Use and Development Control Plan] without having been allowed under Section 44 or where the continuance of such use has been allowed under that Section, continues such use after the period for which the use has been allowed or without complying with the terms and conditions under which the continuance of such use is allowed shall be punished with simple imprisonment for a term which may extend to six months or with a fine which may extend to ten thousand rupees or with both and in the case of a continuing offence with a further fine during which such offence continues.

ii) The West Bengal Metropolitan Planning Committee Act, 1994:

This is an Act for the constitution of Metropolitan planning committee in every Metropolitan area in West Bengal for preparation of draft development plan for the Metropolitan area as a whole. The said committee shall be consisting of such number of members including a chairperson and a vice-chairperson as the State Government may determine for the purpose for which it shall be constituted. The committee shall perform the functions relating to planning and coordination for the Metropolitan area and in preparing the draft development plan, the committee shall have regard to -

i. The plans prepared by the Municipalities and the Panchayat in the Metropolitan area;

ii. Matters of common interest between the Municipalities and the Panchayats, including coordinated spatial planning of the areas;

iii. The overall objectives and priorities set by the Government of India and the State Government; etc.144

144. The West Bengal Metropolitan Planning Committee Act, 1994, Section 3 of the Act, 1994.
The chairpersons of every committee shall forward the development plan, as recommended by the committee, to the State Government.

Such a committee may constitute, for such purpose as it may think, as many subcommittees, as and when it may be considered necessary and expedient.  

5.5 Other Relevant Laws:

i) West Bengal Land Reform Act, 1955:

The changing dimension in land use pattern has attracted wider connotation of the term land under W.B.L.R. Act, although the said Act originally attracted the agricultural land only. The concept of land has undergone a revolutionary change by the W.B.L.R. (Amendment) Act, 1981 and thereby the customary division of land into twice man categories namely agricultural and non agricultural has been done away with. By inserting the new definition of ‘land’, the legislature in its wisdom has thought that this customary division of land into two main categories has lost much of its rationale because of the technological innovation bringing radical change in the land use. The intention of the West Bengal legislature is to give all inclusive definition of land i.e. land of every description. Even though the new definition of land means land of every description, it does not permit raiyat to convert the character of land which is otherwise prohibited under section 4C of the Act unless proper permission is obtained. The right of a raiyat to his land cannot be stretched to a right of freedom of conversion. So if the land has been recorded as tank fishery, then by gradually filling up the water body and converting it into a high land,

145. The West Bengal Metropolitan Planning Committee Act,, Section 10.
the raiyat cannot claim that the land is a high land\textsuperscript{146}. The new definition of land enumerates certain kinds of land by using the expression 'includes' which clearly indicates that the various categories of land is merely enumerative and not exhaustive. Therefore, 'tank' now has come under the purview of the definition of land.

Due to increase in construction activities within urban agglomerates, especially which now the characteristic phenomenon of the urban fringe, the agricultural land is gradually converted into another form. Therefore, conversion of land from one class to another is a landmark phenomenon of ongoing affairs of urbanization.

Change in land use is regulated by sections 4B, 4C and 4D of the West Bengal land Reforms Act, 1955 and Rule 5A made thereunder. Besides these, Section 46 of the West Bengal Town and Country (Planning and Development) Act also places some restrictions on change in land use. While the latter Act is implemented by institutions authorized by the planning Authority or the Development Authority in this behalf, provisions of the former Act are to be enforced by officers of the land and land Reforms Administration.

**Conversion of land from one class to another:**

**Legal Provisions -**

Section 4B of the W.B.L.R. Act 1955 requires a raiyat to preserve the area, character and original use of his holding and forbids any departure from this except with the previous order in writing of the collector under Section 4C. An exception has been made in respect of planting of trees if the land is not

\textsuperscript{146}. State of W.B. Vs Sanjeevani Projects (P) Ltd. 2006 (I) CHN 241 (DB)
cultivated by a bargadar. It has also been provided that this restriction would not apply where such conversion or change in area or character was made in accordance with the provisions of any law for the time being in force. The Division Bench of the Calcutta High Court has made it clear that the raiyat is required to maintain and preserve the land without changing and converting the land into any other kind of land. So, when the land is recorded as the tank fishery, the raiyat by gradually filling the tank cannot convert it into a high land. Such conversion being illegal without the permission of the collector under Section 4C, he cannot apply for sanction for building plan for the purpose of constructing the building thereon—State of W.B. Vs Sanjeevani Projects (P) Ltd.147

**Application for Conversion:**

Section 4C of the said Act provides that a raiyat desiring to make any change in area, character or utilization of any land in his holding may apply to collector for permission. The collector may after causing due enquiry and giving a chance of hearing to the applicant and other interested persons, pass an appropriate order. The collector is also given the power to restrain the raiyat from changing the use of land. The matters to be considered by the collector before giving permission, and the conditions he may impose while granting such permission, have been provided for in Rule 5A of the W.B.L.R. Rules.

**Application for Permission How to be Dealt With:**

A proviso has been added by the West Bengal Land Reforms (Amendment) Act, 2005 with the effect from 1.12.2005 by which for giving permission for changes, conversion, or alteration of any plot of land having water body of any description or size the collector has to hold prior consultation

147. 2006 (1) CHN 241 (DB).
in writing with such department of the State Government as may be prescribed and such order of the collector may, depending upon the circumstances of the case, include an order for creation of compensatory water body of equal or larger size of such water body which is required to be changed, converted or altered. So, the emphasis is for preserving water body in the area by creation of equal or larger size for area of the plot having water body changed, converted or altered. Such compensatory water body has to be created by the raiyat who has sought for change, conversion or alteration of any existing water body, which shall be simultaneously with the change, conversion or alteration of the existing water body. This is a very laudable provision to preserve the ecological balance of the area in which a plot of land having water body has been ordered by the collector to be changed, converted or altered after necessary consultation with the appropriate department of the State Government.

Subsection (4A) of section 4C is a non obstante clause. It provides that when the approval of the appropriate department of the Government or of the local authority in respect of any scheme or project or the permission of the appropriate department of the State Government or the local authority for construction of building or any other permission to conduct any business or carrying on any action involves change of area of any plot of land or character of such plot of land or conversion of the same as is mentioned in Sub Section– (1) of Section–4C or amounts to using any plot of land having any water body of any description or size in a manner that degrades or destroys, directly or indirectly such water body, the appropriate department of the State Government or the local authority shall not give such approval or permission unless the raiyat obtains the order of the collector directing change, conversion or alteration of such plot of land having any water body of any description of size, as the case may be under Subsection (2).
This is a new provision which enjoins the appropriate department of the State Government or the local authority to grant such approval or permission as mentioned above, only when the collector directs such change, conversion or alteration of such plot of land under sub section-(2).

**Power of the Collector to direct restoration of Original Character of the land:**

The original Sub section (5) of Section 4C has now been replaced by the new Sub Section (5) by the W.B.L.R. (Amendment) Act, 2005 w.e.f. 1.12.2005 which has empowered the collector to order restoration of the original character of land when any such land has been changed, converted or altered in violation of Section 4C, if the collector on his own motion or on receiving information is of opinion that it is necessary to do so in public interest within a specified time.

Prior to this amended provision, the collector could issue injunction only in such cases. But it was silent what would happen to cases where the changes, conversion, or alteration of the character of land has already been done by the raiyat but new Sub Section (5) of Section 4C is more effective as it empowers the collector to give order of restoration of the original character of the plot of land.

Non obstante clause is a clause beginning with notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, is sometimes appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the non obstante clause\(^{148}\).

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\(^{148}\) Narcotics Control Bureau Vs Kishan Lal, AIR 1991 SC 558 P.561
Water Body Gradually Filled and Converted into High Land:

When the land is recorded as tank fishery, which is a water body even if the land is gradually filled up and the same has been turned into a high land, the character of the land into agricultural land cannot be changed without obtaining prior permission of the collector under Section 4C (2). The raiyat cannot claim advantage of his illegal activity to contend that the land is now an agricultural land and not a water body. It is made clear that even if the Act has conferred the raiyat the right of the transferability and heritability, yet he has no right to convert the plot of land from one character to another which is otherwise prohibited under Section 4C (1) of the Act unless permission is obtained from the Collector under Section 4C (2) of the Act\textsuperscript{149}.

In Case of Conversion of Character of land Prior Permission of Collector is Mandatory:

In a case, when one of the joint owners of a pond proceeded with the construction after filling up the said pond, the petitioners being the residents of the villages in which the pond was situated, filed a writ petition for cancellation of the building plan and for restraining the owners from proceeding with the construction and also for restraining the owners from proceeding with the construction already made. The Trial Judge of the High Court passed an interim order of injunction and expressed the opinion for placing the matter before the Bench dealing with pollution and environmental matters. The Division Bench of the High Court held that conversion of tank into land for the purpose of construction thereon amounts to conversion as per Section 4C and permission of collector to that effect is mandatory. In the given case, as no permission was granted by the Collector, the owners were not entitled to convert the use of the

\textsuperscript{149} State of West Bengal Vs Green Valley Towers (P) Ltd. 2006 (1) CHN 241.
said tank by making construction over it. Therefore, the Division Bench directed that the owners are restrained from, making any construction over the disputed pond without obtaining prior permission as required under Section 4C of the Act.

**Legislative History behind Section 4C of W.B.L.R. Act:**

S.4C has been added to the Act by W.B.L.R. (Amendment) Act, 1981.

By the W.B.L.R. (Amendment) Act of 2000 an explanation has been incorporated to Sub Section (1) of Section 4C. The explanation seeks to explain the expression ‘the mode of use of land’ by stating that such mode may be residential, commercial, industrial, agricultural excluding plantation of tea, pisciculture, forestry, sericulture, horticulture, public utilities or other use of land.

By the W.B.L.R. (Amendment) Act, 2005 a proviso has been added to Sub Section-(2) which has come into force with effect from 1.12.2005 under which, in case of a permission of change or conversion or alteration, of any plot of land having water body of any description and of any size, the collector is prohibited from making any change, conversion or alteration, unless he has made a prior consultation in writing with such departments of the States Government as may be prescribed and such order of the collector may, depending on the circumstances of the case, include an order for compensatory water body of equal or larger size which is required to be changed, converted or altered.

Subsection (4A) has also been inserted by the West Bengal Land Reforms (Amendment) Act, 2005 with effect from 1.12.2005 relating to the circumstances

under which the approval of the appropriate Department of the State Government or the local authority would be given in respect of any scheme or project or in respect of construction of buildings or for conduct of any business or carrying on any activity unless the collector's permission under Subsection (2) for change of users or conversion or alteration of such plot of land having any water body of any description or of any size has been obtained.

Subsection (5) of Section 4C has also been substituted by the same West Bengal Land Reforms (Amendment) Act, 2005 with effect from 1.12.2005 by new Subsection by which the collector has been authorized to direct the raiyat or a lessee for restoration of the original character of the land under the circumstances stated therein.

**Points for Consideration by the Collector**

Following Principal Points are to be Considered in an application u/s 4C:

i) Whether the proposed changes is likely to adversely affect the interests of any person other than the petitioner or have deleterious effect on the environment. For example, if the change is to make a cultivable land into uncultivable, the change is to establish an industry or brick field which may adversely affect the environment and/or may adversely affect agriculture in surrounding areas.

ii) Another point for consideration of the collector in disposing of an application under Section 4C is the effect of other laws on the proposed change. In this connection a reference may be made to the relevant provisions of the West Bengal Town and Country (Planning and

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151. The W.B.L.R. Rules 1965, Rule 5A.
Development) Act under which a change in land-use in a Planning or Development Area has to be approved by the Planning Authority or Development Authority under section 46 of that Act. (The power to grant or refuse such permission has been delegated to the Municipalities and Zilla Parishads in Calcutta Metropolitan Planning Area subject to certain conditions).

Conversion of land to which U.L.(C&R) Act Applies:

Provisions of the Urban Land (Ceiling and Regulation) Act, 1976 are also relevant in this connection. Accordingly, on receipt of an application for conversion of land from an entrepreneur intending to set up an industry, a reference will be made to the competent Authority appointed under the Urban Land (ceiling and Regulation) Act 1976 requesting them for a report within 30 days. If a report is received to the effect that the land comes within the purview of the Urban land (Ceiling and Regulation) Act, 1976 but has not yet been declared or vested, a declaration will be taken from the entrepreneur to the effect that in future the land in question is found to be vested the entrepreneur will apply to the Government for long term settlement of the same under usual terms and conditions on payment of rent/salami etc. This procedure is followed if the application is for conversion of land for a purpose other than the purpose of setting up an industry.

Conversion of land before making application for permission:

If it comes to the notice of the Collector that the land for which petition for conversion has been put up, has already been converted to some use other than that appearing from the record of rights, it should be enquired as to whether the
change in use has been made in the usual course of nature or by deliberate action on the part of the applicant or any other person.

In the former case i.e. of the change in the use of land has occurred-

a) in the usual course of nature, or
b) at a time when such change was not unlawful,
c) due to developmental activities of the Government or of a local body in the surrounding area or
d) due to urbanization in the surrounding area, the applicant should be informed that the change is being noted in the record of rights and the said record should be corrected accordingly in due course. If there is a reasonable cause behind such change the collector may consider on the merit of the case if post facto permission should be granted.

On the other hand, in the latter case i.e. if the change was deliberately made without reasonable cause after 24.3.1986, the land may be vested under Section 4(4)(a) or penal action may be taken under Section 4D unless prosecution under Section 4D is barred by limitation under the Code of criminal procedure.

**Recording of Change in Classification in Record of Rights**:

When a change is permitted under Section 4C for converting a land to homestead, a change in the record of rights and cadastral map may be necessary. A register for conversion of land shall be maintained in each Block land and Land Reforms Office as well as in each District land and land reforms office.
Transfer of Land situated within an Urban Agglomeration which is used mainly for Agriculture or as an Orchard:

Legal Provision -

Section 4E of the West Bengal Land reforms Act bars the registration of any document purporting to transfer land within an urban agglomeration as defined in the Urban Land (Ceiling and Regulation) Act, 1976, used mainly for agriculture or as an orchard, without an order in writing of the collector. Such transfer is also invalid. It is also provided that an application made to the collector for permission under this section shall be disposed of by the collector within 60 days of its filing, failing which the document may be registered.

Matters to be enquired:

While considering an application u/s 4E, collector shall cause an enquiry into the following points.

i) The date of Transfer of land;

ii) The classification of the land on the date of transfer as per record of rights;

iii) Actual use of the land immediately before the date of transfer;

iv) The object of acquisition of land by the transferee, as stated in the deed of transfer;

v) The general land use pattern in the vicinity of the land proposed to be transferred;

vi) Whether the proposed transfer is for a purpose likely to cause inconvenience to the residents of the locality where the land is situated;

vii) Whether the transfer is contemplated for a purpose which is likely to interfere with the normal agricultural activities in the surrounding areas;
viii) If the proposed transfer is with the object to utilize the land for an industrial purpose and where permission or license from an appropriate authority is necessary for such purpose, whether the same has been obtained;

ix) When the object of the transfer is to put agricultural land into non-agricultural use, whether the land is cultivated by a bargadar;

x) Such other matters as the collector may consider necessary.

Main Consideration:

The main consideration in deciding a petition under section 4E shall be the effect of the proposed transfer and consequent change in use, on the persons interested or affected and also on the environment. Permission should be refused if the proposed transfer tends to violate a land use prepared under the West Bengal Town and Country (Planning and Development) Act.

Where a Transfer has been registered without taking Permission u/s. 4E

(i) Where due to some reason or other, a document has already been registered in violation of Section 4E in respect of a land with predominantly agricultural use or as an orchard within an urban agglomeration defined in the Urban land (Ceiling and Regulation) Act, 1976, without the previous permission of the collector the transferee and the transferor may apply to the collector for permission. Where such permission is granted fresh deed of transfer may be executed and registered canceling the previous one.

(ii) Post facto permission under section 4E may be given by the collector to validate a transfer made in good faith when such permission was not applied due to ignorance or otherwise, after making enquiries provided that the
collector is satisfied that permission would have been granted had the application for permission been submitted before executing the transfer deed.

Where the Classification of land has already been Changed:

If on enquiry it is detected that though in the record of rights relating to the land intended to be transferred the classification of land has been shown as agricultural the land is no longer fit for use for agricultural purpose due to urbanization of the surrounding area, permission for transfer under section 4E of W.B.L.R. Act shall not be granted. Instead, the applicant may be advised stating reasons to apply to the concerned/Competent Authority under the Urban Lands (Ceiling and Regulations) Act, 1976 for permission under the said Act.

Section 4D. Offence and Penalties\textsuperscript{152}:

It prescribes penalty for unauthorized change, conversion, or alteration in the area, character or mode of use of any land of a raiyat or for any violation of the order of collector under subsection(5) of Section 4C. Therefore, such violation is liable for criminal prosecution for which the maximum penalty has been prescribed as imprisonment for a term which may extend to three years or with fine which may extend to fifty thousand rupees (Rs 50,000/-) or with both. But no such prosecution shall lie in a case where an action has already been taken by the prescribed authority under Subsection (4) of section 4 of the Act.

Procedure:

As the West Bengal Land Reforms Act has not laid down the procedure for such criminal prosecution then in view of Section 4 of the Code of Criminal

\textsuperscript{152} The West Bengal Land Reforms Act, 1955, Section 4D.
Procedure, 1973 the provisions thereunder shall be attracted and the complaint has to be made before Magistrate competent to entertain such complaint. Such a complaint has to be entered by the Magistrate having Jurisdiction and the provisions of the Code of criminal procedure for issuing process against the accused on the basis of the private complaint shall be attracted. However, as it is complaint by a public Servant, the examination of the complainant by the Magistrate is not necessary before issuing process against the accused.\(^{155}\)

It is held by the Division Bench of the Calcutta High Court that the offence under Section 4D of the Act is a Cognizable and non bailable offence.\(^{154}\)

**Bar to Registration:**\(^{155}\)

No transfer (including Sales in execution of a decree of a civil court or for recovery of arrears of land revenue) of any land or interest in such land within an urban agglomeration as defined in the Urban land (Ceiling and Regulation) Act, 1976 or within any part of such urban agglomeration as may be specified by the State Govt. by notification in the official Gazette and used mainly for agricultural or as an orchard, without any order in writing of the collector shall be valid and no registering authority shall notwithstanding by the provisions of the Registration Act, 1908, register a document of such transfer unless order of the collector in writing permitting such transfer is produced.

Provided that any application made to the collector for permission for any such transfer made of one's own motion or for registration of a transfer in execution of a decree of a Civil Court shall be disposed of by the collector within

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153. Proviso(a) of Section 200 of the Code of Criminal Procedure.
154. State of West Bengal Vs Sanjeevani Projects (P) Ltd., 2006 (1) CHN 241 (DB).
155. The West Bengal Land Reforms Act, 1955, Section 4E.
sixty days of the application failing which it shall be within the rights of the 
registering authority to register the document of the transfer.

**Object of Section 4E:**

The agricultural land situated within the urban agglomeration as defined 
in the U.L. (C and R) Act, 1976 does not come within the purview of the U.L. (C 
and R) Act, 1976. Even though the Act does not apply to agricultural land it 
provides no mechanism to prevent conversion of such land into any purpose 
other than agriculture. The object of this act is to prevent such easy conversion of 
the agricultural land in the urban agglomeration. This is an additional safeguard 
provided in the Act even though sufficient safeguard has been provided in 
Section 4(4) against such conversion and also in Section 4(C) of the Act. Even for 
violation of the provision of Section 4C, Section 4D Prescribes Penalty.

**Scope of Section 4E:**

Section 4E is confined to agricultural land or orchard when the interest of 
such land within the urban agglomeration as defined in the U.L. (C and R) Act, 
1976 or within any part thereof as may be specified by the State Government by 
notification in the Official Gazette is transferred by the raiyat. Even such transfer 
including sale in execution of a decree of a Civil Court or for recovery of arrears 
of land revenue of any such land within the urban agglomeration attract Section 
4E.

**Constitutional Validity of Section 4E:**

The constitutional validity of Section 4E was challenged in *Prasanta Seth 
Vs Special Officer*156, before Samsuddin Ahmed J. of Calcutta High Court with the

156. (1989)1 CHN 196.
contention that section 4E contravenes Article 300A of the constitution. It has also been urged that the expression used mainly for agriculture is vague and thus would give unguided power to the collector result in its arbitrary use.

The learned judge has upheld the constitutional validity of Section 4E by his judgment dated 16th May 1988. It has been observed that Section 4E is parimateria with Section 27 of the urban Land (Ceiling and Regulation) Act, 1976 that even though in the said Act the 'Urban Land' has been defined as any land, situated within the limit of an urban agglomeration etc., but it does not include any such land which is mainly used for the purpose of agriculture that Supreme Court inMaharao Saheb Sree Bhim Singhji Vs Union of India157, upheld the validity of UL (C & R) Act 1976 except Section27(1) in so far as it imposed a restriction on transfer of any urban or urbanisable land with a building or a portion only of such building which is within the Ceiling area, that Section 22 of the U.L. (C & R) Act contains the similar provision for obtaining the prior permission of the competent authority before transfer of any land within the urban agglomeration by way of sale, mortgage, lease, gift for a period of exceeding ten years or otherwise in urban or urbanisable land. As the Supreme Court upheld the validity of the provision i.e. Section 22 of the U.L. (C & R) Act, 1976, there is no reason as to why Section 4E providing for seeking prior permission for transfer of agricultural land or orchard by the collector would be in any way invalid.

The learned judge has further observed that this enactment has a protective umbrella in terms of Article 31C of the constitution and that the Act is for giving effect to the policy of the State towards securing the principles laid down in the clauses (b) and (c) of Article 39 of the constitution and in view of this

157. AIR 1981 SC 234
protective umbrella the Act cannot be challenged on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, or 19 of the constitution. Thus the learned Judge upheld the constitutional validity of Section 4E.

ii) The West Bengal Premises Tenancy Act-how facilitate The Promoting Lobby to Construct a Multistoreyed Building—An Analysis:

Initially tenancy was governed by the general law as it resulted in by contract between landlord and tenant. But in course of time, especially after the World War II, the relation between the landlords and tenant was getting strained. Gradually it declined from bad to worse. At this juncture the legislators thought it desirable to provide protection to the tenants so that they might not be ousted by the landlords. The 1956 Act as such can be said to be an unevenly balanced legislation— the cries and agonies of the landlords fell on the deaf ears of the law makers. The consequence was disastrous. In the urge to get their own property landlords became very much keen to get rid of their tenants at any cost. The tenants on the other hand, began to deal with the tenanted premises as their own property ignoring in most cases the bonafide and reasonable demands of the landlords. This sorry State of affairs was bound to impair the standard of honesty of many. Both the parties got prepared to fight legal battles, no matter even if they turned out to be sort of a crusade to be fought for years together.

The more the legislators leaned towards the tenants, treating them as have not of the Society, the more was the accommodation shortage. Day by day the accommodation problem was becoming more acute. The reason is that no one was interested either to build a house for letting it to a tenant or to repair dilapidated premises. The 1956 Act, which purported to be a social legislation, has shattered the mutual trust and friendly relation between the landlords and
tenants. The New Act of 1997 is an endeavour to strike a balance between the
claims of two rival groups, though by no means the new Act can be said to be a
perfect legislation. There are so many lacunae in the New Act. Every legislature
legislates for the benefit of its subject, but many a time raising issues for
everything and stretching it too long percolates the very objective for which it is
made. An Act should be interpreted and applied with a pragmatic outlook
without any bias. Such was the happening in the case of the Act 1956.

It is provided in the preamble of the New Act 1997 that it is “expedient to
provide for the regulation of certain incidents of tenancy in Kolkata, Howrah and
some other areas of West Bengal”, without of course, specifying why it has
become expedient to change the law. The reasons for enacting a new Act can be
gathered from the Statement of the objects and Reasons for introducing the Bill
which is meant to replace the Act 1956 with the object of regulating the incidence
of tenancies of premises and relationship between the landlords and tenants of
the premises in the changed circumstances.

The National Housing Policy approved by the Central Government
recommended that appropriate amendments in the existing laws and regulations
be carried out for creating enabling atmosphere for housing activities in the
Country. A number of expert bodies such as the Economic Administration
Reform Commission and the National Commission on Urbanization have
recommended reforming the rent legislation in a way that balances the interests
of both landlords and the tenants and also that stimulates future construction to
meet the growing demands for housing.

“The object of enacting Rent Control laws is well known and it does not
need the elaborate enunciation. Suffice it to say that in view of acute shortage of
housing accommodation, more particularly in the bigger cities, these laws have been enacted to regulate the letting of the available premises. An attempt has been made to reconcile the conflicting interests of landlords and the need for the protection of tenants.” 158

In view of one learned Judge of the Punjab and Haryana High Court the Rent Act is regulatory in its nature and was enacted to protect the exploitation of the tenants, but the legislature in its wisdom has kept the Cherished desire of an Indian to live in his own house as intact conferring a right on the landlord to claim the possession of the demised house for his own use and occupation. It has therefore, been observed that the policy of not depriving a person of his right to live in a house of his own according to his choice not tainted with lack of bonafides as protected by the Rent Act should be given effect to. The right of the tenant to live in a tenanted premises and that of the landlord to live in his own house have to be balanced159.

W.B. Premises Tenancy Act can not be held as a legislation protecting only the interest of the tenants but it regulates the incidence of the premises tenancy as well as inter se rights and obligations of the landlord and the tenant.

Though the primary object of the W.B.P.T. Act is to ameliorate the condition of tenants against unscrupulous landlords taking advantage of scarcity of living Space on pressing for exorbitant rents on threat of eviction, certain salutary provisions have been made by the legislature to do justice to the landlords by protecting their right to evict the tenant in case of violation of the provisions by them. Social justice is not one way traffics. It must therefore look

after the interests of the landlords, by striking a balance so that the legislation serves the interests of the Society as a whole.

Therefore, it may be inferred that due to the lacunae of the W.B.P.T. Act 1956 the very objective of such a Social legislation could not be achieved to that extent as was desired by the legislature. Many a time the raising issue deviated from the pragmatic outlook. The judgment was biased favouring the tenants in the presumption that the tenants are have nots, the legal battles between the two rival parties—Landlords and tenants continued for lengthiest time, and resulting in a situation that no one was becoming interested either to build a house for letting it to a tenant or to repair dilapidated premises. In this precarious situation the promoters lobby entered into the picture to solve the problem by a mutual understanding between the landlords and the tenants being a middleman between these two rival groups and those old dilapidated building was being replaced by a multistoreyed building for the purpose of promoting the Concept of Apartment with absolute and concurrent ownership with a permanent legal right and secured land tenure with a proportionate share of the common properties and facilities.

iii) Urban Land (Ceiling and Regulation) Act, 1976 and Urban Development (Law and Reality):

Multiplicity of authorities, unavailability of lands, unauthorized construction activity, haphazard growth; lopsided policies are some of the factors responsible for the urban decay and the crunch in the housing sector. The stress of rapid urban population growth is overwhelming. Most cities face an acute shortage of houses and the deficit between demand and supply is increasing each year. The problem is exacerbated in most urban centres by the shortage of vacant land. In cities where there is land, much of it has been encroached upon
and occupied, or is tied up in litigation through the very laws that were supposed to release vacant lands for public purpose. Though the urban land (Ceiling and regulation) Act 1976 (ULCRA) was enacted with a view to prevent the concentration of land in the hands of a few persons for bringing about an equitable distribution of land in urban agglomerations to sub serve the common good, by way of imposing a ceiling on vacant land and acquisition in excess of such limit, and with that to regulate the construction of building on such land the Act could not be implemented till the mid-Eighties due to considerable litigation. Some of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 are seen to be at odds with the ground realities of housing needs. The Act was the product of an ‘Emergency mindset’ and the manifestation of the much talked about 20 point programme announced by the then Prime Minister, Mrs. Indira Gandhi. The Act was adopted by several States including West Bengal. But the government faces a number of problems in the implementation of the ULCRA. “The Act is a hindrance to construction”—town planners are of such opinion. They feel that land is scarce. The major holding is with the Government, Railways, the land and Development Authority, and the civic bodies. Large tracts of land are earmarked for projects and building government offices. No change has been effected for land use and land management under the Act.

The purpose of this Act as given in the Statement of objects and Reasons read as under:

There has been a demand for imposing a ceiling on urban property also, especially after the imposition of a ceiling on agricultural lands by the State Governments. With growth of population and increasing urbanization, a need for orderly development of urban areas has also been felt. It is therefore, considered necessary to take measures for exercising social control over the
scarce resource of urban land with a view to ensuring its equitable distribution amongst the various sections of society and also avoiding speculative transactions relating to land in urban agglomeration.

The Bill is intended to achieve the following objective:

i. to prevent concentration of urban property in the hands of a few persons and speculation and profiteering therein;

ii. to bring about socialization of urban land in urban agglomeration to subserve the common good by enquiring its equitable distribution;

iii. to discourage construction of luxury housing leading to conspicuous consumption of scarce building materials and to ensure the equitable utilization of such materials; and

iv. to secure orderly urbanization.

The Act lays down four categories of urban agglomeration.

Class A ------ having a ceiling limit of 500 sq. metres
Class B ------ having a ceiling limit of 1000 sq. metres
Class C ------ having a ceiling limit of 1500 sq. metres
Class D ------ having a ceiling limit of 2000 sq. metres

The Bill provides a ceiling on both ownership and possession of vacant land in urban agglomeration according to categories mentioned above.

The State Governments have been empowered to exempt any vacant land in public interest and also in case where such exemption is considered to be necessary to avoid undue hardship to any person. It also gives powers to State Government to acquire vacant land on payment of an amount equal to eight and one third times the net average annual income actually derived during the
period of preceding five consecutive years or in a case where no income is
derived from such vacant land, an amount calculated at a rate not exceeding Rs
10 per sq. metre in case of categories A and B and at a rate not exceeding Rs 5 per
sq. metre in cases of categories C and D.

The Act regulates the construction of building in the urban agglomerates,
restricts the plinth areas for construction of future residential buildings to be not
more than 300 sq. metres in respect of urban agglomeration of categories A and B
and not more than 500 sq. metres for categories C & D. The Act also lays down a
provision of constituting Urban land Tribunals for entertaining appeals if any
person is aggrieved by an order of the competent authority. The Second appeal,
subject to the procedures of the Code of Civil procedure 1908, shall however lie
to the High Court from the decision of the Tribunal.

The Act raises many interesting issues foremost being the provisions of
permitting to hold vacant land in excess of the Ceiling limit for construction of
dwelling units having an area of not more than 80 sq. meters (861 sq. feet
approx.) for weaker section of society.

The Urban land (Ceiling and Regulation) Act, 1976 has become inefficient
as the land distribution on the bass of social justice is denied. The presumption of
the Act that the owner of urban excess vacant land will construct houses for the
weaker section (which is indeed an impractical proposition) has lost the validity
in reality. There has been administrative apathy, legal loopholes, delays and lack
of political commitment in the implementation of the Act. The Act has failed to
acquire and generate sufficient vacant land for housing economically weaker
sections. The Act has inherent weakness in the conceptual and legal framework.
The Act (ULCRA) has many loopholes through which landlords can prevent excess land from going to the Government for housing the poor. Even the conditions on which exemptions are granted under Section 20 and Section 21 of the Act (for housing the poor) have not proved adequate. These two sections of the Act virtually nullify all its provisions.

Section 20 permits exemption to landowners if they have legitimate reasons like expansion of a factory or for public interest needs like building a school or garden.

Section 21 which is a mandatory provision of the Act permits the exemption of excess land, provided the owner builds affordable houses for the weaker sections of Society. The owner can keep only 15 percent of the profit on the cost of construction. The process is not automatic and requires the sanction of the competent authority. However, the existence of this section does mean any owner of land in excess of the ceiling limit has merely to prepare a scheme for constructing such dwelling units and then the land would have to be given in exemption. Therefore, it may be easily understood that such a provision of law may or may not encourage construction of small dwelling units, but it certainly has presented the transfer of vacant land to public ownership. The adverse effect of the Act is that it has led to freezing effect on the urban land, by pushing its price in an alarming proportion. Although the provision of this section are followed on paper, the housing units for the ‘weaker sections’ are bought by middle class people and the builders charge a much higher rate than that prescribed, citing the provision of extra amenities. The Act has also restricted the supply of land to the housing sector because of litigation over exemptions and compensation while putting a premium on free and exempted land.
The ULCRA presumes, the coexistence of mixed land use planning in a residential complex, an agglomeration between the rich and poorer sections. But such inter mixing has not become acceptable phenomenon in the context of neighbourhood living. This led to the hindrances in the housing development programmes. Due to increase of land market rate in an alarming proportion the State’s monopolistic house building agencies have been in position to command a high price in auctions and surprisingly, the urban development authorities have not been able to arrest the alarming rising trend of urban land values in the context of metropolitan and other large cities. Exemption provision under the Act which empowers the Government to exempt any land from vesting has made the law ineffective from its performance and it led to corruption and weakened the implementation of the Act.

Till the mid-eighties, the Urban Land Ceiling Regulation Act could not be implemented due to considerable litigation. Instead of taking over the excess land and distributing it among eligible sections of society, the government has so far hardly acquired any land. Even whether such acquisition has taken place, there is a litigation to put a stay over the whole matter because of the reason that the provision of compensation is unrealistic and has hampered the housing activity in the metropolitan and other large cities. For inducing the development of excess urban land and for boosting the housing development in urban settlements, the rate of compensation, the amount as stated in the Act was required to be enhanced. This proved to be a blessing in disguise for the middle class people. The schemes were mostly beyond the reach of the lower income groups and the poor for whom they were meant. Private builders cornered most of the surplus land under the Act. While the lower income groups and the poor remained where they were the spurt in the construction activity provided an
opening to the middle and higher income groups to shift from the dingy houses in the old city areas.

The Act provides that no person should hold vacant land in excess of prescribed ceiling limit\textsuperscript{160}. However in practice, the enforcement of the connected provision of the section is impractical as the corporation Acts of different states have not been considered. The floor area ratio has to be worked out. Moreover, these Corporation Acts provide for calculating the floor area ratio based on the road width.

Therefore, the Act has been termed as a draconian law. The implementation of the Act has been dismal due to the following reasons:-

1) vesting too much of discretionary power in the state governments for granting exemption;

2) highly expropriatory nature of the Act;

3) the Act, as it stands does not provide for a mechanism to force the entry of the vacant urban land into the land market through appropriate fiscal measures.

The Government of India has been considering the amendment of the ULCRA. One of the proposed amendments of the Act has been the introduction of Shelter Fund (SF) with a view of increasing the housing stock for the weaker section of society and also providing infrastructure. The Report of the NCU observes that there is need for the amendment of ULCRA. The suggestions are:

a) Section 20 & 21 of the Act, which allow the discretionary exemption should be deleted.

\textsuperscript{160} The Urban Land Ceiling and Regulation Act, 1976, Section 3 and Section 4.
b) all exemptions should be brought within the ambit of Section 19 by expanding its scope, if necessary. In other words what is exempted is mandatory and what is not exempted cannot be exempted by any authority.

c) all lands which are vacant and surplus, must be developed during the five year period of the moratorium of transfer to the State, a State undertaking, a statutory corporation an authority dealing with the housing and urban development or a cooperative organization concerning the housing developments.

**Governmental proposal for ULCRA Amendments**

The union Government has set up the interdepartmental committee to suggest amendments of ULCRA. The committee has rejected countrywide demands to repeal the legislation rather it proposed a series of amendments for shifting the emphasis from acquisition to guided development of vacant land. The committee advocated against the repealing of the Act as it felt that the social objectives proposed to be achieved through the Act are still relevant. The committee has proposed that the Act’s coverage be limited to urban agglomerations with population above 10 lakh as per the 1991 census. Under the proposed amendment urban vacant excess land holder has been given the option to retain part or whole of his land provided he fulfils certain conditions. For instance, he can hold whole of his excess land if he pays 20% of the market value of the land to the Shelter and urban Development Fund. As an alternative the land holder can surrender 20% of excess land free of cost to the State Govt. The committee has proposed such surrendered land should be pooled to create a land Bank for the urban poor. The committee’s proposal suggested for setting up of the shelter and Urban Development Fund for each city for financing low income housing and urban infrastructure. In a major redefinition of urban
agglomerations category, ‘A’ cities have been redrawn as those with population above 50 Lakh, category ‘B’ ranging between 20-50 Lakh, and category ‘C’ ranging from 10-20 lakh. However, the State Govt. should be empowered to extend the Act to town with population above 5 lakh. These towns will be classified as category ‘D’. While the ceiling of urban land holdings for category A and B has been maintained at 500sq.mt. and 1000 sq.mt. the ceiling for category C and D has been hiked to 2000 sq.mt. and 4000 sq.mt. from 1500sq.m and 2000 sq.mt. respectively. In case of companies engaged in industrial production the ceiling will be twice the applicable figure.

The committee has suggested for the hike of the compensation for excess vacant land from Rs.10 per sq.m. for category A and B to Rs.250 and Rs.125 per sq.m respectively. For C & D category from Rs 5 per sq.mt. to Rs 50 for C and Rs 25 for D per sq.mt.

The report suggested also creation of separate machinery in the form of commissioners of urban land, ceiling for each state or city to carry out surveys and inspection of land maintain records and supervise the functioning of the competent authorities. The panel has proposed revamping of the adjudication machinery to reduce delays in the finalization of excess vacant land. The numbers of appellate authorities have been reduced to one, while the second appeal to a high court on an order of urban land Tribunal has been done away with. The committee has recommended the title of the Act be changed to Urban Land (ceiling and Reforms) Act.

The Government’s proposal for amendment of the ULCR Act is again subject to criticism that ULCRA amendment proposal would be defeated for the following reasons:-

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i) The proposed compensation rate (hiked) by the Govt. is extremely low and it would not attract a significant response from the Urban vacant excess land owners to provide voluntarily the land availability for acquisition.

ii) No body would pay 20% of the market rate as alternative, to be deposited in the shelter Fund.

iii) There is a serious error in determining the Urban land ceiling limit because the increasing ceiling limits in cities of categories C and D are unjustifiable and irrational as the cities C and D categories comprising the small and medium towns are rising in population size and eventually land scarcity has risen.

iv) The proposal has not evoked the section 20 and 21 of ULCRA concerning the discretionary power of exemption by the competent authority which is responsible for rampant corruption in the competent authority.

iv) The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993:

*Historical Background of the Act -*

The Apartment ownership law took its shape in India during the 1960’s while law was passed in some of the State, so as to provide for regulation of promoters’ enterprise in construction of multistoreyed building as well as providing a legal base to flat ownership. The Maharastra Ownership Flats (Regulation of the promotion of construction, sale, Management and transfer) Act, 1963 was passed as the out come of such promotional activities in building or construction enterprises. Subsequently, Maharastra Apartment Ownership Act, 1970 was passed. Meanwhile, the concept of ‘Flat’ in the sense of a separate and self contained premises used for the purpose of residence was in vogue in Maharashtra and which was a feature of Maharashhra Cooperative Housing
Societies. Such societies were formed by the promoters to provide accommodations to the members of the housing society and required to be registered under the Maharashtra Cooperative Societies Act, 1960. A cooperative housing society is of two kinds—either as a co-partnership tenancy society or co-partnership ownership society. In the later, the members become the owner of the property whereas in a tenant co-partnership the ownership of the society vests in the Cooperative body of the society and therefore, the mutual rights and obligation of the members therein are of a special type which is different from a tenancy in the sense that is used in the Transfer of property Act, or in the Rent Act, nor is the society a landlord of the members. This Flat ownership required a statutory basis, which was provided by the Act 1963, together with regulation of the promoter’s enterprise within a Comprehensive Legislation. Therefore, Apartment Ownership comprising a part of property intended for independent use together with proportionate share in the common areas and facilities was a later development which gave rise to the Maharashta Apartment Ownership Act, 1970, making apartment a property of exclusive Ownership and possession heritable and transferable and thus distinguishing the concept of Apartment from that of the ‘flat’ in a legal sense.

In West Bengal two legislations were introduced in 1972 - one about regulation of construction and sale of flat/apartment by promoters, and the other about ownership, enjoyment and maintenance of flat/apartment with transferable and heritable interest generally known as Apartment Ownership Act. The former is known as the West Bengal Apartment (Regulation of Construction and Transfer) Act, 1972. This Act was found inadequate to meet the situation.
Therefore, subsequently, this Act was repealed by the new Act known as the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 which is framed according to a model legislation drawn up by the Central Government in order to strike uniformity of practices throughout the country.

The rapid growth of promoters’ enterprise in the construction activities called for regulation to provide safeguard to the interest of all who are directly or indirectly being affected by such activities. Promoters’ responsibility and accountability must be made transparent and stringent as they become the custodian of the public money and the legitimate expectation of the prospective owners of flat depends mostly upon their credibility. Not only that they are promised to get a durable commodity in bricks and mortars which is their long cherished dream and at the cost of their hard earned money. There is always a possibility that the promoters slip off the scene after disposing of all the tenements in his share. So if defect in a construction not visible at the outset surface later the promoter is not available for a remedy. Again ownership of immovable property is accompanied with the concept of the possession which can be delivered even with a defective title short of ownership. So this aspect has to be taken care of through documentation that requires registration under the law of the land. The prospective owner of the apartments who are completely unknown to one another and required to share their respective shares in the common areas and facilities has to be converted into an organization under the name of a co-operative within a legal framework. All these considerations needed a regulatory law to ensure the protection of the perspective owners who are the potential users of this new commercial product in the market of construction, which is now a boom not in the heart land of the cities only but in town and non urban areas too.
The W.B building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 has been enacted to provide for regulation of promotion of construction and transfer of building by promoters in West Bengal in the public interest in the Forty Fourth year of Republic of India by legislature of West Bengal. The said Act has repealed and substituted the West Bengal Apartment Regulation of Construction and Transfer Act, 1972 with the coming into force of Section 17 of the present Act and has been amended by West Bengal Building (Regulation of promotion of Construction and Transfer by promoters)(Amendment) Act, 2002. The preamble of the Act 1993 says that it is enacted in the public interest to regulate the promoters' activities in construction industry and transfer of such buildings by promoters to the prospective buyers in West Bengal.

**Extent of the Act:**

The Act extends to the whole of West Bengal though presently the Act is applicable primarily to Calcutta Municipal and Salt Lake notified area and some adjoining areas of Calcutta city only. Though the construction of multistoreyed building is basically an urban phenomenon, it may be easily anticipated that this phenomenon will very soon engulf the rural areas too because of scarcity of land in already congested urban agglomerates. Perhaps this is the distant vision of the legislature for which the extendibility of the Act has been left upon the State Government with further notification in the official gazette. For the purpose of the applicability of the Act in West Bengal in different setting the areas may be classified into

i) Municipal areas.

ii) Non municipal areas.

iii) Rural areas.
Reason for the repeal of the Act 1972 and Amendment Act 2002:

The pre-existing West Bengal Apartment (Regulation of Construction and Transfer) Act, 1972 had some legal loopholes which helped the dishonest promoters to do unscrupulous business. The National Building Code published by the Bureau of Indian standard (BIS) has laid emphasis on certain basic norms and standards viz. structural safety, constructional safety, fire safety, health safety, etc. Even the Municipal Building Code in our state are well supplied with reference to those standards set by the National Building Code in regard to introduce a check on the constructional activates by the promoters. Section 391 of the Calcutta Municipal Corporation Act, 1980 has laid down a mandatory provision that erection or re-erection of a building, except for a residential building to be erected or re-erected on a plot of 500 square meters or less of land, have to pass through the scrutiny of the Municipal Building Committee constituted under this section.

The West Bengal Apartment (Regulation of construction and Transfer) Act, 1972 remained in the statute book more or less as an ornamental piece of Legislation for it was hardly implemented. The Act had practically no regulatory control of construction of multistoried buildings which were indiscriminately constructed by the dishonest promoters. Section 2 of the Act, 1972 made the Act practically ineffective because it was left entirely at the option of the promoter to submit a declaration before the competent authority that he intends to submit the property wherein the apartment is or is to be located to the provisions of the West Bengal Apartment ownership Act, 1972. Therefore, the provisions were for long time abused by the dishonest promoters to bypass the regulatory measures of the Act as was then the intendment of the legislators. The meaning of the term ‘promoter’ was not so inclusive as is in the present Act. The definition was not so wider to embrace within it anyone as required in the present context until
amended by the Act 2002 which introduced an additional element by providing that any person who constructs a building of a height of 9.5 meters or more with flats in excess of his family requirement, is a promoter, whether or not he dose it for the purpose of transfer by sale, gift etc.

In spite of having all such aspect of regulatory measures, multistoreyed building for commercial purpose are being abruptly constructed even in the interior of narrow lanes and by lanes with both legal and ecological unsuitability. Often substandard materials which are not ordinarily discoverable came to be used by the greedy promoters for their maximum economic profit at the cost of minimum standard of safety. Many a cases were reported that flats constructed by the promoters were not in accordance with the assurance given by them or otherwise which are required for minimum comfort or standard of living of not-so-happy economic groups which belies their long cherished dream of a better apartment at an affordable rate. Some of the incidences proving irresponsibility of the promoters in and around Calcutta are the collapse of Kundalia project in the Bhawanipur area of Calcutta which collapsed in June 1989, that of multistoried building at Buro Shiv tala area of Behala and collapse of another building named Shivalik Apartments on the lansdowne Road of Calcutta on 27th of July 1995 in which thirty five persons were injured while sixteen lost their lives. All such incidence pose a threat to the safety and security of the Apartment owners and raised a question mark regarding the effectiveness of the promoters regulatory Act which alerted the State Government. Therefore, the present Act i.e. The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 was passed and subsequently amended in 2002 which has been assented to by the president of India on 20.07. 2003.
Object and Reasons:

At the time of introducing the W.B. Building (Regulation of promotion of construction and Transfer by promoters) Bill 1992, the Minister in charge Stated the following objects and reasons thereof:

With the growing need of housing stock in this State, especially in the urban areas, promoters have been coming up in a big way in constructing flats/apartments for sale. The W.B Apartment (Regulation of Construction and Transfer) Act, 1972 was enacted with a view to regulating the construction and transfer of such Flats/Apartments in tandem with the West Bengal apartment ownership Act, 1972. Whereas the former Act is supposed to regulate the action of the promoters, the latter is designed to regulate the conduct of the purchaser of the flat/apartments constructed and sold by the promoters. Although the purpose of both the legislations has been to protect the interest of the people in needs of housing unit, provisions of both the Acts apply only if the promoters in the former Act and the purchasers in the latter choose to submit to them. It has therefore been felt that the provision of both the Act should be amended suitably.

In the above context it has been felt necessary to provide for the Regulation of promotion and Transfer of flats/apartment by promoters in this State. Apart from the optional application of the West Bengal Apartment (Regulation of Construction and Transfer) Act, 1972, the provisions contained therein have been found to be hopelessly insufficient to serve the purpose for which the Act was brought into force. The Act, therefore, only remained as a piece of legislation without any real application over the years. Regulation of construction and Transfer of Building activities of the promoters have grown in a phenomenal pace in the mean time and the lives, properties and interest of the urban people in search of ready accommodation have been subjected, as a
consequence, to the greed and malpractices of the unscrupulous promoters in many cases.

It has also been felt necessary to bring all the promoters under the control of the officers authorized for the purpose by the State Government and to prescribe punishment to defaulters. Provisions should also be made to take care of various technical aspects involving safety and security of the buildings constructed by promoters and also of safeguards against any loss that unsuspecting purchaser may suffer due to fraudulent or other commissions and omissions of promoters.

This bill has been framed with the above objects in view. From the point of interpretational value or weightage of the statement of the object and reason which necessitate the introduction of the Bill, it is not the part of the statute and therefore legislative intent cannot be gathered from it or otherwise it cannot be resorted to by the court as an external aid to interpretation to discover the true legislative mind. But complete exclusion of it is not always adhered to. Modern school of thought that limited but open use of it should be made in construing statutes has been gaining ground\(^1\). The Supreme Court is of the view that reference to the statement of objects and reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the mischief or evil which the statute was sought to remedy\(^2\). Therefore, the statement of objects and reasons can be looked into in order to find out the reasons which induced the legislature to enact the statute.


Notable Features of the Act

Definition of Promoter:¹⁶³

The act has defined the term "promoter" in an inclusive sense so as to attribute a broader connotation to mean "a person who constructs or causes to be constructed a building and includes his assignee as also the government, the housing board or Govt. undertakings". The Act has also defined the term "Contractor" separately and which was not earlier mentioned in the Act, 1972. In the Present Act the contractor means any persons who undertake a contract for construction of any building.

"Promoter" means a person who constructs or causes to construct a building on a plot of land for the purpose of transfer of such building by sale, gift or otherwise to any other person or to a company, co-operative Society or association of persons and include-

i) his assignee if any,

ii) the person who constructs, and the person who transfers by sale, gift or otherwise the building, if two are different persons

iii) the Government

iv) an undertaking of the Government or

v) any board, company, corporation, firm or other association of persons, established by or under any law for the time being in force;

¹⁶³. The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, Section 2(g).
Changes introduced by the Amendment Act 1994 and the Amendment Act 2002 of the said Act:

Clauses (iii) and (iv) of the section 2(g) of the Act 1993 have been omitted by Section 2(1) of the West Bengal Building (Regulation of Promotion of Construction and Transfer by promoters) (Amendment) Act 1994 (West Bengal Act XLVIII of 1994) Published in the Calcutta Gazette Extra ordinary, Part III, dated the 17th January 1995 (with effect from the 9th August 1995 as per Notification No 322 HIV/IR-2/93, dated the 9th August 1995). Section 2(b) of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 2002 has inserted an additional element in the definition of a promoter to a sub clause (V) of clause (g) of Section 2 of the Act, 1993 by providing that any person who constructs a building of a height of 9.5 meters or more with flats in excess of his family requirement is a promoter whether or not he does it for the purpose of transfer by sale, gift etc. This amendment tends to meet up the gap that existed before.

Therefore, the present position of the definition of the term ‘promoter’ is as follows:-

“Promoter” means a person who constructs or causes to be constructed a building on a plot of land for the purpose of transfer of such building by sale, gift or otherwise to any other person or to a company, co-operative Society or association of persons, and includes -

i) his assignee if any;

ii) the person who constructs, and the person who transfers by sale, gift or otherwise, the building, if the two are different persons;

iii) any board company, corporation, firm or other association of persons, established by or under any law for the time being in force;
Provided that notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, a person shall be deemed to be a promoter if he constructs or causes to be constructed, a building with a height of 9.5 meters or more and or a plot of land measuring three hundred square meters or above or if he constructs or causes to be constructed a building consisting of flats in excess of the requirements of the members of his family;

This existing amended definition of the term 'promoter' is in order to bring a check on attempts to bypass the provisions of the Act by constructing tall buildings and later on converting it under apartment.

The expression “to construct a building”\(^{164}\) with its grammatical variation means—

i) to construct a new building, or

ii) to reconstruct a building, or

iii) to convert a building or any part of a building not being a flat or block, into a flat or block\(^{164A}\).

\(^{164}\) Substituted by clause(c) of Section 2 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 2002.

Meaning of Apartment:

The Act adopts the meaning of 'apartment' as defined in the West Bengal Apartment ownership Act, 1972.

The word 'apartment' has been defined as part of a property, having a direct exit to a road, street or highway or to a common area leading to such road, street or highway which together with its undivided interest in the common areas and facilities forms an independent residential unit.

The concept of property and the idea of its ownership have undergone a change in the context of present day urban scenario. The urban population, due to excessive pressure on limited land resource for accommodating themselves for the purpose of shelter, has started thinking differently in terms of common ownership to high priced land departing from their traditional concept of ownership of immovable property comprising both land and building.

The word 'apartment' before the enactment of the Apartment ownership Act, would mean and was held as an undivided share, within premises, giving a right of co-ownership instead of exclusive ownership. But after the law was enacted the 'Apartment' means common as well as concurrent exclusive ownership of immovable property. The distinguishing feature of the above definition is that such apartment must have a means of access from outside and it includes a right of share in the areas and facilities that are held in common for the entire building of which the apartment is a part and it is heritable and transferable.

165. The W.B. Apartment ownership Act 1972, Section 3(a).
Section 4 of the West Bengal Apartment ownership Act lay down as follows -

An Apartment to be transferable and heritable property—(1) each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

(2) An Apartment, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force: provided that no apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be partitioned or subdivided for any purpose whatsoever.

(3) Notwithstanding anything contained in the Transfer of Property, Act, 1882, or in any other law for the time being in force, but subject to the provisions of Section 11 of this Act, any person -

a) acquiring by purchase [or by inheritance], or
b) taking lease of, for a period of thirty years or more, an apartment comprised in a property submitted to the provisions of this Act shall -

i) in respect of the said apartment, be subject to the provisions of this Act, and

ii) execute and register an instrument in such form, in such manner and within such period as may be prescribed undertaking to comply strictly with the bye laws and with the covenants, conditions and restrictions set forth in the declaration.
Therefore, after the enacting of this law, each apartment together with its separate unit is immovable property within the meaning of the Transfer of Property Act, 1882 and accordingly an apartment owner may transfer his apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigation, legal proceeding, remedies and to penalty, forfeiture and punishment as any other immovable property or make a bequest of the same under the laws applicable to the transfer and succession of immovable property”.

**Meaning Assigned to the term 'Apartment' in the Acts of Other States:**

The Maharastra Apartment ownership Act, 1970; Delhi Apartment Ownership Act 1986, The Punjab Apartment and Property Regulation Act, 1995 have styled the definition of an ‘apartment’ in somewhat different language, and those are considered to be a more detailed definition in comparison to that of The W.B. Act.

The Maharastra Apartment Ownership Act, 1970\(^{166}\) defines ‘apartment’ as a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces, located on one or more floors (or part or parts thereof) in a building, intended to be used for residence, office, practice of any profession, or for carrying on any occupation, trade, or business or for any other type of independent use and with a direct exit to a public street, road, or highway or to a common area leading to such street, road or highway”.

\(^{166}\) Section 3(a) of the said Act.
Delhi Apartment Ownership Act, 1986 follows more or less the Maharashtra definition of the term 'apartment'. Section (3)(c) of the said act says that apartment means a part of any property, intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors or any part or parts thereof, in a multistoreyed building to be used for residence or office or for the practice of any profession, or for the carrying on any occupation, trade, or business or for such other type of independent use as may be prescribed and with a direct exit to a public street, road or highway or to a common area leading to such street, road or highway and includes any garage or room (whether or not adjacent to the multistoreyed building in which such apartment is located) provided by the promoter for use by the owner of such apartment for parking any vehicle or, as the case may be, for the residence of any domestic aid employed in such apartment.

The Punjab Apartment and Property Regulation Act, 1995 have presented the definition different way.

It provides that "'apartment whether called block, chamber, dwelling unit, flat, lot premises, suite, tenement' unit or by any other name means a separate and self contained part of any property including one or more rooms or enclosed spaces, located on one or more floors or any part or parts thereof, in a building or in a plot of land, used or intended to be used for residency, office, shop, showroom or godown or for carrying on any business, industry, occupation, profession or trade, or for any other type of independent use ancillary to the purpose specified above and with a direct exit to a public street, road or highway or to a common area leading to such street, road, or highway and includes any garage or room whether or not adjacent to the building in which such apartment

167. The Punjab Apartment and Property Regulation Act, 1995, Section 2(c).
is located, provided by the promoter for the use by the allottee for parking any vehicle or as the case may be, for the residence of any domestic servant employed in such apartment.

**Explanation (1)** If a basement, celler, garage, room, shop, or storage space is sold separately from any apartment, it shall be treated as an independent apartment and not as part of any other apartment or of the common areas and facilities;

**Explanation (2)** notwithstanding that provision is made for Sanitary, washing, bathing or other convenience as common to two or more apartments, the apartment shall be deemed to be separate and self contained.

**Reasons for such detailing of the definition of Apartment**

In ordinary parlance apartment would mean a self contained arrangement for the purpose of residence of a person or family. Before the enactment of the apartment ownership laws, an apartment was regarded as an undivided share within a premises, with its transferability and heritability and passed on to a transferee or an heir as such undivided share giving right of co-ownership instead of exclusive ownership. But now the concept has been changed with rapid urbanization and resultant scarcity of land spaces to accommodate ever increasing population with the soaring prices of land. Therefore, optimum utilization of limited land resource has imported the idea of high rise buildings with its multifaceted purpose from the rich countries of the world where the multistoreyed buildings are constructed with technological skill to accommodate multipurpose use viz. residential flats, commercial complexes, restaurants and hotels, conference room, offices, showrooms, godowns, assembly hall, cinema hall, swimming pool etc. with its vertical expansion in preference to horizontal expansion. In India, the idea primarily made its inroad and restricted to
residential use only with incidental mixed use type for both residential and commercial or office use purpose. Of late, large projects for extension of townships have started to implement the three dimensional approach to real estate. Hence the property concept has been changed from absolute ownership to the common and concurrent ownership of immovable property with exclusive right to transfer and make it heritable to legal heirs and any other transferee together with undivided interest in the common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner and with the legal effect that each apartment together with its percentage of undivided interest in the common areas and facilities appurtenant thereto is a separate unit of immovable property within the meaning of the Transfer of Property Act 1882.

**Meaning of the Term 'Flat':**

The term 'flat' is apparently synonymous with 'apartment'.

The West Bengal Building (Regulation of pro-motion of construction and Transfer by promoters) Act, 1993 gives various meaning to the word 'flat' and distinguishes it from an apartment.

It provides that 'flat' means a separate residential unit whether self contained or not, used or intended to be used for any of the purposes referred to in the Calcutta Municipal Corporation Act, 1980 and includes an 'apartment'. The Calcutta Municipal Corporation Act refers to more than one occupancy in different portions of a building i.e. buildings with mixed occupancies.

168. Section 2(e) of the said Act.
169. Sub clauses (a) to (i) of clause (2) of section 390.
According to the definition of 'flat' as in the Maharashtra Ownership Flats Act, 1963 it includes an apartment and it must be separate and self contained. So the definition is distinguished from that of the West Bengal Act in respect that the flat must be a self contained in the Maharashtra Act but as per the definition given by the West Bengal Act it may be or may not be a self contained one.

*Flat* is the basic unit and it includes an apartment:

The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act 1993, though has adopted the definition of apartment as meant and defined in the W.B. Apartment Ownership Act, 1972, it hardly refers to the term 'apartment' in any part of the provisions. The Flat has been considered as basic unit for the purpose of the Act as provided in the provisions contained in Sections 3, 6, 7, 8, 9, 10, 11 and 12 of the said Act. But West Bengal Apartment ownership Act has referred the term 'apartment' in its entire provisions. As the object of the Act as expressed in the long title of the Act is to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property within the meaning of Transfer of Property Act, 1882, the Act shall primarily apply to every building which is used or proposed to be used, mainly for residential purpose.

The West Bengal Apartment Ownership Act bears a qualifying expression taking the seat, that the apartment could be used and owned for residential purpose vis-a-vis the provisions of the West Bengal Premises Tenancy Act 1956. The grounds for letting excepting for residential purpose are distant claims which cannot be imported to the West Bengal Apartment Ownership Act.

The words 'residential purpose' as embodied in the whole of the Act have not been defined under the Statute but the main Stand of Section 2 is applicable
to every building which is used or is proposed to be used for residential purpose which may be a residential unit and includes a flat.

The meaning for residential purpose should be extended to the apartment owners for the legion of precedents that the premises could be used even for commercial, professional and other purposes which will not make the apartment being used for non residential purpose.

A professional man such as a Doctor, Advocate, Legal Practitioner and Businessman may carry on his work from the residential house and the interpretation suggests that he must have a chamber. It is difficult to exclude the unit from the concept of residential purpose170.

As per the definition of ‘Flat’ given in Section 2(a) of the Maharastra Act, of 1963, it is defined as a separate and self contained set of premises used or intended to be used for residence, or office, or show-room, or shop, or godown and such premises forming part of a building. A garage is included in the definition of the term ‘Flat’. The Gujarat Ownership Flats Act, 1973 defines Flat in Section 2(a) as a separate and self contained set of premises forming part of a building and used or intended to be used for residence or office or showroom or shop or godown or garage, and includes an apartment. So it may be inferred that ‘Flat’ includes an apartment in the promoter’s regulatory laws in West Bengal as well as in other States. Therefore, an ‘apartment’ is a subset within the concept of a ‘flat’.

The term ‘apartment’ has been used in the relevant Act to mean as a Separate and independent residential unit so as to assign the Status of property

170. Dr.Goapl Vs S.K. Bharadwaj. AIR 1963 SC 337.
to make it heritable and transferable within the meaning of the Transfer of Property Act and to be part of the building or a multistoreyed construction, inevitable under the changed circumstances. On the other hand, the term 'Flat' has been used in various provision of the relevant Act in order to bring regulation of the construction by promoters.

Though the idea of the multistoreyed building has been imported in India from the richly developed and advanced countries, this new concept has yet to reach its height and dimension as prevailing in those countries. Sky scrapers in those advanced countries comprise multiple uses like residential, commercial, mercantile, assembly, storage, showroom, hotels, conference rooms, offices, chambers, recreational centres and therefore, require management and good administration. In our country unlike that of those rich and advanced countries, the construction of multistoreyed buildings is designed for residential purpose mainly with incidental commercial or official use within the scope of widest possible meaning of residential use which is evident from the use of the term 'apartment'.

Therefore, the use of the term 'flat' in the provisions of the promoters regulatory laws of different States is enabling in nature necessarily to include other uses in the definition of the term flat though at present such uses remain restricted mainly to the residential purpose with ancillary purposes as extended to the commercial or office use not going beyond to this use at present moment. But this is the limitation of the building technology or urban infrastructure which causes purposes to be restricted to such existing use. Hence scope is there within the definition of 'flat' to encompass the varied and multiple use of the 'unit' of such multistoreyed building if the technology or urban infrastructure permits as and when necessary. The promoter's laws then need to be reframed to set the
appropriate qualification and criterion to determine the eligibility of the profession. That is why the term 'flat' has been frequently used in the different provision of the West Bengal as well as other State laws to regulate the activities of construction and promotion of multistoreyed building in the changed circumstances for the cause of safety and security of tenure of ownership.

**Meaning of Building:**

Building is an inclusive term. It comprises a flat or block. It means a building containing four or more apartments or more than one building each containing four or more apartments comprised in the same property.

However, the National Building Code lays down the standard size of rooms, spaces open, spaces inside the building, water supply requirements, design of sanitary installations, drainage design etc. so as to attract the aspect of health and safety. The code also provides for fire safety which is urgent within the multistoreyed building for fire fighting and fire extinguishing, exhaust requirements. The code further provides for the structural safety and foundation design to that effect. Therefore, the term building has been dealt in the National Building Code in a comprehensive way to cover all the aspect of a building in terms of its structural safety and health safety for the owners or occupants.

An exhaustive definition of a building is found in the Development Control Regulations for Greater Bombay, 1991. The Calcutta Municipal Corporation Act, 1980 has also defined building in an exhaustive way and the definitions of buildings of those two Acts find substantial inclusion in the definition of 'flat' as given in the Section 2 of the promoters' law of west Bengal.

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171. As per Section 3(c) of the West Bengal Apartment Ownership Act, 1972.
172. Section 2(11) of the Regulation.
As per the Bombay Act 1991\(^\text{173}\) an 'Unsafe Building' means a building which—
i) is structurally unsafe,
ii) is unsanitary,
iii) is not provided with adequate mean of egress,
iv) constitutes a fire hazard,
v) is dangerous to human life,
vi) in relation to its existing use, constitutes a hazard to safety or health or public welfare by reason of inadequate maintenance, dilapidation or abandonment.

Block: The expression ‘Block’ means a number of flats together\(^\text{174}\).

'Multistoreyed Building' Meaning Thereof:

It means a building constructed on any land containing four or more apartments or two or more buildings in any area designated as a block, pocket or otherwise, each containing two or more apartments with a total of four or more apartments in all such buildings and includes a building containing two or three apartments in respect of which a declaration has been made under the proviso to Section 2\(^\text{175}\).

'Building Site' meaning thereof:

A ‘Building Site’ means a site or place on which a construction can be raised without changing the nature and character of the site. The term has been defined in terms of environmental aspect and ecological consideration. [A building is constructed on a solid surface of the earth. But no construction is possible on a tank as it does not become a land without filling it up i.e. changing its nature and character which means ignoring the ecological value of the site].

\(^\text{173}\) Section 2(11) (O).
\(^\text{174}\) The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, Section 2(b).
\(^\text{175}\) Section 3(S), Delhi Apartment Ownership Act 1986.
The legislative intention in this regard is clear that tank or pond is not a vacant land. If the legislature had intended to include tank as vacant land which is defined in Section 2(q) of the urban land (Ceiling and Regulation) Act, 1976, it would have surely prescribed one uniform rate for both solid land and for tank, the later being undoubtedly of lesser value than solid land.

The Section 2(q) of the urban land (Ceiling and Regulation) Act prohibits absolutely against construction of building in any tank and water area. A building under the Calcutta Municipal Corporation Act is permissible to be constructed on solid land which is vacant and not put to any use. Section 11(3)(b) of the Urban Land (Ceiling and Regulation) Act, 1976 says that tank is not included within the definition of vacant land and cannot be treated as vacant as per Section 2(q) of the Act. The judicial observation in this regard is that a tank without being filled up cannot be held to be a building site in as much as no construction work on a tank is possible without filling it up. Once filled up, a tank loses its character and becomes solid land\textsuperscript{176}.

Section 17A of the West Bengal Inland Fisheries Act 1984 seeks to promote pisiculture, checking of destruction of fisheries and prevents of environmental degradation and has totally banned for ever the filling up of the tank in dispute used for rearing fish by the petitioner\textsuperscript{177}.

\textbf{Suggestion:}

The definition of building site, therefore, is necessary to be included within the definition clause of the promoter's law in West Bengal as well as in

\textsuperscript{176} Induprova Mitra Vs State of West Bengal, 97 CWN 515.
\textsuperscript{177} Malina Rani Saha Vs State of West Bengal, 100 CWN 502 (DB).
other State laws so as to make clear the provisions to bring the regulation of construction works or activities at the cost of ecological consideration.

**Eligibility of a Promoter:** The Act prescribes for registration of a promoter to get permission for construction of building and provides that the name of a promoter shall not be registered if

- a) he is of unsound mind and stands so declared by a competent authority.
  
- b) he is an undischarged; or

- c) he being a discharged insolvent, has not obtained from the court having jurisdiction a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

- d) he has been convicted of an offence of criminal breach of trust; or

- e) he is otherwise incompetent to make any contract under any law for the time being in force; or

- f) the certificate of registration granted to him previously for construction of any building was cancelled under Section 4 of this Act.

Therefore, any person who is not afflicted by any of the nominal disqualifications mentioned above is entitled to be registered as a promoter.

**Comment:**

This is the drawbacks of the existing provision that the promoters regulatory Act has omitted to prescribe a requisite set of qualification for eligibility to be a competent 'promoter'. National Building Code has exhaustively dealt with all the aspects of a building for its structural as well as health safety.

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178. The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, Section 3(4).
Moreover the definition of the term 'flat' is an enabling expression so as to encompass within its ambit, all the sophistication and technological innovations. The multistoreyed buildings in our country are yet to reach the height and dimension like that of the developed countries. But urban infrastructure and building technology if permits or supports the construction of skyscrapers to that height and dimension, then the promoters regulatory laws are to be refilled with appropriate provisions and qualifications as the criteria for eligibility to the promoter. The present practice is different in approach as compared to that of the rich countries that the professional attitude of the promoters are lacking in the regulatory provisions of the promoters law, which are based merely on some nominal disqualification. Taking this omission as an advantage the unscrupulous and uneducated, unskilled contractors have taken entry into this field of promotional activities of building along with the well qualified architects and firms of repute. This is the scenario particularly in the private fields. As a result the term 'promoter' may entertain the inexpert hands in this growing industrial sector. This drawback is all over India. While an Estate Agent has to possess some requisite qualifications under the laws of some foreign countries including Malaysia, it is absent in our country. As a result some uneducated, non-technical man have mushroomed in this field with political patronage or local muscle power. Real Estate Development has now become a boom in the market and promotership a recognized industry. Therefore more stringent control regarding registration of the promoters need to be emphasized and incorporated by way of reframing of the existing law.

Categories of Promoters:

In terms of the definition as given in the Act, the following are the categories of promoter being a person or juristic person who
constructs or causes to be constructed a building for the ultimate purpose of transfer\textsuperscript{179}:

a) a person who constructs on his own land for the purpose of transfer,

b) a person holds a land in lease and in terms of the lease, authorized to construct building for the purpose of the transfer,

c) a person acquiring land under an agreement for sale which is not terminable,

d) a person acting on the basis of a power of attorney given by the owner of land or authorized leasee,

e) a person stepping into the shoes of a promoter on the strength of a valid assignment,

f) a person who actually executes the transfers of the building or flats upon such construction by sale, gift or otherwise

\textbf{Registration and Permission for Construction:}

The Act mandates that every promoter who constructs or intends to construct a building shall, at least ninety (90) days before the commencement of the construction accompanying a Statement containing the requisite particulars to the authorized officer who will grant a certificate of registration to be valid for ten years only\textsuperscript{180}.

Every promoter shall make a separate application for the construction of building on separate plot of land or for the construction of separate building\textsuperscript{181}.

\textsuperscript{180} The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, Section 3(1).

\textsuperscript{181} Ibid, Section 3(3).
If the promoter furnishes any false or incorrect Statement as required under subsection 2 of Section 3 of the Act, or violates any rules or established principles regulating the construction or, subject to any disqualification, uses sub-standard materials, the authorized officer may after giving him an opportunity of being heard, cancel the certificate of registration.

Every application to be accompanied by a Statement containing following particular and documentary evidences where necessary.

a) detailed description of land with site plan;

b) the nature of the title to the land (copy of title deed to be annexed);

c) details of the agreement between the owner of the land and the promoter authorizing the latter to undertake the construction of building (copy of agreement to be annexed);

d) the nature of encumbrances on the land, including the right, title, interest or claim of any other person in or over such land;

e) the total covered floor area, the number of flats proposed to be constructed, the approximate size of each flat and the facilities including common facilities likely to be made available to the purchasers by the promoter;

f) sanctioned plan of the construction of building under any law for time being in force or, where the plan is not sanctioned at the time of making the application under sub-section (1), an undertaking by the applicant to the effect that the plan will be submitted by him as soon as it is sanctioned; provided that the name of the applicant shall not be registered and the applicant shall be granted permission to construct the building under Sub section(5) until the sanctioned plan is submitted.

182. Section 4(2) of the Act.
g) detailed specifications of the construction of building as approved by any competent authority under any law for the time being in force;

h) the estimated expenditure for the construction of building and the source from which the expenditure shall be financed;

i) details of financial agreement made with any bank or other financial institution, and of legal safeguards taken, if any, for the construction of building, or the transfer of building by sale, gift or otherwise;

j) details of advance payment or deposit to be taken by the promoter from the purchaser;

Provided that no advance payment or deposit shall be taken by any promoter before his name is registered under sub-section (5).

k) the period within which or the date on which the possession of flats is proposed to be made over to the purchasers;

l) copies of agreement entered into or proposed to be entered into with the purchasers;

m) the name of architect or engineer or any other person authorized to submit plan under any law for the time being in force, or the name of firm or company competent to submit plan, who has prepared the plan and the estimates of the proposed construction of building together with address;

n) the name and address of the contractor or contractors proposed to be engaged for the construction of building;

Provided that if and when there is any change of contractor proposed to be engaged or actually engaged before or after the commencement of the construction of any building, as the case may be, the promoter shall
forthwith inform the authorized officer of the name and address of such contractor;

o) such other particulars as may be prescribed.

**Object behind the Section 3 of the Act:**

It has been enacted with the purpose to bring regulatory measure to this construction activity by the promoters and to secure the safety of such activities and to protect the interest of the occupiers or owners of this flats constructed or to be constructed by the promoters.

*Therefore, the section provides the following steps to be followed –*

a) Compulsory registration of the name of a person who wants to construct a building as a promoter within the meaning of this Act,

b) Compulsory permission to be obtained to construct a building after such registration.

c) An authorized officer as appointed by the State Government is vested with powers and responsibilities necessary to carry out the aforesaid regulatory measures.

d) In case of any building under construction on the date immediately before the date of coming into force of this Act, by any promoter, this Section provides for investigation of any complaint from any purchaser with regard to unlawful or defective construction or use of substandard materials by the authorized officer who shall have access to the site of such building at anytime of the day without prior intimation to the promoter. In case of finding any defects such officer shall require the promoter to rectify such
defects and failing to rectify such defect such building may be declared as
unsafe or dangerous for human habitation.

**Compulsory Registration of a Promoter’s name and its legal necessity:**

Compulsory registration of the names of promoters or estate agents before
an authorized officer who shall register their name is a unique feature of the
West Bengal law which no other State except Punjab has maintained. The Punjab
Apartment and Property Regulation Act, 1995 is a comprehensive Act in this
regard. Section 21 of this Act provides for registration of a promoter and estate
agent and condition for registration in Section 22 thereof.

Due to acute housing shortage in India, especially for the poor and low
income groups, ‘Housing for all’ has been a slogan and declared as a priority
zone in the National Housing and Habitual Policy of 1998. The Policy
emphasized the construction of large scale housing settlements for the poor and
under privileged section of the Society. Housing is a subject of State List (List-II)
of the Seventh Schedule of the constitution of India. Moreover it is now pressed
as a claim of fundamental right to shelter as an emanating right under the
concept of right to life, dignified living and wholesomeness of the environment
under Article 21 of the constitution by way of interpreting several provision of
the constitution latent in Chapter III and IV of the constitution and several
International Treaties and conventions. But the lacking in this area is dearth of
the resources of the State Governments to be mobilized for the investment
purpose in housing, keeping pace with the actual requirements. Public sectors
sponsored by the Central Government could not provide the sector to the fullest
extent and therefore, Public private partnership in this field were opted to fulfill
the requirement but that could solve only a little of the problem. Therefore,
private builders on their own initiation came into this picture. The concept of
ownership of building on the basis of concurrent but exclusive ownership of apartment together with sharing of common facilities came into being with private initiative and investment. This is how the promoters came into play a significant role. Meanwhile growth of building activities to compensate the acute housing shortage continued unabated in spite of having so many legal complicacies and threat to the safety of the purchasers and to the environmental equation without any proper check by the Administrative Agencies. This results in boom in the promoters' enterprise and with that deterioration of the quality of the business for intrusion of unscrupulous elements with political patronage which added another dimension to the digression. Therefore, registration of promoter under a suitable legislation became inevitable to regulate the construction activity in a massive scale.

**Registration of Promoters and its legal effect:**

The provision of compulsory registration of a promoter before the authorized officer appointed by the State Government is the unique feature of the W.B. Act and this one is different from the registration of deed or other document under the Registration Act, 1908 because the registration of a promoter under provisions of this Section is a regulatory measure to empower the administrative authority to exercise effective supervision and control over the enterprise of the promoters.

**Stopping construction or demolition of unauthorized building**

The Act says that …

1) The authorized officer, if he is satisfied that a building is being constructed in violation of any provision of this Act, may direct the concerned local

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183. Section 3A of the Act, as has been inserted by Section 4 of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Amendment Act, 2002.
body or the District Magistrate or the Commissioner of Police or the Chief Engineer, Housing Directorate or any other authority as may be prescribed without prejudice to any other law for the time being in force, to stop construction of such building or to demolish such building after giving the promoter a notice and an opportunity of being heard in the manner as may be prescribed.

2) The cost of demolition of such building shall be realized from the concerned promoter under the provisions of the Bengal Public Demands Recovery Act, 1913.

Comments:

This amended section has strengthened the hands of the authorized officer to exercise his power on a firmed basis and more stringently in case of constructing a defective or hazardous building and to stop the violation before it is carried into effect. The authorized officer may pass an order, subject to giving an opportunity to the promoter of being heard, either for stoppage of construction or for demolition of what has been constructed. The authorized officer is only empowered to pass an order; he does not execute his order. The execution of such order is exercised by a separate agency i.e. the local body, the District Magistrate, The Commissioner of Police (in case of Kolkata), or the Chief Engineer, Housing Directorate or any other authority.

The Certificate of Registration and Permission to Construct-Twin Controlling Measure:

The Act, 1993 has brought twin provision, first, providing certificate of registration to a promoter under Section 3 which shall remain valid for a period
of ten years from the date of issue of such certificate\textsuperscript{184} and Secondly, The permission for the construction of a building granted to a promoter under Section 3, shall remain valid for a period of five years from the date of grant of such permission provided further that subject to the extension of such period, on an application by a promoter, the total period of such extension not exceeding two years and provided further that the State Government may extend such extended period of seven years by further period as it think fit, on an application by a promoter, if the promoter cannot complete the said construction within the total period of seven years for the circumstances beyond his control. [Section 4A of the Act 1993]\textsuperscript{185}.

Therefore, in the second stage of the controlling measures i.e. in the step of permission to construction of a building the total period of validity is seven years with the extension of an original period of five years at the discretionary power of the authorized officer. It doesn’t end here. In case of extension of the validity period beyond seven years, the final authority of authorized officer get lost and the State Government then becomes the ultimate authority to give such permission if satisfied with the reasons stated by the promoter and get convinced.

\textbf{Appeal by an Aggrieved Promoter, to an Appellate Authority:}

Any promoter who is aggrieved by an order of the authorized officer under Subsection (5) of Section 3 i.e. [when the authorized officer refuses, by an order,

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{184} Section 4 of the said Act, as substituted by Section 5(a) of the West Bengal Building (regulation of promotion of construction and transfer by promoters) Amendment Act, 2002. The provisions before such substitution maintained the validity period for three years from the date of such certificate or grant of permission, as the case may be.
\item \textsuperscript{185} Section 4 A of the said Act, inserted by Section 6 of the Amendment Act, 2002.
\end{enumerate}
\end{footnotesize}
to register the name of the applicant promoter and to grant him permission to
construct the building for reasons recorded in writing which is not satisfactory to
the applicant promoter or order was passed without giving him a reasonable
opportunity of being heard] or,

Subsection (2) of Section 4 i.e. on any of the grounds of disqualification
stated therein,

May prefer an appeal to such authority known as Appellate authority as
may be prescribed by the State Government, within thirty days from the date of
the service of the order.

Here Appellate Authority means an authority, an officer superior in rank
to the authorized officer as may be appointed by the State Government under
Subsection (1) of Section 5 of the Act and as per the provisions of rule 6 of the
Rules framed by the Government.

**Certain grey areas in this regard which need the attention of the Legislature:**

As the primary object of this legislation is to provide certain safeguards to
the intending purchasers against fraud by the promoters and their lobby and to
regulate the constructional activities by unscrupulous promoters, the Act has
brought certain welcome measures to that end. Still there are some hurdles
which a law abiding promoter face, caused by socio-economic and political
factors. Those are generally noticeable in and around this newly grown up
industrial sector due to having bureaucratic-politicio nexus. And where those
promoters have no way to get the remedy by way of appeal to the Appellate
Authority or otherwise the secondary way is only to get through unfair means.
Following are the Fact finding to mean that:

i) Sometime delaying or postponing of the sanction of approval from the planning and development authorities take time unnecessarily which prompted the lobbing with the agencies to get early approval.

ii) Sometimes promoters are faced to give answer to so many unnecessary quarries by the local bodies prior to sanctioning the plan, to pressurize them get lobbied.

iii) The central Govt. has repealed The Urban Land ceiling Act but some states including the State of West Bengal has maintained the same for which no promoter can hold vacant land in excess of the prescribed limit which obstructs development planning is a big way.

iv) Infrastructure like, road, sewerage, water supply is not available without lobbying.

v) Promoters do not get protection against local anti social elements or clubs who demand contribution from the promoter otherwise threaten them with dire consequences.

vi) The promoter can not get cooperation from Police Station unless influenced by political patronage.

vii) There is pressure from local youths for labour contracts or supply contracts which often stand in the way of maintaining quality of construction.

viii) FAR/FSI is not properly understood which creates problem.

The grounds for appeal do not leave any scope to bring all the above grievances of the promoter for consideration under the provision of appeal.
Other Controlling Measures to Promoters' Activities in the field of Construction (Sections 7, 8, 12 of the Act, 1993):

Section 7 of the Act, 1993: Notwithstanding anything contained elsewhere in the Act or in any other law for the time being in force, a promoter shall, before he takes any advance payment or deposit, [as may be prescribed] enters into a written agreement for sale with each person who intends to purchase such flat, and such agreement shall contain such particulars and shall be accompanied by such documents or copies thereof, as may be prescribed.

Therefore, under the letters of Section 7, the promoter is enabled to take advance payment or deposit for the project and the Amendment Act 2002 has withdrawn the Statutory Ceiling on the amount of such advance payment or deposit which was previously not more than forty percent of the sale price of the proposed flat. The law has waived the requirement of registration under the Registration Act, 1908 as it was in effect in the previous Act. Instead, the present law i.e. Amendment Act 2002, has introduced certain safeguards in favour of the intending flat purchasers. Now the promoter must enter into a written agreement for sale with the intending flat purchaser before taking any advance or deposit and such agreement shall incorporate the particulars and document as may be required. And further that prior to enter into such agreement the promoter must possess the permission to construct he building as required under Section 3(S) of the Act.

186. The Expression "which shall not be more than forty percent of the scale of a flat" has been omitted by Section 7(a) of the W.B. Building(Regulation of Promotion of Construction and Transfer by Promoters) (Amendment) Act, 2002.

187. The Word "And the agreement shall be registered under the registration Act, 1908" omitted by Section 7(b) Ibid.

188. The proviso "Provided that no such agreement shall be registered before the promoter is granted permission to construct building under Subsection(5) of Section 3 omitted by Section 7(c) Ibid.
Interpretation of the Words ‘Advance Payment or Deposit’:

The use of the words ‘advance payment or deposit’ in the Section 7 of the Act might have some ambiguity in the sense of its legal effect that it may raise doubt in the mind whether the promoter, once after taking such advance or deposit, if diverts, such fund for any other purpose at the cost of the building or flat for which the intending purchase has made such advance or deposit shall be made accountable to the purchaser or not. In a normal sense ‘advance payment’ means payments towards sale price or cost of construction of the flat and which is adjusted towards total price or cost of the flat. But the word ‘deposits’ may be interpreted otherwise. In some cases, the promoter may utilize such deposit for his own business purpose and fails to give his account for the same.

Therefore, the provision of the law should be more clear to that effect and there should have clear provision that the promoter is under obligation by Statutory force to make a full and true discloser of all transactions in regard to that account.

The Promoters Law in West Bengal has no such provision to safeguard the interest of the flat purchaser in this regard unlike the corresponding provisions in the laws of other States. Other State Laws require the promoter to maintain Separate account of sums taken by him as advance or deposit from the purchaser of flat.

For Example: The Maharashtra Ownership Flats Act 1963 Provides that a Promoter is required to maintain separate account of sums taken as advance or deposit and to be trustee for that and disburse them for purposes for which given.\textsuperscript{189}

\textsuperscript{189} The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, Section 5.
The Section also requires that the promoter is duty bound to make full and true discloser of all transactions in respect of that account on a demand being made in writing by an officer appointed by general or special order by the State Government for the purpose.

The Punjab Apartment and Property Regulation Act 1995 lays down that a promoter shall maintain a separate account in any Scheduled bank of sum taken by him from persons intending to take or who have taken apartments or plots, as advance towards sale price or for any other purpose, or, deposit including any sum so taken towards the Share capital for the formation of a cooperative Society or a Company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, charges for water or electricity, revenue assessment, interest on mortgages or other encumbrances, if any, stamp duty and registration fee for the agreement of sale and the conveyance); and the promoter shall hold the money for the purposes for which they were given and shall disburse the moneys for those purposes including for the construction of apartments and, in the case of colonies, for meeting the cost of development works and shall on demand, in writing, by the competent authority make full and true discloser of all transactions in respect of that account and shall not utilize for any other purpose the amounts so collected for a particular purpose.

Therefore, both the Maharastra and Punjab State laws have the regulatory provision unlike that of West Bengal to protect the money of the purchaser of flat against any divert for any other purpose and the promoter is trustee for the amount taken as advance payment or deposit, whatever may be from the purchaser, and the West Bengal Building (Regulation of promotion and transfer by promoters) Act, 1993 is silent to this effect.

190. The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, Section 9.
Section 8 of the Act, 1993:

The Section has been incorporated in the said Act with an object to eliminate the malpractices amongst the promoter. Sometimes the promoters commit alteration in the structure of the flat reserve to themselves the right to build additional floors as and when permitted by the local authorities to do so even after recovering their capital and profits from the construction; sometimes they uses substandard materials in construction or leaves defects not apparently visible or deviates from specifications. Therefore, this section is a protection to the interest of the intending purchasers or flat owners with adequate remedies.

The Act prohibits the promoter to make any alteration in the structure of the flat except with the previous consent of the flat purchaser. This subsection also prevents the promoter for making any unauthorized alteration in the flat to the detriment of flat owners191.

The Act casts obligation upon the promoter to construct and complete the building in accordance with the plans and specifications. In case any such malpractices mentioned above come to the notice of any flat owners within one year from the date of handing over possession, the promoter must rectify that and in failure to do so he must pay reasonable compensation to the flat owners192.

It provides a machinery to award compensation to the flat owners for the aforesaid disputes. In case the promoter fails to rectify such defects or is incapable of being rectified, the matter shall be referred to the Chief Engineer in

191. The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, Section 8(1).
192. Ibid, Section 8(2).
193. Ibid, Section 8(3).
the Housing Directorate under the Housing Department of the State Government or to such other officer, of the State Govt. not below the rank of Executive engineer, as the State Govt. may appoint, or to the concerned local body or to any other experts as may be prescribed for an enquiry. The concern authority shall, after necessary investigation into the matter, submit a report to the authorized officer, within a period of six months. And then on the basis of such report, the authorized officer shall dispose of such dispute within three months thereafter.

The Act empowers the enquiring authorities with the right of access to the building for the purpose of investigation and inspection of the work of construction or substandard material used for such construction on the complaint from any purchaser of such flat, at any time of the day without prior intimation to him (promoter).

The word 'Consent' in the context of this section does not mean implied consent which is construed by conducts of the parties or from the circumstances. It means, 'positive consent' to specific items of work or alteration carried out by the promoter which must be obtained by affirmative acceptance from the purchaser of flat.

Insurance Against Loss or Death (Section 12, of the Act, 1993):

This is a welcome measure under the Act that this Section specifically makes the promoter(s) liable for any loss or death caused by his negligence and therefore, cast a duty on the promoters to insure the coverage of the liability in respect of any loss or death caused by any defect in land or building as a result of shortcomings in soil testing or land filling or due to structural deficiency or substandard materials used in the construction of such building.

194. Section 8(5), of the said Act.
The liability of the promoter continues till five years of the receipt of the completion certificate of the building from the authority who sanctioned the building plan. Prior to this Amendment Act of 2002 the period for the coverage of risk was counted from the date of making over of possession of the last saleable flat. The promoter shall obtain the insurance policy and a copy of such insurance policy has to be furnished within one month after completion of construction as laid down in item No.3 of Form-E read with Rule 13 of the W.B. Building (Regulation of Promotion of Construction and Transfer by Promoters) Rules, 1995. And the promoter shall keep the authorized officer informed of payment of premium from time to time against such insurance policy or policies. This is a unique feature in the promoter's law in West Bengal.

The insurance policy shall cover the risks extending not less than ninety percent of the value or estimated value of building. The liability of the insurance company shall extend up to the value of life and property lost or bodily injuries suffered but shall not exceed the insured sum. For death or bodily injuries, compensation is payable in accordance with the norms provided in the Motor Vehicles Act 1988. The death or injuries to an outsider is also included in the risk covered because the collapse of a building may cause harm to passerby or invited guest as well.

For determining the value of life and property lost or bodily injuries suffered, a Tribunal headed by a judicial officer assisted by assessors, not less than two in number, may be constituted by the State Govt.

195. Introduced by Clause (a) of Section 12 of the W.B. Building (Regulation of Promotion of Construction and Transfer by Promoters) Amendment Act, 2002.

196. Section 12(1) of the said Act.
A new provision has been inserted by the Amendment Act, 2002\textsuperscript{197} which provides that in case of death of the promoter or winding up of the promoting company or business or when the promoter(s) is/are not available, the society or the association of the apartment owners would step in for recovery of claim on behalf of the insured promoter with the permission of the authorized officer, for recovery of claim in case of any death or loss caused by any defect in land or building.

**Comment:**

The present section has specifically provided for insurance against loss or death caused by promoter’s negligence, willful or otherwise, resulting in the defects in land or building which may result from the shortcomings in soil testing or land filling or due to structural deficiency or substandard materials used. The liability of the promoter continues till five years of the receipt of the completion certificate of the building. A copy of the insurance policy has to be furnished within one month after completion of construction as laid down in item No.3 of Form–E read with Rule 13 of the Rules\textsuperscript{198}.

This is unique feature in the promoter’s law in West Bengal. No other States has any provision in the promoter’s law to this effect. But the liability of the insurance company is limited to the value of life or property lost or bodily injuries suffered. Point is to be noted that It is not the building for which insurance is mandatory. The compensation in case of loss or death or bodily injuries is payable in accordance with the norms provided in the Motor Vehicles Act 1988. It is clear from the Explanation I attached to the Section that the injuries

\textsuperscript{197} Subsection (6) of Section 12.

\textsuperscript{198} W.B. Building (Regulation of promotion of Construction and Transfer by promoters) Rules, 1995.
or death to/of an outsider is also included in the risk covered by this Section as there is the possibility of causing harm to the outsider or frequenter of such building due to its collapse.

Bar on Jurisdiction of Court\textsuperscript{199}

1) No Civil Court shall have any jurisdiction to entertain or decide any question relating to matters arising under any provision of this Act or the rules made thereunder.

2) Every order passed by the authorized officer which is subject to appeal or revision, every order passed by the authority referred to in subsection (1) of Section 5, and every order passed by the officer referred to in Section 6, which is subject to revision, shall be final and shall not be questioned in any court of law.

The jurisdiction of the Civil Court to take the cognizance of such matter is barred by the Act. An order passed by Tribunal to assess loss for property and life or bodily injuries insured for under Section 12 is also barred to interventions by Civil Court under Subsection (1) of Section 12A being a matter arising under provision of this Act. The ouster of jurisdiction of Civil Court does not, however, prevent intervention under a writ petition on appropriate grounds. The jurisdiction of the High Court under the provision of Article 226 or Article 227 of the constitution cannot be taken away by any statute. The power of the Supreme Court also cannot be limited or conditioned by any statutory provision.

The nature of the controversy, exclusiveness of the Tribunal or body, constituted under the Act, Bar of the Jurisdiction of the Civil Court, the finality of

\textsuperscript{199} Section 12 A of the said Act.
the adjudication—all these mean to say that the legislature intended to provide a more speedier and a cheaper remedy and the jurisdiction of the Civil Court in such matters must be held to be barred by necessary implication.

But the Supreme Court had laid down certain principles relating to the jurisdiction of Civil Court under special circumstances wherein it is stated interalia that where the statutes gives a finality to the orders of the Special Tribunal, the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure; challenge to the provisions of the particular Act as ultra vires cannot be brought before the Tribunal constituted under the Act. Where a provision is already declared unconstitutional a suit is open. Therefore, an exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions hereinabove mentioned apply²⁰⁰.

Criminal Liability of a Promoter:

Offences²⁰¹

(1) Any offence committed by a promoter by violation of Subsection (1) of Section 3, Section 7, Subsection (1) and (2) of Section 8, Section 9, and Section 11, of this Act shall be cognizable and non-bailable offence.

(2) Any offence committed by a promoter by violation of the provision under Section 10, and Section 12, of this Act shall be non-cognizable and bailable offence.

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200. Dhulabhai Vs State of M.P. AIR 1969 SC 78
Penalties

(1) Any promoter who fails to comply with the provisions under Subsection (1) of Section 3 of this Act or the rules made thereunder, shall, on conviction, be punished with imprisonment of either description for a term not being less than six months which may extend to five years or with fine which may extend to fifty thousand rupees or with both:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding fifty thousand rupees.

(2) Any promoter who fails to comply with, or contravenes, the provisions of Section 7, Subsections (1) and (2) of Section 8, Section 9 or Section 11 of this Act or the rules made thereunder, shall on conviction be punished with imprisonment of either description for a term, not being less than three months which may extend to four years or with fine which may extend to twenty five thousand rupees or with both:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding twenty five thousand rupees.

(3) Any promoter who fails to comply with or contravenes the provisions of Section 10, or Section 12 of this Act or the rules made thereunder, shall, on conviction, be punished with imprisonment of either description for a term, not being less than three months, which may extend to three years or with fine which may extend to ten thousand rupees or with both.

(4) Any person who violates the provisions of any other Section of this Act shall on conviction, be punished with imprisonment of either description

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for a term, not being less than one month, which may extend to two years, or
with fine which may extend to five thousand rupees or with both.

It is to be noted that this Act does not exhaust all kinds of offences with
which a promoter may be charged for default. Therefore, other probable charges
under the Indian Penal Code are mentioned herein below:

v) Criminal Liability of a promoter under the India Penal Code:

In the sphere of constructional activities often the promoters are required
to pull down the old or dilapidated building for the purpose of new construction
of multistoreyed building or flat. So under such circumstances the promoter is
required to take precaution and guard against any probable danger to human life
from the fall of that building or any part thereof. Therefore, in such a case the
promoter if proved to be negligent may be held criminally liable as per the
provision of Indian Penal Code as stated below:

Section 288, I.P.C.:

Whoever, in pulling down or re-pairing any building, knowingly or
negligently omits to take such order with that building as is sufficiently to guard
against any probable danger to human life from the fall of that building, or any
part thereof, shall be punished with imprisonment of either description for a
term which may extend to six months, or with fine which may extend to one
thousand rupees, or with both.

Ingredients of this Section:

To convict a person under this section the following conditions must be
proved -
1) The accused was pulling down or repairing a building;
2) The accused knowingly or negligently omitted to take such precaution; and
3) To guard against any probable danger to human life.
4) And such negligent act or omission caused danger to any person.

Section 405, Criminal Breach of Trust:

In case of commission of an offence of criminal breach of trust in respect of any sum as advance payment or deposit, he may be punished accordingly. The West Bengal Building (Regulation of Promotion of Construction and Transfer by promoters) Amendment Act, 2002, has specifically mentioned in new Section 13B that a promoter who commits a criminal Breach of Trust in respect of any sum of money as advance payment or deposit referred to in Section 7, shall on conviction, be punished with imprisonment for term, not being less than three months which may extend to four years or with fine which may extend to twenty five thousand rupees or with both and provided further that the court may for reasons to be recorded in the judgment, impose a fine exceeding twenty five thousand rupees.

A charge under Sections 418 and 420 of Indian Penal Code for cheating is very often added to the charges against the promoter by purchaser of flat or apartment.

Cheating at common law was a misdemeanour and punishable with imprisonment and fine. Hawkins defines cheating as, deceitful practices, in defrauding or endeavouring to defraud another of his own right by means of some artful device, contrary to the plain rule of common honesty.
Section 418, Cheating with Knowledge that wrongful loss may ensue to person whose interest offender is bound to protect whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by a legal contract, to protect shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or both.

Section 420, Cheating Involving Delivery of Property Following are the ingredients to establish the offence under this Section.

Ingredients-

1. That the representation made by the accused was false;
2. That the accused knew that the representation was false at the very time when he made it;
3. That the accused made the false representation with the dishonest intention of deceiving the person to whom it was made; and
4. That the accused thereby induced that person to deliver any property or to do or omit to do something which he would otherwise not have done or omitted.

Therefore, the basic ingredient of the offence under Section 420, I.P.C. would be cheating with the intention to cheat from the very inception. In other words, his intention was dishonest at the time of making the promise and such dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise.

vi) National building Code of India

National Building Code was first published in 1970 at the instance of Planning Commission and then revised in 1983. Thereafter three major
amendments were issued; two in 1987 and the third in 1997. It is a national instrument providing guidelines for regulating building construction activities across the country, a model code for adoption by agencies, i.e. P.W.D., other government Constructional Departments, local bodies, private constructional Agencies. The Code contain Administrative regulations, development control rules, and general building requirements, fire safety requirements, stipulation regarding materials, structural design and construction (including safety) and building and plumbing services. The existing National Building Code 2005 includes the changes especially in regard to further enhancing our response to meet the challenges posed by natural calamity and reflecting the state of the art and contemporary applicable international practices.

Salient features of the N.B.C. 2005:

Following are the salient features of the Code 2005:

1) Inclusion of a complete philosophy and direction for successfully accomplishing the building projects, through integrated multidisciplinary approach right through conceptual stage to planning, designing construction, operation and maintenance stages.

2) A series of reform in building permit system/ process.

3) Provisions to ensure and certification of safety of buildings against natural disaster by engineer and structural engineer.

4) Provisions for two stage permit for high rise and special building.

5) Provisions for periodic renewal certificate of occupied building from structural, fire and electric safety point of view.

6) Provision for empowering engineer and architects for sanctioning plan of residential building upto 500m².
7) Inclusion of detail town planning norms for various amenities such as educational facilities, medical facilities, distribution services, police, civil defense and home guards and fire services.

8) Revision of parking requirements for metro and mega cities.

9) Updation of special requirements for low income housing, rural habitat planning.

10) Inclusion of special requirements for low income housing rural habitat planning.

11) Revision of the provisions for building and facilities for physically challenged.

12) Fire safety norms completely revamped through detailed provisions on fire prevention, life safety and fire protection.

13) Inclusion of new categories of Starred hotels, heritage structure and archaeological monuments for fire safety provision.

14) Substitution of halon based fire/extinguishers for fire fighting system.

15) Promotion to new/innovative building materials/technologies.

16) Inclusion of latest provisions for earthquake resistant design and construction.

17) Inclusion of details on multi disaster prone districts.

18) Inclusion of new chapter on design and construction using bamboo.

19) Chapter on prefabricated and composite construction for speedier construction.

20) Updation of provision of safety in construction.
21) Complete revision of provision on building and plumbing services in line with applicable international practices.

22) Provision on rain water harvesting.

23) Inclusion of new chapter to cover landscaping needs.

vii) **Real estate and consumer protection act**

Real Estate came under the preview of the consumer protection Act in 1993 after an amendment to the definition of service in section 2(1) 0 of the Act to include the term *'housing construction'* . But there are still several lacunae relating to consumer protection. Under the provision of this Act housing is considered as *'Service not goods'* . If housing is treated as goods, then replacement or liquidated damages can be claimed if it is defective, unlike in the case of breach of service provision, which require only payment of a penalty. Further pricing is covered by the Act under the *'unfair trade practice'* as applicable to goods. By defining housing as a *'service'* unfair practices relating to pricing of housing are not covered. However, merely defining housing as *'goods'* will not solve all the problems. Thus, even if housing were to be included, as a good, the very definition of *'goods'* adopted in the Act may need to be reviewed to give adequate protection to a purchaser of housing.

*In Lucknow Development Authority, Vs M.K. Gupta*203 the question arises for consideration in these appeals, directed against orders passed by the National Commission, New Delhi is if the statutory authorities such as Lucknow Development Authority or D.D.A. (Delhi Development Authority) to carry on

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planned Development of the cities in the state are amenable to Consumer Protection Act, 1986 for any act or omission relating to housing activity such as defective or faulty construction etc. Another aspect of this issue is if the housing activity carried on by the statutory authority or private builder or contractor comes within the purview of the Act.

The judgment delivered that the housing construction or building activity carried on by a private or statutory body was service within the meaning of clause (0) of S.2 of the consumer protection Act as it stood prior to inclusion of the expression 'housing construction' in the definition of 'service'. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Deficiency in rendering of service of particular standard, quality or grade is defined in Sub clause (ii) of clause (r) of S.2 as 'unfair trade practice'. If a builder of a house uses substandard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the Act. When a contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to. The judiciary adopted a constructive approach as to the construction of the provisions of the Act in favour of the consumer to achieve the purpose of enactment as it is social benefit oriented legislation.

It was held that the entire objective of the Act is to protect a consumer against malpractices in business. The Act requires that provider of service to be more objective and caretaking. Truly speaking the object of the Act is to render service to the society and therefore, public accountability is necessary for healthy growth of society. A person who applies for allotment of a building site or for a
flat constructed by the developmental authority or a contractor is a potential user and nature of transaction is covered in the expression “Service of any description”. Since housing activity is a service it was covered in the clause as it stood before 1993.

Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharge public duty. It has to act to sub serve general welfare and common good. In discharging the duty honestly and bonafide loss may accrue to any person. In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. Even in ordinary matter a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system.

5.6 National Policies on Housing and Urban Development

In the 21st Century the affordability of housing even of one room tenement would become costly affair. The explosion of population in urban areas will bring more challenging problems and aggravate the existing ones. The urban governance will have to face a serious threat and the situation as a whole will be unmanageable provided timely action is not taken at all level. With rapid urbanization and unplanned growth of human settlements including growth of slum areas an acute public utility services breakdown can be predicted in the urban Indian Scenario of the new millennium. Therefore, in keeping view the haphazard growth of urbanization and lack of growth in small and medium town developments, there is a need for evolving a national urbanization policy
for ensuring a congenial living environment in the comprehensive urban settlements. Need for the policy emerges from the growing requirements of shelter and related infrastructure.

Prior to 1962, there was no comprehensive experience available in the country. Since the Third Five Year Plan recognition was given to the fact that urbanization was an important aspect of the process of economic and social development closely connected with many problems including civic administration and the planning of land use. Preparation of master plans for all the major cities and their surrounding areas was emphasized but implementation of master plan was marginal due to lack of appropriate legal tools, administrative machinery and financial budgeting. From the State’s earliest intervention in housing, the focus was on the urban population in spite of the fact that more than three quarters of the total population lived in rural areas.

Government’s emphasis on supporting housing in urban areas was once again reflected in the Fourth Five Years Plan. However, the low income groups could not financially participate in the public or private housing market. In the Seventh Five Years Plan, the Government of India for the first time realized the specific contribution made by the public housing and advocated that the household sector should be left to the private sector and the government saw its role that of the initiator rather than a builder of houses. This sentiment was expressed in the National Housing Policy, 1988. The Eighth Plan considers housing essentially as a private activity but it recognizes the need for state intervention to meet the housing requirements of a majority of vulnerable section as well as to create an enabling environment for accomplishing the goal of shelter for all on a self sustainable basis. The ninth plan viewed the role of the state and the private
sector as complementary and both are essential and the focus being on growth with Social justice and equality.

Housing is a State subject but the Union Government is responsible for formulation of policy with regard to programme and approaches for effective implementation of Social housing Schemes, particularly those pertaining to weaker sections of the Society.

A new Housing and Habitat Policy 1998 had been formulated to address the issues of Sustainable Development, infrastructure and strong public private partnership for shelter delivery which is the central theme of the policy and to address the problem of shortage of housing compounded by the population explosion.

**Objectives of the Policy:**

i) to create surpluses in housing stock;
ii) to facilitate construction of two million additional dwelling units each year in pursuance of National Agenda for Governance
iii) to ensure that housing along with supporting services is treated as a priority sector at par with infrastructure.
iv) to identify the rules of the Central Government, the State Government, local authorities, financial institutions, research standardization and technical institutions.

**The National Housing and Habitat Policy**

Realized that State Governments have to play the primary role in formulating specific action plans and programmes suited to local needs and conditions in consultation with local bodies and citizen groups. The National
Agenda for Governance has identified Housing for all as a priority area, with particular emphasis on the needs for the vulnerable groups. As per this programme, it is proposed to facilitate construction of 20 lakhs additional units every year with emphasis on Economically Weaker Sections (EWS) and low Income Group (LIG) Sections of the population as also need of SC/ST and other and other vulnerable groups. *Shelter is one of the basic needs, next to food and clothing. With the increase of urban population the need for shelter is also on the increase. The need for the Policy, therefore, emerges from the growing requirements of shelter and related infrastructure. Urban population in India is likely to grow from 285.3 million in 2001 (Census 2001) to 360 million in 2010, 410 million in 2015, 468 million in 2020, 533 million in 2025. This report on the population projection for 2001 – 2025 in millions is based on historical growth rate of census population from 1901 – 2001.

Following (Table No. 15) shows the projection:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Urban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>1027.30</td>
<td>285.30</td>
<td>742.00</td>
</tr>
<tr>
<td>2005</td>
<td>1091.78</td>
<td>316.33</td>
<td>781.70</td>
</tr>
<tr>
<td>2010</td>
<td>1178.52</td>
<td>360.38</td>
<td>834.32</td>
</tr>
<tr>
<td>2015</td>
<td>1272.16</td>
<td>410.57</td>
<td>890.48</td>
</tr>
<tr>
<td>2020</td>
<td>1373.23</td>
<td>467.74</td>
<td>950.34</td>
</tr>
<tr>
<td>2025</td>
<td>1482.34</td>
<td>532.87</td>
<td>1014.41</td>
</tr>
</tbody>
</table>

Table No. 15

Population Projection for 2001 – 2025 in Million
Following (Table No. 16) shows annual rate of change of urban and rural population (2000 - 2030) in percentage in India:

<table>
<thead>
<tr>
<th>Year</th>
<th>Urban</th>
<th>Rural</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000 - 05</td>
<td>2.81%</td>
<td>0.82%</td>
</tr>
<tr>
<td>2005 - 10</td>
<td>2.73%</td>
<td>0.43%</td>
</tr>
<tr>
<td>2010 - 15</td>
<td>2.70%</td>
<td>0.12%</td>
</tr>
<tr>
<td>2015 - 20</td>
<td>2.74%</td>
<td>(-) 0.09%</td>
</tr>
<tr>
<td>2020 - 25</td>
<td>2.52%</td>
<td>(-) 0.22%</td>
</tr>
<tr>
<td>2025 - 30</td>
<td>2.25%</td>
<td>(-) 0.40%</td>
</tr>
</tbody>
</table>

Table No. 16

World Urbanization Prospects, the 1999 revision done by United Nations.

*India is undergoing a transition from urban to semi-urban society.*

Following (Table No. 17) shows the Share of urban population in 2001:

<table>
<thead>
<tr>
<th>Class/Category</th>
<th>Population</th>
<th>No. of Town</th>
<th>Urban Population (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>&gt; 1 lakh</td>
<td>393</td>
<td>68.67</td>
</tr>
<tr>
<td>II</td>
<td>50,000 to 1 lakh</td>
<td>401</td>
<td>9.67</td>
</tr>
<tr>
<td>III</td>
<td>20,000 to 50,000</td>
<td>1151</td>
<td>12.23</td>
</tr>
<tr>
<td>IV</td>
<td>10,000 to 20,000</td>
<td>1344</td>
<td>6.84</td>
</tr>
<tr>
<td>V</td>
<td>5,000 to 10,000</td>
<td>888</td>
<td>2.36</td>
</tr>
<tr>
<td>VI</td>
<td>&lt; 5,000</td>
<td>191</td>
<td>0.23</td>
</tr>
<tr>
<td>All</td>
<td></td>
<td>4368</td>
<td>100</td>
</tr>
</tbody>
</table>

Table No. 17

Based on Census of India 2001.
Therefore, the problem of housing shortage compounded with the population explosion need to be addressed by policy framing by the government. The Government is also concerned with the rise in prices of houses. To address these issues the Government is going to introduce National Urban Housing and Habitat Policy 2007 with the aim to provide Housing facility to Economically Weaker Sections/Low Income Groups and other Sections of the Society.

This policy will bridge the gap between need and supply of housing and infrastructure. The Government has launched (JNNURM) Jawaharlal Nehru National Urban Renewal Mission on 3.12.2005 to provide basic services to urban poor (BSUP) for 63 cities and integrated housing and slum development programme for non mission cities, central assistance is provided based on preparation of city development plan, JNNURM is demand driven, as such no target can be fixed for construction of houses. It depends on release of state share/local bodies' share and beneficiary contribution and progress of reforms.

**The Housing and Habitat Policy aims, interalia at** –

i) Creation of adequate housing stocks both on rental and ownership basis;

ii) Facilitating accelerated supply of serviced land and housing with particular focus to EWS and LIG categories and taking into account the need for development of supporting infrastructure and basic services to all categories;

iii) Facilitate up gradation of infrastructure of town and cities and to make these comparable to the needs of the times;

iv) Ensuring that all dwelling units have easy accessibility to basic sanitation facilities and drinking water;
v) Promotion of larger flow of funds to meet the revenue requirements of housing and infrastructure using innovative tools.

The State government would prepare the State Urban Housing Habitat Policy. The urban local governments, development authorities would identify specific housing shortage and prepare local level urban housing action plans. Private and cooperative agencies would undertake an active role in terms of land assembly, construction of houses and development of amenities within the projects.

Research and development organ would undertake research to respond to different climatic conditions with a focus on transition from conventional to innovative, cost effective and environment friendly technologies, develop and promote standards on building materials, components and construction methods including disaster mitigation technologies, accelerate watershed development to conserve water, stop soil erosion and regenerate tree cover to improve the habitat.

The construction workers need to be trained to keep up with the technologies advancement in this sector. The construction industry is the biggest employer of women workers and is perhaps their biggest exploiter in terms of disparity in wages. The solution lies in skill up gradation and induction of women at supervisory levels and also encouraging women as contractors.

A national commission on human settlements (NCHS) may necessary be set up by Government of India to assess the status of human settlements in India in terms of sustainability, balanced regional development, shelter status, access
to basic services, nature and dimension of poverty, to review this progress made on the decentralization process initiated by 74th constitutional amendment.

The ultimate goal of this policy is to secure sustainable and inclusive development of human settlements including shelter for all and a better quality of life to all citizens using potential of all the stakeholders.

Furthermore, keeping in view the haphazard growth of urbanization and lack of growth in small and medium town developments, there is a need for involving a national urbanization policy for ensuring a congenial living environment in the comprehensive urban settlements. The Town and Country Planning Organization in its national urbanization policy resolution has highlighted some recommendation one of which is to evolve a spatial pattern of economic development and a hierarchial location of human settlements consistent with the explosion of the natural and human resources of their respective regions while ensuring functional links. There should be constant effort to provide maximum services for improving the quality of life in rural and urban areas and to reduce the differences between rural and urban living. The national urbanization policy should be formulated effectively for developing the small and medium towns settlements by reducing the alarming pressure of population in urban India. Specific emphasis must be given to land use and density pattern for minimizing transport needs. Environment impact studies outlining measures to conserve the environment (natural and manmade) must from now be an essential pre requisite of all major projects in the country before they are taken up for execution. Emphasis in the national urbanization policy has to be given to planning cities not limited within itself in terms of physical boundaries but set within wider interaction of a regional, spatial and economic development framework. A proper legislation is required for ensuring an
appropriate treatment of industrial waste in urban areas before it is discharged into the rivers. Such a legal provision should be embodied in the national urbanization policy.

It is therefore, felt that India’s policies and programmes on population, urbanization and settlement structures should be based on the realization that neither sustainable economic growth nor social equity can be achieved without a demographic balance between urban and rural areas and equilibrium within the urban order, comprising capital cities, metropolitan complexes, small and medium size settlements.
5.7 Actual Practice in Constructional Activities

Indian real estate market is still in its infancy, largely unorganized and dominated by a large number of small players with very few corporate or large players having national presence. This market here, if compared to the other more developed Asian and Western markets is characterized by smaller size, lower availability of good quality space and higher prices. In India National Building Code has been formulated by the experts in the field to assure quality in construction but the builders don’t bother about it. The tradition here is that the builders and promoters depart after the sale formalities are over and are not held responsible for what happens thereafter. It is evident that the promise regarding the facilities which they make before the prospective buyers they fail to keep afterwards. The roof top, which is a common facility, is often sold to another agency without the consent of the flat owners. As per law,¹ it is the duty of the promoter to hand over the management of the entire housing complexes to a body to be constituted from the inhabitants of that complexes after disposing off the last saleable unit. In case the last saleable unit or some units are not sold yet the promoter should be a member of that body. This is for the purpose of in house maintenance of the entire block. But it is evident that most of the promoters generally avoid the formation of such in house body just to preserve their own right and in the expectation of exerting further profit by way of leasing out the top floor to any other agency or to construct further by manipulating the civic body anyway. Abroad in high rises there is in house maintenance department and maintenance charges are deducted from the salary or income and deposited into an account by the employers or the government. There is no such thing here. So the government should work out measures to tackle the situation before it sanctions such buildings. Such activities of the promoters may

be called real estate fraud. The researcher has studied two cases of such fraud
done by the promoters, to the buyers of flat, one in North Plaza Housing
Complex, 10 Umakanta Sen Lane, Paikpara, Kolkata – 700030.

This North Plaza Housing Complex situated in the address as mentioned
above comprises Four Blocks each consisting of fourteen (14) flats and thereby
total number of flats being fifty six (56). Total Car Parking Space as sanctioned in
the original plan was 26. The actual number of Car Parking Space was reduced to
19 and which was subsequently duly sanctioned in the revised plan. A
community hall space on the ground floor beyond those 19 car parking space,
was assured for exclusively use of the same by the flat owners of that Housing
Complex for community gathering.

The dispute between the promoter, M/S Sam Developers Pvt. Ltd. and the
flat owners of the said Housing Complex arose when about 400sq.ft. of ground
floor space on the South West Corner of the Housing Complex, taken out of the
car Parking Space and Common Space was gifted to a local club, "North Sangam"
which is a Registered Social Organization and was existing there for more than
40 years before the sanction of the plan. The said promoter executed a deed to
the club. The said club has constructed a permanent structure on that part which
blocked the back space of car driving and thereby prejudicial to the interests of
most of the flat owners who own their own car. A case was pending before the
High Court at Calcutta in the bench of Mr. Justice Kalyan Jyoti Sengupta, 'F'.Cal.
H/C. The court granted injunction and passed an interim order to maintain the
status quo. Subsequently the High Court ordered the Kolkata Municipal
Corporation to demolish the illegal construction and dispose off the matter.*

* Source.  Interview with one of the residents of North Plaza Housing Complex 10, Umakanta Sen Lane,
Pike Para, Dum Dum, Kolkata-700030. Sri Bivas Biswas, owner of Flat No. 12 D, Fourth Floor.
It is also known from the said responder to my interview that in the said locality a big pond was tried to be filled up by the promoter lobby but strong movement from the local resident including women force compelled the promoter lobby not to fill up that pond. The pressure group demolished a long wall of a height which was constructed around the pond to avoid the easily noticeable illegal activities of reclaiming of such water bodies.

Another case study was made in the Kanakangan Lifestyle Residency in Durgapur, whose flat owners claimed that promised facilities have not been provided. The news was circulated first in the Statesman, Thursday 21\textsuperscript{st} April 2005, under the caption-"High rise falls flat with owners". The prestigious Kanakangan Lifestyle Residency, in Durgapur developed by Bengal Shristi Infrastructure Development limited faced criticism from its occupants, Bengal Shristi, a State joint venture company with the Kanoria group, had taken up the project to bring modern urban living standards to residents in and around Durgapur, Raniganj and Asansol. The Asansol Durgaptir Development Authority (ADDA), a state promoted infrastructure developer, had tied up with the Kanoria group, aiming at the development of residential, commercial and entertainment plazas in the Asansol and Durgapur industrial hub.

The Bengal Shristi Infrastructure Development Limited (BSIDL) had assured that the respective flats in the residential plaza would offer a lifestyle beyond imagination and provide additional care for residential comfort. The Kanakangan flat owners alleged that they have been cheated by the company and have been deprived of the facilities they were assured of, like greenery and gardens within the area and the roof-top of the G+12 multistoreyed complex. But the roof has been leased out to other operators. The flat owners demanded that construction of a hotel in the proposed greenery and garden area should be
stopped immediately. They made such demand in a representation to the Durgapur Municipal Corporation Mayor, Mr. Rathin Roy. As per the flat owners saying the Company has not left place for the proposed garage and has handed over the possession to flat owners. The Kanakangan does not have either parking or garage facilities and therefore, the flat owners were facing acute trouble as they all are having vehicles. The roof-top has been sold to another agency without the consent of the flat owners. The service lift as per plan has not been provided in the high rise building which is considered as the tallest apartment in the region. In the move by the flat owners, the Durgapur Mayor, Mr. Rathin Roy had assured the flat owners that a solution would be reached at the earliest. The Durgapur Municipal Corporation as had approved the plan of the apartment and therefore, violation of the sanctioned plan comes under the purview of the civic body. This position was upto April 2005 when it was studied after getting the news in the Statesman.

The Kanakangan Lifestyle Residency in Durgapur, whose flat owners claim that, promised facilities have not been provided.*

* Source. The Statesman, Thursday 21 April 2005
Mr. Pradip Ghosal an occupant of the said Residency.
The right to receive sufficient amount of light and air is part of an easementary right which is not a personal right but this right is attached to the land. The nature of this right is that it is incorporeal, intangible one, exercised over and in respect of an immovable property. Therefore, this right is also an immovable property. The right to housing is more than a shelter which means a roof over four walls. But housing is meant for an all inclusive comfort and a hygienic living condition, which are the natural right and fundamental one also by way of interpretation of Article 21 of the constitution of India. In the field of constitutional activities such practice of the promoters is also evident that they construct the high rises in utter disregard of this easementary right of the neighbouring land holder. The prospective buyer also is supposed to suffer from this sort of deficiency in sufficient amount of light and air. For the purpose of comfortable human habitation the Municipal Building Codes has prescribed the minimum open space as front open space, rear open space and side open space, to be maintained while construction of a high rise building on a piece of land is going to be erected.

But due to increasing price of a piece of land in cities and town areas the promoters are trying to use maximum portion of land as construction area

These Three Photographs have been taken from Pipulpati Area and Chinsurah Station Road under Hooghly Chinsurah Municipality
with minimum land left open as space around the building. This is also gross violation of Floor Area Ratio (FAR) norm.

The promoters in such a case first complete the construction upto the roof of the ground floor. The pillars of the ground floor is erected maintaining the minimum distance from the boundary wall but from the first floor onward the project part of the roof is covered within the floor area of the first floor and onwards which is not legally approved. This way the minimum gap between two continuous building be reduced and those get congested.

Ponds, wetlands, water bodies are not solid land and they are not land within the definition given the West Bengal land Reforms Act and other Municipal laws and Building Rules and Therefore, they can not be regarded as a building site. A building may be erected on a solid substratum. But land is a limited resource and now is scares in terms of its availability. Due to increasing rate of urbanization, the price of land is becoming high. The water bodies are reclaimed indiscriminately for the purpose of construction of building after filling it up which is in gross violation of law and at the cost of ecological balance. In congested urban areas in case of happening of any sudden outbreak of fire, generally a natural water reservoir of a pond nearby save the spreading of fire and

These Two Photographs have been taken from Ward No. 19 & 16 under Hooghly Chinsurah Municipality showing the negligence to maintain water bodies whose contribution is vital in an urban form.
gutting out of everything adjacent to the origin of fire. But most of the urbanized areas now lack such natural water reservoir. Another problem which is evident mainly in Bally Municipal area that the area has been developed gradually by way of reclaiming water bodies or low lying wetlands which causes the stagnation of rain water during monsoon season due to having no way out to make those water volume run off. The necessity of having a water reservoir nearly and its utility was felt of late when a building at the market place of Borobazar area of Kolkata gutted out by fire and the Fire Brigade of West Bengal faced tremendous trouble to put off that fire. The fire remained present continuously for about 90 hours. The instance should be taken as a lesson for the future line of action and as a preparedness and reclamation of water bodies should be stopped at any cost. Even it is the duty of every citizen to preserve a pond or such water bodies.

The field study reveals that such practice of filling up of the water bodies is still going on. It is also observed that a good number of ponds in town area have been left unused for a longer period. Some of such unused water bodies are left in such a condition with an ulterior motive of the owner to declare such pond a dry dying pond after a considerable point of time in a pretention that those unused dying ponds would have then become environmentally

These Two Photographs have been taken from the Area of Hatibera of Haldia, Purba Medinipur District, where a large pond is being reclaimed partly for the construction activity.
harmful to the human habitation in the surroundings. This is gross negligence of the owner of the land adjacent to that pond or that of the pond as violation of his fundamental duty under Article 51A(g) and also of the local body under Article 48A of the constitution when the local body is informed of such a motive or having Knowledge of such a State of any water body. The field study reveals a good number of ponds or water bodies which are lying unattended under negligence within Hooghly Chinsurah Municipal area. Following photographs are the glaring example of the above mentioned fact.

These Photographs are different views of a BIG BAZAAR, a Multistoreyed Shopping Complex which was constructed after reclaiming a large portion of a big water body. The last two photographs show the backside of the said complex which bears the evidence that it was constructed on water body by reclaiming it. The Burdwan town is proud of having large water bodies differently named like Rani Saiyar, Krishna Saiyar. The town is located near the Burdwan Railway Junction and therefore, having importance from the point of communication.
Any construction or projection of construction is not permitted within a stipulated distance from electric lines stated in the provision of the Indian Electricity Act, 1910 and the rules made thereunder.

But it is noticeable that some construction has been done in violation of that provision. These Two Photographs reveal the fact that the statutory provisions are not complied with in regard to maintaining the vertical and horizontal clearance. The Photographs were taken from Chinsurah Buno Kalitala Area under Hooghly Chinsurah Municipality.

Following distance is mandatory to be followed as per the Rule–43 of the West Bengal Municipal Building Rules 1996,

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<th>Vertical Clearance</th>
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<td>i) Low and medium voltage lines</td>
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<td>ii) High voltage lines upto and</td>
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<td>iii) High voltage lines above 11</td>
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<td>33,000 volts.</td>
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The West Bengal Municipal Building Rules 1996 has set a rule in case of a building in the zone river which is within 15 metres from the river bank or other water fronts of large water bodies (more than 1000 acres),

In the river zone the maximum height of a building which is permissible in such zone shall be 5.00 metres i.e. 16 feet (about).

No building shall be more than 20 meters i.e. 65 feet (approx) long alongside the river or other water fronts. There shall be a clear gap of 50.00 metres i.e. 164 feet (approx) between the two buildings alongside the river or other water front.

The maximum permissible covered area of such building shall be 200.00 sq.metres i.e. 2152 sq.feet (approx)

*These Three Photographs were taken from the Bally Municipal Corporation Area. The Buildings shown in the pictures are standing on the Bank of the Hooghly River. The Arrow Marks show the violation areas of the Structures. In the first Two Photographs it is evident that the construction covers the river area and then shows back open space from the River Side, but actually it is the construction in violation of Rule 9(4) of the West Bengal Municipal Building Rules 1996. The building is Annapurna Co-operative Housing Society. The First Photograph from the Right Side shows another building constructed on the Bank of the Hooghly River in the same area. The Arrow Marks in the said photographs point out the water area near the building.*

These Three Photographs are different views of Bally Ganga Apartment which is situated at the side of G.T. Road at Bally, Howrah, under the Bally Municipal Corporation. The Photographs intend to show the closeness of the building structure to the G.T. Road which is the busiest road and all the time frequented by heavy vehicles. The structures are abutting the road which is not so wide in this particular area, without leaving the desired front open space as per the building norms.

The photographs taken from Bally Municipal Corporation area reveal the violation of the statutory norms. Moreover, most of the high rise buildings constructed along side the G.T. road lying on the river bank are congested without leaving any gap of considerable distance between them. The high rise buildings constructed on the G.T. road side have left no space open as front open space which depends upon the width of the street. It is to be pointed that the breadth of the street in that area is narrower compared to the other part of G.T. road.

Storing of building Materials on the roadside nearby:

Storing of Building Materials like Sand, Bricks, Stonechips, Rods etc. are prohibited to be stored on the roadside or near the construction site blocking the free flow of traffic is prohibited by the Municipal Act and Rules. The practice is hazardous because it may cause accident at any point of time. This picture shows that the Sands are lying on the road causing discomfort to the passer by. The location is a prime area, a juncture of main road leading to bus stand and another local road at Chinsurah.
A study was made on the basis of the following questions to know the actual practice in the field of constructional activities. The study reveals the following results. Following are the questions arranged first:

**Q1.** Whether Fire safety measures are adequately installed in such high rise buildings?

**Q2.** Is there any measure to compel the promoters for compulsorily to be registered?

**Q3.** Whether ‘FAR’ / ‘FSR’ is maintained in the Multistoreyed Building?

**Q4.** Is there any mechanism to control the quality of building materials?

**Q5.** Do the promoters perform their duty to form an owners association to be registered under Society's Registration Act?

**Q6.** What is the role of the Inspector from the local body to regulate the constructional activities?

**Q7.** Do the promoters comply insurance provision of the building constructed by them?

**Q8.** What is the method of certification of a multistoreyed building in different phases?

**Q9.** Are the high rises feasible in West Bengal and earthquake resistant?

Study reveals that in respect of fire safety norms and fire hazards the high rises are not safe. Most of the buildings are unsafe in respect of earthing and lightning conductors. Only fire safety measures installed in the high rise buildings are the fire extinguishers which are of Six Months validity and those are not sufficient measure compared to those measures which have been recommended by the National Building Code and the revised Municipal
Building Rules. The old structures in the Borobazar area of Calcutta are not safe. Any single instances of fire hazards may cause a mass disaster, which is evident from the recent happening of fire breakout of Borobazar area. Following two photographs taken from the said area reveals the miserable state of affairs and the indifference of the authority to such condition.

![Photograph showing the condition of old dilapidated buildings where electric wires are hanging in dangerous condition which may cause fire breakout at any point of time.](image)

**Fire Protection and Fire Fighting Measures:**

The fire safety norms and fire hazards are mostly ignored in the construction of multistoreyed buildings here. The taller the building the stricter the norms have to be. There is no such provision in the existing municipal Building rules to install such adequate and sufficient fire safety measures to fight successfully in case of fire hazards. The National Building Code, 2005 has recommended for inclusion of provisions for periodic renewal certificate of occupied building from fire safety and electric safety point of view, substitution of halon based fire extinguisher for fire fighting system, to revamp fire safety
norms completely through detailed provisions on Fire prevention, life safety and fire protection. There is a question of earthing and lightning conductors. Most Indian buildings are unsafe in this regard. The safeguards ought to be such that not a single electrical or electronic item in the building should be damaged in case of a direct lightning strike. There is no such provision sufficient in the existing Municipal Building Rules, 1996 regarding this aspect. The Act provides that the State Govt. may from time to time prescribe in the interest of public safety, by notification, such other conditions as may be necessary for the fire protection, fire prevention and fire fighting in relation to any class of buildings and the Board of Council shall comply with such conditions. The Act further states that no permission for the erection of any building other than a residential building of less than fourteen meters and a half in height shall be granted unless the Board of Councilors in consultation with the Director of Fire Services of the Government of West Bengal or any Officer specially empowered by the Director for this purpose, is satisfied about the provision of means of exists and about the arrangements for protection against fire proposed for the building.

The W.B. Municipal Building rules has laid down the provisions requiring the adoption of certain measures for exit requirement in case of any fire breakout with specific instruction in case of a building for residential and educational uses of more than fourteen meters and a half in height, and for all buildings of other uses and arrangement for protection of fire.

In this regard the Andhra Pradesh Fire Service Act, 1999, has made provision for the more realistic and inbuilt check system for fire prevention in high-rise

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3. The West Bengal Municipal Building Rules, 1996, Rule 44.
4. Ibid, Rule 79.
buildings. The act lays down that any person proposing to construct a building of more than 15 meters height for commercial/business purpose, 18 meters and above height for residential purpose and buildings of public congregation like schools, cinema halls, function-halls, religious place, which are more than 500 sq.mt. in plots area or 6 meters and above in height shall apply to the Director General or any member of the service duly authorized by him in this behalf, before submission of such building plans to the authority or officer competent to approve the same under the relevant law, for the time being in force, for no objection certificate along with such fee as may be prescribed. The Director General or any member of the service authorized by him in this behalf, shall issue a no objection certificate on being satisfied about the provision of fire prevention and safety measures as stipulated in the National Building Code or any other law for the time being in force regulating such purpose or activity and if not satisfied shall reject the same for reasons to be recorded in writing. The authority or officer competent to approve the building plan before construction under the relevant law, shall not accord such approval except on production of no objection certificate issued under Subsection (2) of the Section whenever required.

Preventive Measure:

The Act has made the provision requiring the owners or occupiers of the premises used for purpose which is likely to cause risk of fire, to take such precautions as may be specified in notification issued by the Government or any officer authorized by the Government in this behalf.

5. The Andhra Pradesh Fire Service Act, 1999, Section 13(1).
6. Ibid, Section 13(2).
7. Ibid, Section 13(3).
8. Ibid, Section 14(1).
The owner or occupier or both, of a building or part thereof shall provide fire safety measures in it and maintain them in good repair and efficient condition at all times, in accordance with building bye-laws.

The authorized officer or any other member of the service empowered by him in this behalf may enter any place, which in his opinion constitute a fire risk, and may make an inspection of such place between sunrise and sunset in the discharge of his duties under this Act. But such inspection may be done only after serving a notice to that effect to the occupier or owner of that building or part of that building and with the recording of his reasons to believe such need. If any industrial work is carried out in that building and the officer or authorized member of that service consider such inspection urgent and absolutely necessary may make immediate inspection of such building on reasons being recorded in writing for such opinion.

After completion of such inspection of the building or part thereof the authorized officer or any other member of the service empowered by him, if consider it deviation from or the contravention of the building bye laws with regard to the fire prevention and safety measures, may issue a notice to the owner or occupier of such building premises or part thereof directing him to undertake such measures within such time as may be specified in the notice.

The Act has made the contravention of any provisions of the Act as punishable offence.

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10. Ibid, Section 20.
11. Ibid, Section 21.
The Act has laid down the provision that the Government may establish and maintain one or more training centres in the state for providing courses of instruction in the prevention and extinguishment of fire.

Comment:

Therefore, the remarkable feature of the Andhra Pradesh Fire Service Act, 1999 is that it is mandatory to obtain a no objection certificate on the part of any person proposing to construct a high-rise building for residential purpose of more than 15 meters in height, from the Director General or any member of the Service duly authorized by him in this behalf before submission of such building law, for the time being in force, and such officer or the authority concerned shall not accord such approval except on production of no objection certificate, issued by the Director General or any member of the service duly authorized by him in this behalf.

Another important feature of the Act is that it has imposed a liability to adopt fire safety measures not only on the owner but the occupier of the premises and the authorized officer has the right to inspect the premises which is a continuing duty on the part of the concerned authority. The Act has endeavoured to encourage and to engage the general people or a voluntary organization to extinguish the fire whenever may happen by way of getting training from an institute to be established and maintained by the Government. Therefore, this provision give rise to a deep insight on the part of the legislature of the State of Andhra Pradesh to prepare a ground of preparedness to fight the calamity if happen at any point of time and which is in the line of recommendation of the National Building Code, 2005.
In the field of constructional activities a large number of small players have intruded who are constructing the Apartments in and around the city and towns. Except the large project operators, most of these small players are not registered under the Promoters Regulatory Act i.e. the Act, 1993. They are mainly performing these activities under a Trade license passed by the local body. Those promoters are not getting registered under the said Act, of 1993 due to the fear of getting treated under the Act, 1993. Therefore, measures to be taken to make them compelled to be registered under the Act compulsorily. The local body and the Licensing Authority should be more stringent in this regard. Builders Licensing Act is must to be legislated for that purpose.

FAR/FSR (being the abbreviation of "Floor Area Ratio"/"Floor Space Ratio") means the quotient obtained by dividing the total floor area of all the floors of a building by the area of the plot, the formula being as follows:

\[
\text{FAR/FSR} = \frac{\text{Total floor area of the floors}}{\text{Area of the Plot}}
\]

The maximum permissible Floor Area Ratios has been prescribed in the West Bengal Municipal Building Rules, 1996 in rule 51(6) (a).

For calculating the Floor Area, the following shall not be included, namely;

i) Stair cover not exceeding 2.4 metres in height,

ii) Lift machine room as per latest edition of the National Building Code.

iii) Roof tank and their support, the height of support not exceeding 1 metre.

iv) Chimney, ventilating, air-conditioning and service equipment attached to the building.
Provided that the aggregate area of these structures mentioned at (i) to (iv) above shall not exceed one-third area of the roof upon which these are erected.

The Photograph is taken from Chinsurah Kamarpara Road where the building is erected utilizing the maximum space leaving no side open space and front open space free for the passage and the structure shows the violation of floor area ratio. The Building after its construction was laid vacant for many years because the rooms are not sufficiently spacious for which the buyers were not willing to purchase easily. However, few rooms have been purchased by some persons.

Regarding the examination of quality of building materials there is no independent machinery of the certifying authority of the local body or any State owned authority. The occupancy certificate is given by the local body and that depends upon the certification of the technical personnel engaged by them. So there is a strong possibility of manipulation. It should be regarded as a satisfactory check or means to control the malpractices. A State owned independent body with expert hands or skilled personnel should be constituted to issue a certificate regarding the maintaining of quality of building materials in different phases depending on which the local authority shall issue the completion certificate and occupancy certificate. Such a body should be constituted in a location of building site, zone wise to function in a coordinate way.

As per the Act, 1993 it is the duty of the promoter generally to form an association from the inhabitants of the Apartment after the completion of the
building and the sale of the last saleable unit of that apartment in order to hand
over the maintenance of that apartment to that association which is to be
registered under the Societies Registration Act. But in most of the cases the
owners afterwards organize it. The study reveals that the promoters are not
willing to do it because they keep pending many working for which they
generally avoid such a registered society. Sometimes disputes do remain
between the promoter and the flat owners in respect of so many works remained
as pending or any deviation from the promise, which he made at the time of
contracting.

The local authority has a vital role to inspect the construction work when
it is in operation. Power to inspect the building operation at all time has been
assigned to the Municipality and the Municipal Corporation or any officer
authorized by them in that behalf. The provisions are there in the West Bengal
Municipal Act, 1993 and the West Bengal Municipal Building Rules, 1996 made
thereunder and the Calcutta Municipal Corporation Act, 1980 and The Building
Rules made thereunder. But no sufficient infrastructure for such purpose has
been provided for under any of the two authorities mentioned above.

The promoter is liable for any loss or death caused by his negligence or
any defect in land or building as a result of shortcomings in soil testing or land
filling or due to structural deficiency or substandard materials used in the
construction of the building constructed by him or anyone under his direction.
Therefore, the West Bengal (Regulation of Promotion of Construction and
Transfer by Promoters) Amendment Act, 2002, has introduced a change in
regard to put a liability upon a promoter to make compulsorily an insurance
policy for the coverage of such risk and which the promoter shall keep the
authorized officer informed from time to time as to the payment of such
premium. This liability of the promoter continues till five years of the receipt of the completion certificate of the building. But study reveals that most of the buyers of the flat are unaware of such provision of law and the promoters/builders generally give such insurance only for one year. Therefore, this provision of law remains confined only in papers. The implementation is very weak. It is reported from another residents of a flat that "promoters generally do not perform the insurance policy and it is the financer who generally does the insurance of the building".  

The Photograph is taken from DUM DUM PURBA SMRITI, Madhugar. It shows the negligence of the promoter who constructed the said building. Presently one of the building has slanted on to the other building and thereby, both the buildings have taken crack. The inhabitants are living in tension. The promoter who constructed the building is now not answerable. It happened due to faulty pilling work. The building was constructed on a water body as known from the local source.

13. Section-12(a) of the Act, 2002.
14. Mr. Bivas Biswas, Residents of the Flat No. 12D of North Plaza Housing Complex, 10Uma Kanta Sen Lane, Kolkata-30, Pike Para.
Methods of certification of a building construction are followed in two phases - Phase-I and Phase-II. First of all, Soil Testing report is must. This report is obtained from the technical personnel like Geo Technical Engineer. The promoters may obtain this report from the private authority also like Chattered Engineer. The local body engages the officer to inspect the building construction. The first phase of building inspection is done when the Ground Floor is completed. The Second and final phase of inspection is done after the completion of the entire building. A report as such is essential in the terms that the building has been constructed as per the sanctioned building plan or revised building plan. But most of the Apartments in and around the city and town are being constructed violating the building rules of keeping side and front space open. The study reveals that the roof on the pillars erected on the ground floor is projected covering the side open space and in some cases the steel rods are kept projected and after getting the permission in the first phase those projections are covered by concrete. The construction from the first floor and onwards are done covering those projected spaces as to include the projected spaces within the calculation of carpet area. Therefore, the point to be remembered is that a flat owner possessing or enjoying, by way of purchasing an area of certain measurement which is not legally permissible and the promoter is deriving this excess profit from the purchaser showing the measurement of covered area. There is a great question mark how can be there no control in spite of having urban development department, housing department, municipalities and others as well? The answer may easily be guessed from all such happenings that inspectors from the departments merely come and see if the construction is as per the quality of construction and the quality of materials used. The completion certificate is granted to the promoter in such a condition and the last and ultimate resort to such problem is to impose a penalty and make the violations
regularized by the local body. Occupancy Certificate is generally granted in the Calcutta Municipal Corporation areas.

The building in other municipal areas is handed over to the occupants without issuing any occupancy certificate.

The West Bengal falls within Zone-IV from the rank of earthquake prone intensity. Therefore, the precaution is taken here from that angle. Actually Soil Testing is done to see whether it can withstand the load of the entire structure or not. But the structures are elevation-oriented and not safety oriented. In Japan as the place is earthquake prone, most of the high-rises are technologically equipped to withstand the tremor of an earthquake. The technology is cost effective. In India it is not possible due to financial constrain. In India the National Building Code has been formulated by experts in the field to assure quality in construction but the builders don't bother about it. The buyers too are not generally quality conscious. They merely look at the price of the flat and not at the safety of the buildings in which they are situated. The developers charge exorbitant prices for flats, which are not justified.

The skyscrapers built on the Eastern Metropolitan Bypass side are slowly getting positioned and gradually becoming a popular commercial hub. The transformation of Eastern Metropolitan Bypass has already begun to happen due to the creation of E.M. bypass road, (15 km. long and 120 feet wide) with an objective to make the longest and widest road link within the city. It has attracted two five star hotel, a number of residential complexes, multi specialty hospitals, multiplexes, elite academic institutions, Heritage Park, football stadium with sport institutes, elite clubs and a trade fair complex. Much of these multi dimensional and functional developments have entered around the stretch, which starts from Science city and perhaps ends in Ultadanga. The Highland
Park on the E.M. Bypass is known for tallest highrises, each being thirty storeyed or nearly thirty-five storeyed building. If we trace into the nature of land on which these tall structures have been erected, we see that most of the lands developed on the E.M. Bypass is marshy land which was gradually and slowly reclaimed by depositing garbages and waste materials of the city day after day. How far these lands, which have been developed by gradual deposition of garbage, are capable to withstand the tall structures like 30-35 storeyed building built on it? From the engineering point of view such types of reclaimed land with sanitary landfills require longtime to undergo a setting and it is risky to build too quickly over filled areas. Landfill areas are better set aside for playing fields, parks, shopping malls, and the like but not for building dwellings. Landfills, if properly planned can be used later for construction sites.

*Multistoreyed Building Constructed on E.M. BYPASS, situated at HIGHLAND PARK, KOLKATA.*
Reverse migration is a recent phenomenon of urbanization. The elite urbanites now prefer rural areas to build a resort for staying weekend to get rid of the monotonous and congested urban life. Therefore, to meet a modern lifestyle in a rural setup among the greeneries in its surroundings new chunk of rural land is being developed by the private groups like Bengal Ambuja, Shristi developmental Corporation etc. Only the elite groups are the target consumers of such lofty housing products. A case study was made in the Birbhum district, at Prantik near Bolpur Santiniketan. Santiniketan is famous and popular for the creation of Rabindranath Tagore and it has attained a status of international village drawing attention of people from various parts of the State for owning a flat or resort here.

The Photographs show the project the construction of which is going on near Prantik Railway Station at Ruppur Gram Panchayat area, 128 No. Gram Samsad by the Bengal Shristi Infrastructural Development Limited (BSIDL).
The West Bengal Government's concerned department as vested land acquired the land of the project area. The owner of that land as was heard from the local residents has filed a suit. Now the State Government in collaboration with the B.S.I.D.L. has entered into the constructional activities to provide housing but the question is who the target groups are. Such housing units are costly which may attract the elite groups who have already one or more flats in their possession. The agricultural land where agriculture is still going on surrounds the project area. There is no outlet of sewerage disposal or drainage. Selection of the project area and its surroundings easily may give rise to a perception as to its impact on the environment of that area and those locational imbalances. The question may arise in mind that what social philosophy of urban development is served by permitting such large projects which are costly and purposive for selected elite groups, at the cost of agricultural land nearby which further helps in land speculation and instigates change of land use pattern.

In an interview with the Telegraph, Mr. Manas Roy Chowdhury, the civil engineer who returned to India after a long stay in Germany and who is well known for building reasonably priced but thoughtfully constructed housing complexes, gave replies to some question about certain serious and basic issues concerning flats in and around Calcutta. He viewed that most of the structures of highrises are elevation oriented and not safety oriented. Any proper construction involves the erection of a structure that will withstand an earthquake 100 years or even 200 years from the date of construction. The experts in the field to assure quality in construction have formulated National Building Code in India but builders don’t bother about it. In a question put to him by the interviewer as to the controlling mechanism of quality of the construction he replied that Inspectors from the concerned departments merely come and see if the construction is as per the sanctioned plan and the quality of the construction and
the quality of the materials used is as per the desired or required standard. There is no quality control despite the decade long real estate boom in the State. He said that most of the highrises are unsafe in regard to the compliance of fire safety norms and fire hazards. As per his opinion the taller the building the stricter these norms have to be. He opined that the buyers here are not sufficiently aware of the quality and the price of the flat. The prices charged by the developer here is absolutely unjustified. Here the price is determined on the basis of measuring super built up area, which is a vague and meaningless term, neither mentioned in the National Building Code nor found elsewhere abroad. Therefore, the buyers are cheated by promoters through indiscriminate and unregulated imposition of charges for the so called Super built-up area. The term itself is a meaningless one and it is a convenient device to derive unjustified profit from such development. Hence the Government should immediately stop this large scale cheating of buyers by the promoters, by imposing any regulation on this aspect.*

*Source The telegraph, Feb. 05, Advertisement Feature, HOME (Sweet House), at Pg. 14 - 18.