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HOUSING DEVELOPMENT AND ITS FINANCING  
DEBT RECOVERY MECHANISMS  
AND  
MORTGAGE FORECLOSURE LAWS

IN

NDIA

AUGUST 13, 1992

**TWENTY-FIRST CENTURY**  
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MORTGAGE FORECLOSURE IN INDIA

- TRIP REPORT OF LEGAL SPECIALIST

Introduction:

Pursuant to modification No. 02 to Delivery Order No. 03, Contract No. 391-0507-I-00-1780, Mr. Askari Taqvi, Legal Specialist, visited Bombay and Delhi in India from July 19 to 27, 1992 to carry out a study on specific debt recovery issues. Mr. William Strong, Advisor to SRMP, USAID was also a member of the same team.

02. Meetings at Bombay and Delhi had been arranged by HDFC and USAID India respectively. Discussions were held with the following:

01. Mr. Deepak M. Satwalekar  
Deputy Managing Director  
Housing Development Finance Corporation (HDFC), Bombay.
02. Mr. Nasser M. Munji  
Chief Economist HDFC, Bombay.
03. Mr. Keki M. Mistri  
General Manager Finance & Personnel HDFC, Bombay.
04. Mr. S. N. Shroff  
Deputy General Manager Corporate, Legal & Admn. HDFC,  
Bombay.
05. Dr. N. A. Majumdar  
Consultant to HDFC Bombay.
06. Mr. Ramnath  
Manager HRD, HDFC Bombay.

07. Mr. S. Krishnamurthy  
General Manager Northern Region  
HDFC, New Delhi.
08. Mr. P. K. Partha Sarathy  
Executive Director, (South)  
National Housing Bank, Bombay.
09. Mr. Y. K. Garg  
Chief General Manager  
National Housing Bank, New Delhi.
10. Mr. K. K. Babu  
Deputy General Manager  
National Housing Bank, New Delhi.
11. Mr. B. Hanumantha Rao  
Asst. General Manager  
National Housing Bank, New Delhi.
12. Mr. Anoop Aggarwal  
Executive Director ( Law )  
Housing & Urban Development Corporation, New Delhi.
13. Mr. P. S. A. Sunderam  
Joint Secretary  
Ministry of Urban Development  
Government of India, New Delhi.
14. Mr. Charles Billand  
USAID India, New Delhi.
15. Mr. N. Bhattacharjee  
USAID, India, New Delhi

**Note:**

Out of the above persons those listed at Nos. 02 and 08 could become resource persons for work related to housing finance. Both of them could be invited to Pakistan to participate in the proposed workshop on Housing Finance and Mortgage Foreclosure Laws.

Policy of the Indian Government on Housing Finance:

03. The National Housing Policy was approved by the Indian Parliament in 1988 and it has been subsequently elaborated and improved. The Indian Government has announced that its crucial role at different levels is not to seek to build houses itself but to make appropriate investment and create conditions where all the people may secure adequate housing, and to remove impediments to housing activity.

The salient features of the Indian Policy in relation to Housing Finance are given below:

- i) The objective will be to promote easy access to finance for different housing activities and to evolve an elastic and wide spread resource mobilisation strategy to tap household savings in the formal and informal sector.
- ii) To take steps to remove constraints to the flow of finance into the housing sector - specially larger lending to the poor and the informal sector.
- iii) 20% of the requirement of investment in housing would be met by specialised housing finance institutions, insurance and banking sector, provident fund, mutual funds etc. and additional mobilisation of household savings.
- iv) In the interest of long term development of the mortgage market and assured resources for the housing finance system, increasing proportion of the resources of insurance sector, Unit Trust, commercial banks and cooperative banks will be channelled into housing.

- v) It is planned to introduce house-linked savings schemes for the provident fund subscribers, the workers in the organized sectors and public sector employees.
- vi) As the apex agency charged with linking the housing finance system with the financial sector as a whole, the National Housing Bank of India will facilitate the promotion and regulation of housing finance institutions in the public and private sector, refinance their operations and expand the spread of housing finance to different income groups; the role of National Housing Bank is discussed in detail in subsequent paragraphs.
- vii) The Housing and Urban Development Corporation (HUDCO), which was set up in 1970 and charged with the responsibility of financing and/or undertaking housing and urban developed (discussed in detail in subsequent paragraphs), will be strengthened and its resources will be increased.
- viii) Innovative savings and lending instruments will be introduced to integrate the housing finance system into the capital market by enabling access of housing finance institutions to the funds on a competitive basis with other financial institutions and by permitting NHB and HUDCO to set up mutual funds for housing, apart from their access to foreign aid.
- ix) In due course it is planned to introduce a secondary mortgage system in order to attract funds from a wide range of investors, including insurance and provident

funds and to integrate housing finance with the overall financial system.

- x) The cooperative housing movement, specially for lower and middle income groups, will be given assured access to institutional finance to supplement internal resources.
- xi) Presently commercial banks are required to invest 1.5% of their incremental deposits into housing. The government of India is considering to increase this percentage.
- xii) It is also planned to reduce the stamp duties and registration fees.

#### EVOLUTION OF HOUSING FINANCE IN INDIA

04. HUDCO: The evolution of formal housing finance in India began with the establishment of an apex financial institution - the Housing and Urban Development Corporation (HUDCO) in 1970.

This Corporation was established with the object of accelerating the pace of housing and urban development schemes of the state governments/State Housing Boards, local bodies etc., and also for undertaking, wherever possible, worthwhile programmes of its own. The objectives also included financing or setting up of low cost building material industries and new satellite townships. The agencies eligible for HUDCO's financial assistance are as given below:

- i) State Housing Boards

- ii) Slum Clearance Boards
- iii) Development Authorities
- iv) Improvement Trusts
- v) Municipal corporations/councils
- vi) Local bodies
- vii) Apex primary cooperative societies
- viii) Public sector organisations etc.

In order to meet its objectives, HUDCO mobilises funds from various sources such as equity contribution from the government, borrowings from public by the issue of government guaranteed Debentures, Shelter Bonds, Urban Bonds and raising term loan from banks, insurance companies Unit Trust of India, other financing institutions and also from the government. Presently the paid up capital of the corporation is Rs. 160.00 crores. At the end of 1990-91, borrowings including long term borrowings from banks, insurance companies and financial institutions were of the order of 2292 crores. The German Agency KFW has also provided a loan of DM 40 million to HUDCO.

As a matter of policy, in order to help the economically weaker sections and lower income groups, HUDCO has implemented a differential interest rate policy for various categories of households: the lower the household income, the lower the rate of interest and vice-versa. Apart from financing social housing schemes, HUDCO has also augmented

basic community facilities. It promotes projects involving self-help by the beneficiaries by encouraging services, core housing, skeletal housing etc. Financial assistance for basic sanitation schemes is extended on liberal terms. HUDCO's financing pattern as amended upto March 1992 is enclosed at Annex I.

During the last twenty years, HUDCO has sanctioned over 6700 projects worth Rs. 6,763.00 crores of which HUDCO's commitment is Rs. 4,220.00 crores. Despite the subsidy provided by HUDCO in its interest rate structure, the corporation earned a net profit of Rs. 18.00 crores in 1989-90 and Rs. 26.00 crores in 1990-91.

05. In 1977, the Reserve Bank of India appointed a Working Group on Housing Finance to examine the role of the banking system in providing finance for housing schemes. The involvement of commercial banks in housing finance was then largely confined to their investment in bonds/debentures of HUDCO and State Housing Boards and direct loans mainly to their employees. In 1978 the Working Groups suggested commercial banks' additional involvement in housing finance to a minimum extent of 0.5% of their incremental deposits. The Working Group recommended that banks' finance may be extended for (i) construction of residential houses to be built by public housing agencies like HUDCO, Housing Boards, local bodies, individuals, cooperative societies or employers priority being accorded for financing construction of houses meant for economically weaker sections, low and middle income groups and (ii) educational and other

institutions as well as shopping complexes etc., which are part of the housing project, and (iii) construction meant for improving the conditions in slum areas. According to the Working Group, banks ought to get an average return of 11.5%, maximum repayment period be 15 years and the level of margin between 20-40%. For large projects consortium approach was recommended. The Working Group recommended a two-tier housing finance system with HUDCO on top and local housing finance institutions at regional or district level. It was also recommended that the Life Insurance Corporation in collaboration with the General Insurance Corporation should evolve a scheme of mortgage insurance and then contribute effectively to the auction of a secondary mortgage market in the country.

06. It was at that time that the concept of mortgage lending through a specialised institutional framework began to receive attention in India. A major problem of housing finance had been the general perception of risk of housing as collateral in view of the tenancy laws in India which absolutely protected the rights of tenants. It was not possible to conceive that foreclosure could be possible through the normal judicial process without undue cost and delay. Moreover, mortgaging property was expensive as it attracted stamp duty @ 10%. Resource mobilisation without government assistance in a rigidly controlled financial system was extremely difficult. An housing finance institution (HFI) could not advertise attractively for deposits (as it required a statutory advertisement) nor it could offer notice accounts. It also suffered vis-a-vis

commercial banks, Unit Trust of India (UTI) and corporate deposits because these could offer more attractive tax concessions and a wide range of financial services at subsidised costs. If an HFI borrowed long term, security for the loan posed major problems as the concept of a negative lien as an acceptable form of security was relatively unknown.

07. HDFC: The Housing Development and Finance Corporation was established in 1978, in the private sector, as a specialised lender to households and to corporate entities specially for housing purposes.

Undoubtedly the establishment of HDFC was a courageous effort in the background of unhelpful and out dated mortgage foreclosure laws and the government of India had taken no steps to provide any protection or assistance to HFIs in the recovery of their loans.

The promoters of HDFC took a bold step at that time without any loan from the government. The IFC agreed to support the venture with a loan of 4 million US dollars and the Aga Khan volunteered to put up 5% of the equity. The Chairman of HDFC had been the Chairman of the Industrial Credit and Investment Corporation of India and did not find it too difficult to get the banks and other institutions interested. The promoters and institutions originally held 73% share while only 27% was offered to the public. (Now the public shareholding is 47.5%). At that time individuals were reluctant to deposit money with HDFC, but the commercial

banks which were then required by the Reserve Bank of India to invest 0.5% of their incremental deposits in housing, preferred to give loans to HDFC. The USAID provided a loan of 20 million US dollars to HDFC in 1983 and the total borrowing from USAID has gone up to 120 million US dollars. The World Bank also gave a loan of 250 million US dollars to HDFC in 1988.

In view of its performance during the past fourteen years, the HDFC has generated a great deal of confidence in the public. Last year it launched a programme for mobilisation of household savings and is now getting term deposits from public @ about rupees one crore a day thereby serving as a savings institution. HDFC has about 2500 approved brokers who assist in the mobilisation of deposits against payment of commission.

These term deposits are for a period of 25 months to 84 months. The maximum interest that can be paid on term deposits is 15% starting from 13.5% on deposit months. These rates are fixed by the National against this the maximum interest that is allowed by commercial banks is 13.5% for any duration). refinance facilities from the National Housing Bank loans upto Rs. 01 lac and gets a spread of 3 to lending rates of HDFC range from 10.5% to 16.5% depending upon the size of the loan. The average spread available to HDFC on its total lending is about 1.7%. HDFC is also competent to issue commercial paper upto one year but has not started doing so. The Corporation has about 16,500

shareholding who own 47.5% of the total shareholding; the balance shareholding is with institutions and companies out of which Unitrust of India holds 9.65%, IFC 3% ICIC 3% etc. The paid up capital of HDFC is 450 crores. Loans/borrowings outstanding as on 31.03.92 were of the order of Rs. 1,242.00 crores (World Bank - Rs. 413.00 crores, USAID - Rs. 145.00 crores, IFC Rs. 72.00 crores, National Housing Bank Rs. 278.00 crores, scheduled banks Rs. 198.00 crores, Life Insurance Corporation of India Rs. 120.00 crores, and Army Group Insurance Fund Rs. 15.00 crores. The KFW has also provided a loan of DM 25.00 million to HDFC for low cost housing projects. Deposits were of the order of Rs. 871.00 crores at the same time.

HDFC has so far disbursed Rs. 2,875.00 crores as loans for Rs. 06.00 lac units spread throughout India. 75% of these loans were given to individuals and 25% to corporate and institutional borrowers and real estate developers through short term construction finance. Bridge financing is for 02 years @ 19.5%. These loans are given very selectively and not more than 10% of the total loans can be given to developers as bridge loans. 80% of the HDFC borrowers are salaried persons while only 20% are self employed. The loan ceiling is Rs. 05.00 lacs for individuals. These loans are given for 15-20 years. Loans to companies are given for 5-7 years. HDFC staff is trained to sanction a loan within two weeks if the borrower so desires.

HDFC has also provided some finance for assisting lower income households. The Corporation also provides lease finance facilities to corporate clients for infrastructure development which includes finance for such assets like pollution control equipment, water treatment plants, and construction equipment.

The Corporation has a very elaborate system of appraisal of loan applications. There are only 729 employees who are well trained to effectively sanction and monitor all the loans and their recoveries. The recovery percentage is almost 100% and there have been only 15 court cases (for foreclosure of mortgaged property) during the past 14 years. As a result of sound management, HDFC declared a dividend of 24% for 1991-92 as against 22% for 1990-91.

08. In 1979 the Planning Commission of India set up a number of Task Forces to report on strategies for housing development as well as the needs of housing and urban finance. The reports of the Task Forces led to major decisions. The need for radical orientation of all policies was felt and it was generally recognized that the main constraint that had inhibited large scale house construction by households was the inadequate provision of institutional finance for the housing sector. Another policy decision was to provide encouragement and support to housing finance institutions that promote the channeling of private resources into housing in a constructive way. All these efforts led to the establishment of the National Housing bank.

09. National Housing Bank (NHB): (NHB) was set up under statute in 1985 to support the development of a local network of housing finance institutions which would draw resources from households and would be refinanced by NHB acting as a conduit for institutional finance. The NHB is a 100% subsidiary of the Reserve Bank of India. It was set up with an initial capital of Rs. 100.00 crores entirely subscribed by the Reserve Bank of India. Its main objective was to ensure the development of a viable and accessible institutional system for the provision of housing finance. It views its role as an 'Apex housing finance institution which has a regulatory, promotional and re-finance role for other institutions operational in the field. Under the National Housing Bank Act, 1987, the NHB is empowered to perform the following functions:

- i) issue directions and provide guidelines to housing finance institutions to ensure their promotion, management and growth on sound lines;
- ii) make loans and advances and render any other form of financial assistance to scheduled banks and housing finance institutions;
- iii) formulate schemes for the purpose of mobilisation of resources and extension of credit for housing;
- iv) formulate schemes for the weaker sections of the society, which may be subsidised by the Central or State Governments or others;

- v) form, promote and manage subsidiaries for carrying out functions under the Act;
- vi) organise training programmes, symposia on matters relating to housing;
- vii) co-ordinate with various agencies in the housing sector; and
- viii) subscribe to stock, bonds and securities of every other description.

A copy of the NHB Act 1987 is enclosed at Annex I. In order to achieve its objectives, the NHB devised the following strategies:

- i) "NHB will operate as a multi-functional apex bank for the housing sector, taking an integrated view of the real and financial sectors. It will promote complementary and, to a healthy extent competitive roles of the public, co-operative, and private agencies in these sectors".
- ii) "In the financial sector, the basic thrust of NHB will be on developing a healthy and self-sustaining housing finance system and integrating it with the general financial system. It will be its endeavour to operate the housing finance system at non-subsidised rates of interest with full cost recovery. However, a degree of internal cross-subsidisation of interest rates, with comparatively lower rates of interest being charged for the lower income groups keeping in view the fiscal concessions enjoyed by the higher income groups, will be an important feature of the housing finance system".

- iii) "NHB will seek to promote more and more housing finance companies in the public, private and joint sectors for tapping household savings and to act as dedicated outlets for delivery of housing credit. It may also extend equity support to HFCs which expand operations in specified geographical areas".
- iv) "NHB will simultaneously strengthen and support the existing institutions providing credit for housing, especially the co-operative institutions. NHB will be steadfast in its support to professionalism in lending".
- v) "NHB will discourage the prevailing hire purchase system in public agencies as the creation of primary mortgages is a pre-requisite for creation of mortgage based securities market as a major resource for the housing finance system in the years to come".
- vi) "NHB will mobilise savings specifically linked to housing, while seeking allocation of a larger proportion of existing household savings like insurance and provident funds for housing".
- vii) "NHB will promote national level loan-linked and other savings instruments, while encouraging housing finance institutions to promote innovative schemes to cater to particular regions or segments of the population".
- viii) "NHB will dovetail its initiatives in the financial sectors for increasing the supply of credit for housing with initiatives in the real sector and finance projects to develop land and infrastructure so as to ensure a matching supply of buildable land for housing".

- ix) "NHB recognises that affordability of housing is of essence and will support cross-subsidisation in land prices, besides interest rates. NHB will endeavour to ensure that delivery cost of credit is kept as low as possible by the lending agencies".
- x) "Size of the plot/dwelling unit will be an important parameter in NHB's lending norms to secure adequate allocation of financial and real resources to the 'small man'. Luxury housing will be discouraged".
- xi) "NHB will lay special emphasis on housing in rural areas and small and medium towns and on checking excessive congestion in larger cities".
- xii) "NHB will support commercial exploitation of cost saving technologies for building materials and construction components, generally by way of equity participation in companies adopting such technologies".
- xiii) "NHB will support and fund training and research on aspects concerning both housing and financial sectors".
- xiv) "NHB will co-ordinate with the Central and State Governments and other agencies in promoting necessary amendments to the existing laws and in the enactment of new laws with a view to removing impediments to the growth of housing and accelerating the supply of housing".

xv) "NHB will encourage participation of non-governmental organisations and social action groups in its various programmes, particularly those focussed on low income groups".

To start with, the NHB took the following steps to put its objectives into operation:

- i) In November 1988, NHB announced the role that it envisages for the commercial banking system in housing finance through its 55,000 branches throughout the country. Commercial banks had hitherto allocated a certain quantum of funds each year, under guidelines issued by the Reserve Bank of India, for both direct as well as indirect lending for housing finance. The new guidelines indicated the terms and conditions on which banks could finance individuals, institutions, Housing Boards and private developers. The terms for individual households were comparable to those currently offered by HDFC. In turn, the commercial banks are setting up housing finance subsidiaries either jointly with existing housing finance institutions or on their own.
- ii) In March 1989, NHB announced detailed guidelines for a Home Loan Account Scheme that would be offered and operated by banks through their branch network. (Annexure III) A household would be able to save under the scheme for a minimum period of five years at a rate of return of 10% per annum, after which the saver would be eligible for a housing loan of a multiple of the total savings subject to a ceiling of Rs. 300,000, as well as some

restrictions on the size of the unit to be financed. The scheme is to be a national scheme which would replace all other schemes, if any, offered by the banks.

- iii) In April 1989, the NHB announced its refinance guidelines to existing housing finance institutions, aimed at refinancing these institutions, especially for loans made to lower income households and loans made for renovation or for upgrading of low cost housing. Refinance is available upto Rs. 50,000 per household for purchase and upto Rs. 30,000 per household for renovation or upgrading of an existing unit. The rate of interest varies from 10.5 per cent to 13 per cent per annum depending upon the size of the loan with a slight difference of 0.5% for rural housing.
- iv) In June 1989, NHB also announced guidelines for acceptance of deposits by housing finance institutions (Annexure IV). The major feature of these guidelines is that housing finance institutions cannot now accept deposits for a period of less than 24 months.
- v) NHB has also issued guidelines for the promotion of Housing Finance Institutions in private or joint participation which would be applicable if these institutions expect financial support from NHB. The guidelines, inter alia, include paid-up capital requirements, gearing ratios, acceptance of deposit and terms and conditions offered by these institutions for housing finance.

- vi) In November 1989, NHB announced its intention to finance Land Development and Shelter projects undertaken by public housing agencies such as State Housing Boards and Area Development Authorities. The policy emphasis, however, was on land development where public agencies would be reoriented to work more as promoters and facilitators for housing units. Further, these public agencies would, in due course, give up the role of long term housing finance.
- vii) In January 1990, NHB announced its intention to provide finance to Co-operative Housing Societies as short term (3 years) project loans to assist societies with land parcelling and development.

Salient features of the House Loan Account Scheme are given at Annex III.

Directions issued by the NHB to regulate the functioning of the Housing Finance Companies are shown at Annex IV. Guidelines issued by NHB for the professional developers are enclosed at Annex V.

The NHB provided financial assistance of Rs. 567.00 crores in 1990-91 as against Rs. 132.00 crores in 1989-90. During the same year NHB raised the first installment of US 825.00 million from the US Capital market under USAID Housing Guarantee Programme. The Bank also signed an agreement to receive the rupee equivalent of 02.09.70 billion year loan from OECF of Japan. Scheduled banks/HFCs operating the Housing Loan Accounts Scheme collected total deposits of

Rs. 95.00 crores on behalf of NHB from about 05.00 lac accounts. An amount of Rs. 82.00 crores was also collected under the Capital Gains Bonds Scheme.

There are about 200 large and small HFCs operating in India out of which 18 HFCs have been recognised by the NHB for the purpose of refinancing etc. Out of these, six HFCs have been sponsored by scheduled banks as their subsidiaries. The General and Life Insurance Corporations of India have also set up similar subsidiaries. NHB even participates in the equity of some of these bank subsidiaries.

The rates of interest charged by NHB on refinance for housing loans are given below:

<u>Amount of loan</u>	<u>Rate of interest</u>	
	To be charged by NHB to banks	To be charged by banks to ultimate beneficiary
i. Upto Rs. 7,500.00	08.0	10.0
ii. Above Rs. 7,500.00 and upto Rs. 15,000.00	09.5	11.5
iii. Above Rs. 15,000.00 and upto Rs. 25,000.00	10.0	12.0
iv. Above Rs. 25,000.00 and upto Rs. 50,000.00	12.5	14.0
v. Above Rs. 50,000.00 and upto Rs. 200,000.00	14.0	15.0

Repayment of loans to NHB has started and there have been no defaults. The recovery by HFIs is about 97-98%.

While presently the commercial banks are required to invest 1.5% of their incremental deposits into housing, the NHB has recommended to the Reserve Bank of India that this limit may be raised to 5%.

The NHB has also recommended amendment to the NHB Act to provide for a simple procedure for creation of charge over the assets financed by HFIs (to whom re-finance is provided by NHB) and the rules and procedure relating to foreclosure by HFIs and scheduled banks assisted by NHB.

#### RECOVERY OF HOUSING LOANS AND MORTGAGE FORECLOSURE LAWS

10. HUDCO has had no problem so far in recovery of its loans as the borrowers in this case are usually institutions and public sector agencies who have, somehow, managed to repay HUDCO loans despite having problems in recovery of their own loans. Loans granted by NHB are also recoverable without much difficulty as it is the controlling authority of the HFIs etc. The Housing Finance Companies like the HDFC have a very elaborate system of ensuring that in the first instance they do not grant loans to doubtful cases, and then monitor the recovery so effectively that the borrower does not have a chance to get away. As stated earlier, 80% of the HDFC borrowers are salaried persons and only 20% are self employed. HDFC usually does not grant a loan to a self employed person unless he is a tax payer. Loans are secured by HDFC and other HFIs by two personal guarantees and assignment of the life insurance policy. HDFC and other well organised HFIs emphasize more on recovery without having resort to foreclosure.
1. Procedures relating to the sale and registration of property in India are as cumbersome as in Pakistan; stamp duties are high and there is widespread temptation to avoid registration. A large number of transactions are not legally

undertaken in order to avoid restrictions and to circumvent high titling charges and capital gains tax etc. Rent control laws favour the tenants.

12. The HFIs insist that when a loan is required from them, the borrower has to have a clear title to the land and the mortgage deed has to be registered. In the case of purchase of flats the Agreement to Sell has to be registered with the Sub-Registrar. Builders of flats transfer the complex to an Association or Society of buyers. According to a Supreme Court decision, occupancy right of a flat owned by a Cooperative Society or Association is transferable. Premium to sell the flat is given by the Society.

13. 1.5% interest per month is chargeable on over due instalments. The well organised Computer System of efficient HFIs enables them to issue reminders and notices almost mechanically. Corporation employees also visit the defaulters personally. Bouncing of a cheque for shortage of funds is a criminal offence under the Negotiable Instruments Act.

Adequate notices including legal notice are given before a petition is filed in a court. HFIs usually file petitions for recovery of loans rather than for foreclosure. Plaints are filed in different court on the basis of their pecuniary jurisdiction. In Bombay cases involving Rs. 50,000.00 or more are filed in the High Court whereas in other districts the plaintiffs are filed in district courts. The solicitor is allowed to serve the plaintiff on the defendant as an agent of

the court. Substitute service is also possible. Suits for recovery of loan are decided under the summary procedure prescribed in the Civil Procedure Code. Cases in the high court are decided in about four months whereas the civil courts take about nine months. However, if the defendant disputes the amount then it becomes a regular suit and may take several years to be decided.

14. The foreclosure laws in India are the same as in Pakistan. The HFIs don't have any special adjudatory mechanism for their claims or for enforcement of mortgage created by their borrowers. In case of default, the HFIs have to proceed against the defaulting borrowers in the ordinary civil court under the Civil Procedure Code. There is a huge backlog of cases in civil courts and in view of the multi-layer procedure, a suit for enforcement of mortgage can take well over ten years. The provision of multiple appeals can further frustrate the HFIs. Even after obtaining a final decree, the enforcement of decree itself often becomes difficult, consuming and costly.

15. The Maharashtra Ownership of Flats Act 1963: A very interesting and useful legislation was enacted in the State of Maharashtra which has subsequently been adopted or is being adopted by other states. This legislation provides the liabilities, responsibilities and rights of the project promoters and flat purchasers, and requires that a Society or Company be formed to take over and manage the flats. Main features of this Act are given at Annex VI.

GENERAL OBSERVATIONS

16. The development of the housing finance system in India has been dependent on institutional support from well established development and investment institutions. The government company HUDCO was established 20 years ago and the NHB was set up about 15 years later. The last few years have seen an increase in the number of primary HFIs. These HFIs today depend substantially on resources from the banking system. The HFIs are now trying to broad base their resources and focus on two principal markets - the household savings sector and the capital market for debt and equity support respectively. To quote Mr. M. J. Pherwani Chairman of the National Housing Bank, "As far as India is concerned, the primary phase of institution building is almost over and the future task is to induce HFIs into the capital markets for both debt as well equity support. This transition would need the creation of specialised institutions and a new management focus in terms of the array of assets to be created".
17. The major objectives of a future strategy in India are:
- i) to develop an institutional network that would enhance the quantum of housing finance;
  - ii) to identify a potential resource base for the system as a whole;
  - iii) to codify and simplify the legal system with respect to risk management of HFIs (liquidity, interest rates and default risks in particular);

iv) to rationalise and re-orient the fiscal system to re-allocate funds to the housing sector by providing incentives for household thrift as well as institutional growth.

v) To link formal networks with informal networks which are the major source of financial and economic activity for rural and urban poor.

18. Amendments in NHB Act to facilitate/recovery/foreclosure: At the end it is only appropriate to give some details of the amendments proposed by NHB in the relevant legislation to empower the HFIs/NHB to take effective measures for recovery of housing loans and foreclosure of mortgaged property in cases where recovery is not possible without having recourse to prolonged litigation. The amendments have already been tabled in the parliament and are likely to be approved in due course. This law would be applicable to only those HFIs which have availed of refinance or credit facilities from the NHB. Salient features of the proposed amendments are given below:

- i) When any person seeks financial assistance from an HFI on the security of any immovable property belonging to that person or any other person, the dues relating to such assistance shall be a charge on such immovable property.
- ii) If a borrower makes any default in repayment, the HFI may request the NHB to recover the arrears.

- iii) The NHB in turn shall, after giving notice to the borrower, have the right to transfer the property by way of lease or sale and realise the dues of the HFI out of sale proceeds of the property.
  - iv) The buyer of the mortgaged property could request the District Magistrate to take possession of the property; the District Magistrate in turn would have the power to take possession of the property. This action of the District Magistrate shall not be actionable in any court of law.
  - v) Such transfer shall vest in the transferee all rights in the property so transferred - as if the transfer had been made by the owner of the property.
  - vi) The HFI will also be vested with the discretion to request the NHB to arrange recovery of the amount due as arrears of land revenue and the NHB, after making necessary enquiries, may issue a certificate to the District Collector requesting that the amount may be recovered as arrears of land revenue.
  - vii) No court shall pass any order in respect of an immovable property mortgaged with an HFI unless an order is also passed for repayment of the dues of such HFI.
19. The present appraisal standards of HFIs demand and result in over-securitization of loans which militates against those who earn irregular incomes and also against low income households. Creditors of HFIs are also more cautious in lending to these institutions. So far the policy and the

laws and procedures do not encourage innovative financing mechanisms, and preclude lower income families access to shelter credit and enhances credit risk to the lending institutions. Foreclosure possibilities as envisaged in the NHB legislation would reduce risks and enhance the abilities of HFCs to create new resource mobilisation avenues.

LIST OF ANNEXURES

Pages

Annex I	HUDCO s financing pattern	i to vii
Annex II	National Housing Bank Act (1987)	viii to xxix
Annex III	Salient features of the House Loan Account Scheme	xxx to xxxv
Annex IV	Directions issued by NHB to regulate the functioning of the Housing Finance Companies.	xxxvi to xxxix
Annex V	Directions issued by the NHB to professional developers.	xxxx to xxxxiv
Annex VI	Salient features of the Maharashtra Ownership of Flats Act 1963.	xxxxv to xxxxxi

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28

## Annex I

HUDCO'S FINANCING PATTERN

The Housing & Urban Development Corporation (HUDCO) was set up in 1970 as a Government of India Undertaking. Its main objectives are to finance or undertake housing and urban development and related programmes. HUDCO sanctions loans amounting to over Rs. 1300 crores a year.

**ELIGIBLE SCHEMES**

The schemes eligible for HUDCO's financial assistance include the following:

- Urban Housing
- Rural Housing
- Environmental Improvement of Slums
- Urban Infrastructure
- Basic Sanitation
- Staff Housing
- Cooperative Housing
- Building Material Schemes
- Land Acquisition Schemes
- Construction Loans
- Commercial Schemes
- Repairs and Renewal
- Urban Employment through Housing & Shelter Upgradation
- Night Shelter
- Working Women Ownership Condominiums
- Building Centres

**ELIGIBLE AGENCIES**

The agencies eligible for HUDCO's financial assistance are State Housing Boards, Slum Clearance Boards, Development Authorities, Improvement Trusts, Municipal Corporations/Councils, local bodies, apex primary cooperative societies, public sector organisations and so forth. The agencies for rural housing schemes, must be nominated by the State Governments. In the case of staff housing provided by both private and public sector employers and for building material schemes, private sector entrepreneurs are also eligible.

**SECURITY FOR HUDCO LOANS**

There are a few variations when the question of security for these loans come up. The requirements for each agency are given below:

- (a) For housing boards, development authorities, public sector organisations, etc.
  - Government Guarantee
  - Bank Guarantee
  - Mortgage of Property
  - Negative lien for housing boards and development authorities.
- (b) For Cooperative Societies:
  - Bank Guarantee
  - Mortgage of Property
  - Government Guarantee
- (c) For Private Sector organisations:
  - Bank Guarantee
  - Mortgage of Property

**GENERAL REQUIREMENTS****1 Application Fee**

Each loan application sent to HUDCO must be accompanied with a bank draft of Rs. 10,000 except for independent EWS where it shall be Rs. 5000 towards incidental and documentation charges. In respect of Urban Infrastructure projects, documentation charges shall be based on loan amount i.e. Loan upto Rs. 2 crores Rs. 15,000; Rs 2 to 5 crores Rs. 20,000; Rs. 5 to 10 crores Rs. 30,000 and Rs. 10 to 20 crores Rs. 40,000. This amount will not carry any rate of interest. The application fee is non-refundable.

**2 Financial Information**

The borrowing agencies are expected to furnish their Annual Audited Accounts for the last three years and certain other financial information/documents to HUDCO's requirements.

**3 Commitment Charges for Building Material Schemes**

For Building Material Schemes, the borrower is expected to draw the loan instalments as per agreed schedule failing which commitment charge @ 1% are payable on the loan instalments remaining undrawn on the dates specified in the loan agreement.

**4 Front-end Fees**

One time Front-end fees on the total loan amount shall be levied on all the schemes as per following scales:

- |  |                 |
|--|-----------------|
| a) - EWS Schemes   | : 0.50% of loan |
| - LIG Schemes  | : 1.00% of loan |
| - MIG Schemes  | : 1.25% of loan |
| - HIG and all other Schemes<br>(Urban Infrastructure, Land Acquisition etc.)<br>including composite schemes. | : 1.25% of loan |

- b) The amount of Front-end fees shall be recovered from the first instalment and will be in addition to documentation charges.
- c) Front-end fees shall be reduced by 0.25% in respect of those schemes where legal documentation is completed within the prescribed period of four months (six months for North-Eastern States). In respect of those schemes where the legal documentation is not completed within the prescribed period, Front-end fees shall be levied without giving rebate of 0.25% and the Front-end fees equivalent to 0.25% shall be transferred to Research and Development Account of the borrowing agency which shall be made available to them in the form of grant for upgrading their organisational capability and such other purposes. Agencies would be given maximum three years time to utilise R&D amount after which it will be treated as HUDCO income.

**5 Risk Charge**

1. In the case of loans sanctioned directly to the primary cooperative societies on the security of mortgage, risk charge @ 0.5 per cent will be payable by the society in addition to the interest chargeable on the outstanding loan.
2. A risk charge @ 0.50% is also made in addition to the normal rate of interest on the loan outstanding in case the security for the loan is a Negative Lien. However, in a scheme where the loan is secured by Negative Lien and the borrower defaults and request for continuance of security of Negative Lien is accepted by HUDCO, the risk charge shall be increased to one per cent instead of half per cent.

## Annex I

**6 EWS Fund**

The borrowers which do not observe allocation pattern prescribed by HUDCO i.e. 55% for EWS and LIG schemes and 45% for other categories/programmes shall contribute to EWS fund @ 2% of the sale price of each HUDCO sanctioned projects. This levy would, however, not be applicable on priority sector EWS schemes such as Low Cost Sanitation, Slum Upgradation etc. and schemes which are formulated on land area of less than five acres. In addition to contribution to EWS fund, the agencies which are not taking up projects for priority sector as per funds allocation of HUDCO, shall be required to pay one per cent levy on non-priority sector schemes.

**7 All Inclusive Cost**

The all inclusive cost mentioned under different schemes includes the cost of raw land, the cost of land development, construction cost, administrative and supervision expenses and interest during the construction period. The ceilings provided against each scheme are the maximum and it is desirable that the estimated cost is kept sufficiently below these limits so as to amply provide for future cost escalation, contingencies and so forth.

**8 Gross Interest**

The net interest rates mentioned against different schemes will be increased by 0.50%. The additional interest of half per cent will be allowed as rebate for timely repayment of principal and payment of interest etc. In the event of default in payment of principal and/or interest etc., the borrower will also have to pay penal interest at 2.50% over and above normal gross rate of interest. In addition to applicable rate of interest, the borrower shall also pay interest tax equivalent to 3% of the applicable rate of interest accrued on or after 1st October 1991.

**9 Extent of Loan and Repayment Period**

The extent of loan, repayment period etc. indicated for different schemes are the maximum allowed. However, the actual extent of loan and repayment period will be determined in relation to the merits of each case and keeping in view the affordability of the beneficiaries belonging to various income groups.

**10 Periodicity of Repayments**

- |                                  |  |
|----------------------------------|--|
| i. For Building Material Schemes | : Principal amount repayable in half-yearly instalments & interest in quarterly instalments. |
| ii. For All Other Schemes        | : Repayable in quarterly instalments.  |

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## REVISED FINANCING PATTERN FOR HUDCO SCHEMES

Category	Cost ceiling (Rs)	Max. Loan ceiling (Rs)	Extent of finance (% age)	Net Interest rate (% age)	Repayment period (Yrs)	Monthly Instalment on loan of Rs 1000 (Rs)
1	2	3	4	5	6	7
<b>I EWS - Monthly Income up to Rs. 1050</b>						
<b>Rural</b>						
Landless	12,700	11,430	90	7.5	15	9.27
Landed	22,000	19,500	90	8	22	8.05
Village Abadi including Repairs	4,000		100	7.5	11	11.15
<b>Urban (1)</b>						
EWS House	22,000	19,500	90	8	22	8.06
Community Toilets	NA	NA	50	8	12	10.82
Repairs/Additions	11,000	9,500	90	7	10	11.61
<b>II LIG - Monthly Income over Rs 1050 and upto Rs 2200</b>						
<b>Rural-Urban</b>						
LIG House (2)	50,000	42,000	85	11.50	15	11.68
Repairs/Additions	25,000	21,000	85	11.50	10	14.06
<b>III MIG - Monthly Income over Rs 2200 and up to Rs 3700</b>						
<b>Rural-Urban</b>						
MIG House	1,75,000	60,000	75	12	15	12.00
		80,000	75	13	15	12.65
		1,15,000	75	14	15	13.32
Repairs/Additions	85,000	30,000	75	12	10	14.34
		40,000	75	13	10	14.93
		55,000	75	14	10	15.53
<b>IV HIG - Monthly Income over Rs 3700.</b>						
<b>Rural-Urban</b>						
HIG House	-	1,15,000	60	14	15	13.32
	-	1,50,000	60	15	15	14.00
	-	2,00,000	60	16	15	14.69

(\*) including marginal farmers

(1) Up to 50 per cent of loan may be considered by implementing agencies for serviced plots and balance as construction loan or skeletal house plus atleast Rs. 3000/- as construction loan.

(2) At least 50 per cent of the loan may be considered as construction loan by implementing agencies.

\*\* Though there is a provision for extending loan upto 100%, the beneficiaries/State level agencies should contribute minimum 25% of the cost as their share.

1	2	3	4	5	6	7
Repairs/Additions	-	55,000	60	14	10	15.52
	-	75,000	60	15	10	16.13
	-	1,00,000	60	16	10	16.75
<b>V Staff Housing</b>						
Company Owned <sup>(3)</sup>	-	1,15,000	60	14	10	15.52
	-	1,50,000	60	15	10	16.13
	-	2,00,000	60	16	10	16.75
Employee Owned	----- As per Urban Housing Norms -----					
VI Commercial Schemes			75	16	15	14.69
VII Building Material	As per IDBI norms subject to availability of refinance from IDBI. However, till refinance facility not available, loans shall be available at IDBI basic interest rate which at present is 20% p.a., loan up to 70%, 17.37 repayment 8 years and Debt Equity 2:1.					
<b>VIII Plotted Development</b>						
EWS Serviced Sites	7,500	7,500	upto 100	7.00	22	7.43
Other Categories	----- As per Urban Housing Norms -----					
IX Social Infrastructure and Single Working Women Hostel & Condominiums			-75	12.50 <sup>(4)</sup>	12	13.44
X Housing Cooperative Societies	As per urban housing norms.					
XI Shelter Upgradation (NRY) Night Shelter, Low Cost Sanitation, (individual toilets), Central Govt. Employees Group Insurance Schemes	As per Govt. of India Guidelines. For NRY schemes, built house not to be financed and subsidy to be limited to 25% of improvement cost upto a maximum of Rs. 1000 and interest rate at 7%.					
XII Slum Upgradation, Environment Improvement Schemes including in inner city area.	As per EWS urban housing norms subject to a maximum loan of Rs. 4000 per family.					
XIII Handloom Weavers and Beedi Workers	Housing loan as per HUDCO norms and Subsidy/ working shed loan as per Govt. of India guidelines.					
XIV Private Builder Scheme						
- Construction Loan			-upto 50	14 to 16	5	23.26 to 24.32
- Housing Loan	----- As per Urban Housing Norms -----					
XV Land Acquisition			upto 50	14	6	20.61
			upto 75	15	6	21.15
			upto 100	16	6	21.69
XVI Transit Accommodation schemes	56,000	42,000	85	14 to 16	10	15.53 to 16.75

(3) In the case of non-profit Government agencies, interest shall be reduced suitably upto a maximum of one per cent.

(4) For Single Working Women Hostel and Condominium, rate of interest shall be reduced by half per cent.

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**Notes**

- A Loans for SC/ST landless beneficiaries both in rural and urban areas are proposed to be given out of Banking Sector Funds, if available, under RBI scheme at 4 per cent per annum. In such cases HUDCO will charge 6 per cent interest.
- B Loans for natural calamities/flood affected schemes are proposed to be given as per Govt. of India Guidelines.
- C Grant for Building Centres shall be as per Govt. of India Guidelines.
- D Cost and loan ceilings applicable to EWS and LIG categories shall be increased by 25 per cent both for Rural and Urban Schemes in hilly areas, Metropolitan Towns, North-Eastern States, Islands and difficult areas. Increase for difficult areas will be subject to approval by HUDCO Board of Directors in each case.
- E Loans in excess of minimum allocation for a State prescribed by HUDCO for various categories can be considered as construction loan for the interim period. However, the interim construction loan can be converted into regular loan, if at the end of the financial year surplus/unutilised of minimum allocations from other States is available, at the normal rate of interest for each category or funds to be mobilised from National Housing Bank either on NHB rate or NHB's refinancing norms.
- F Implementing agencies may be allowed to allot houses either on hire purchase or rental or cash down basis to general public depending upon actual demand.
- G The cost ceilings indicated above for various categories will not include cost of Raw Land for schemes to be undertaken in Hilly Areas and Rural EWS Schemes.
- H Loans will continue to be sanctioned by HUDCO as per existing funds allocation i.e. 55 per cent for EWS (30%) and LIG (25%) and 45 per cent for other categories/schemes.
- I Recategorisation of various housing schemes shall be done in case the actual cost exceeds 10 per cent above ceiling cost prescribed for various categories. In such cases, the additional burden of higher rate of interest shall be borne by the agencies and shall not be recovered from the beneficiaries. In case of need, additional loans for agencies can be sanctioned by HUDCO as per usual terms and conditions. However, agencies can pass on the burden of additional interest to beneficiaries provided they do not ask for additional loans.
- J For company owned staff housing in rural areas with a population up to 20000, rate of interest shall be 12 per cent per annum and other terms as per Staff Housing (company owned) Guidelines. This scheme will be applicable only to Public Sector Agencies and where repayments and balance project cost are to be met out of specific State Govt. Grants.
- K Working Capital and Term Loan to Building Centres will continue to be sanctioned as per existing norms i.e. loan upto Rs. 4 lakhs, interest 10.00 per cent per annum and repayment 10 years. Loans beyond Rs. 4 lakhs can also be considered by Board of HUDCO at higher interest rate.
- L Private Builder (Construction Loan) and Transit Accommodation Schemes shall be formulated at the maximum interest rate i.e. 16 per cent.

**OWNERSHIP HOUSING SCHEMES FOR CENTRAL GOVERNMENT EMPLOYEES**

HUDCO's finance is available for Ownership Housing Schemes for Central Government Employees covered under the Group Insurance Scheme of the Government of India. Such schemes can be formulated by Housing Boards, Development Authorities, Improvement Trusts, State Governments, Government Employees Cooperative Societies etc. HUDCO's lending rate is 13 per cent per annum and the loan is repayable within a maximum period of 20 years including moratorium of three years in the repayment of the principal. The land on which the scheme is to be implemented should be in the applicant's possession and should be free from encumbrance. The loan is to be secured by Government Guarantee or by mortgaging of unencumbered and immovable property.

The scheme is financed by HUDCO out of the funds received from the Central Government separately and therefore does not figure under the general allocation of funds.

**URBAN INFRASTRUCTURE SCHEMES**

Category	Extent of finance (% age)	Net Interest rate (% age)	Loan ceiling (Rs/Cr)
UI projects in towns having population upto 5 lacs	70	13.00	5.00
UI projects in towns having population more than 5 lacs and upto 10 lacs	70	15.50	10.00
UI projects in towns having population above 10 lacs	70	16.50	20.00

**Notes:**

1. Repayment period - between 5 and 15 years depending upon the nature of the project.
2. One per cent additional interest shall be levied in case the loan required is in excess of loan ceilings mentioned above.
3. Interest rates as indicated above can be increased by one per cent in emergent situations.

**MINISTRY OF LAW AND JUSTICE**

**(Legislative Department)**

*New Delhi, the 28th December, 1987/Pausa 7, 1909 (Saka)*

The following Act of Parliament received the assent of the President on the 23rd Decemebr, 1987, and is hereby published for general information:—

**THE NATIONAL HOUSING BANK ACT, 1987**

No. 53 of 1987

[23rd December, 1987.]

An Act to establish a bank to be known as the National Housing Bank to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions and for matters connected therewith or incidental thereto.

Enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

**CHAPTER I**

**PRELIMINARY**

1. (1) This Act may be called the National Housing Bank Act, 1987.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates

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may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Defin-  
itions.

2. In this Act, unless the context otherwise requires,—

(a) "Board" means the Board of Directors of the National Housing Bank referred to in section 6;

(b) "Chairman" means the Chairman of the Board appointed under section 6;

(c) "director" means a director appointed under section 6;

(d) "housing finance institution" includes every institution, whether incorporated or not, which primarily transacts or has as its principal object, the transacting of the business of providing finance for housing, whether directly or indirectly;

(e) "Managing Director" means the Managing Director appointed under section 6;

(f) "National Housing Bank" means the National Housing Bank established under section 3;

(g) "notification" means a notification published in the Official Gazette;

(h) "prescribed" means prescribed by regulations made under this Act;

(i) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

2 of 1934.

(j) words and expressions used herein and not defined but defined in the Reserve Bank of India Act, 1934, shall have the meanings respectively assigned to them in that Act;

4 of 1934.

(k) words and expressions used herein and not defined either in this Act or in the Reserve Bank of India Act, 1934, but defined in the Banking Regulation Act, 1949, shall have the meanings respectively assigned to them in the Banking Regulation Act, 1949.

2 of 1934.

10 of 1949.

## CHAPTER II

### ESTABLISHMENT OF THE NATIONAL HOUSING BANK AND CAPITAL THEREOF

Estab-  
lish-  
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corpora-  
tion of  
National  
Housing  
Bank.

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established for the purposes of this Act, a bank to be known as the National Housing Bank.

(2) The National Housing Bank shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by that name, sue and be sued.

(3) The head office of the National Housing Bank shall be at Bombay or at such other place as the Reserve Bank may, by notification, specify.

(4) The National Housing Bank may establish offices, branches or agencies at any place in India, and with the previous approval of the Reserve Bank, at any place outside India.

4. The authorised and paid up capital of the National Housing Bank shall be one hundred crores of rupees and shall be subscribed by the Reserve Bank:

Capital

Provided that the Central Government may, in consultation with the Reserve Bank, by notification, increase the said capital up to five hundred crores of rupees and the capital so increased shall also be subscribed by the Reserve Bank.

### CHAPTER III

#### MANAGEMENT OF THE NATIONAL HOUSING BANK

5. (1) The general superintendence, direction and management of the affairs and business of the National Housing Bank shall vest in the Board of Directors, which shall exercise all powers and do all acts and things, which may be exercised or done by the National Housing Bank.

Management

(2) Subject to the provisions of this Act, the Board, in discharging its functions, shall act on business principles with due regard to public interest.

(3) Subject to the provisions of sub-section (1) and save as otherwise provided in the regulations made under this Act,—

(a) the Chairman, if he is holding offices both as the Chairman and the Managing Director, or

(b) the Managing Director, if the Chairman is absent,

shall also have powers of general superintendence, direction and management of the affairs and business of the National Housing Bank and may also exercise all powers and do all acts and things which may be exercised or done by the National Housing Bank and shall act on business principles with due regard to public interest.

(4) The Managing Director shall, in the discharge of his powers and functions, follow such directions as the Chairman may give.

(5) In the discharge of its functions under this Act, the National Housing Bank shall be guided by such directions in matters of policy involving public interest as the Central Government, in consultation with the Reserve Bank, or the Reserve Bank, may give in writing.

6. (1) The Board of Directors of the National Housing Bank shall consist of the following, namely:—

Board of Directors

(a) a Chairman and a Managing Director;

Provided that the same person may be appointed as Chairman and as Managing Director;

(b) three directors from amongst the experts in the field of housing, architecture, engineering, sociology, finance, law, management and corporate planning or in any other field, special knowledge of which is considered useful to the National Housing Bank;

(c) three directors, who shall be persons with experience in the working of institutions involved in providing funds for housing or engaged in housing development;

(d) two directors from out of the directors of the Reserve Bank;

(e) three directors from amongst the officials of the Central Government;

(f) two directors from amongst the officials of the State Government.

(2) The Chairman, the Managing Director and other directors excluding the directors referred to in clause (d), shall be appointed by the Central Government in consultation with the Reserve Bank and directors referred to in clause (d) shall be nominated by the Reserve Bank.

Terms of office of Chairman, Managing Director and other directors, service conditions, etc.

7. (1) The Chairman and the Managing Director shall hold office for such term, not exceeding five years and shall receive such salary and allowances and be governed by such terms and conditions of service as the Central Government may, in consultation with the Reserve Bank, specify and shall be eligible for re-appointment:

Provided that the Chairman or, as the case may be, the Managing Director shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The directors referred to in clauses (b) and (c) of sub-section (1) of section 8 shall hold office for a term of three years:

Provided that any such director shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(3) The Central Government may, in consultation with the Reserve Bank, remove the Chairman or the Managing Director, or any other director referred to in sub-section (2), at any time before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the proposed removal.

(4) Notwithstanding anything contained in sub-sections (1) and (3), the Central Government, in consultation with the Reserve Bank, shall have the right to terminate the term of office of the Chairman or, as the case may be, the Managing Director, at any time before the expiry of the term specified under sub-section (1), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof and the Chairman or the Managing Director, as the case may be, shall also have the right to relinquish his office at any time before the expiry of the term specified under sub-section (1), by giving to the Central Government notice of not less than three months in writing or three months' salary and allowances in lieu thereof.

(5) The directors shall be paid such fees and allowances as may be prescribed for attending the meetings of the Board or of any of its committees and for attending to any other work of the National Housing Bank:

Provided that no such fee shall be payable to any director, who is an official of the Government or a director of the Reserve Bank.

Disqualifications.

8. No person shall be a director of the Board, if he—

(a) is, or becomes of unsound mind and has been so declared by a competent court; or

(b) is or has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) is, or at any time has been, adjudicated as insolvent or has suspended payment of his debts or has compounded with his creditors; or

(d) has, for any reason, been removed or dismissed from the service of—

(i) the Government, or

(ii) the Reserve Bank, the State Bank or any other bank, or

(iii) any public financial institution, or state financial corporation, or

(iv) any other corporation owned or controlled by the Government.

9. (1) If a director—

(a) becomes subject to any of the disqualifications mentioned in section 8; or

(b) is absent without leave of the Board for three or more consecutive meetings thereof,

his seat shall thereupon become vacant.

(2) Any director may resign his office by giving notice thereof in writing to the authority that appointed or, as the case may be, nominated him and on his resignation being accepted by such authority or if his resignation is not sooner accepted, on the expiry of three months from the receipt thereof by such appointing authority, he shall be deemed to have vacated his office.

10. If the Chairman, or as the case may be, the Managing Director, is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise, in circumstances not involving the vacation of his appointment, the Central Government may, appoint another person to act in his place during his absence.

11. (1) The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) The Chairman, or, if for any reason he is unable to attend a meeting of the Board, the Managing Director, or, in the event of both the Chairman and the Managing Director being unable to attend a meeting, any other director nominated by the Chairman in this behalf and in the absence of such nomination, any director elected by the directors present from among themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the directors present and voting, and in the event of an equality of votes, the Chairman, or, in his absence, the person presiding, shall have a second or casting vote.

Vacation and re-signation of office by directors.

Casual vacancy in the office of Chairman or Managing Director.

Meetings of Board.

Execu-  
tive Com-  
mittee  
and  
other  
commit-  
tees.

12. (1) The Board may constitute an Executive Committee consisting of such number of directors as may be prescribed.

(2) The Executive Committee shall discharge such functions as may be prescribed, or, as may be delegated to it, by the Board.

(3) The Board may constitute such other committees, whether consisting wholly of directors or wholly of other persons or partly of directors and partly of other persons as it thinks fit for such purposes, as it may decide and any committee so constituted shall discharge such functions as may be delegated to it by the Board.

(4) The Executive Committee or any other committee constituted under this section shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings, as may be prescribed.

Director  
of Board  
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13. Any director of the Board or any member of a committee, who has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board or a committee thereof, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and the disclosure shall be recorded in the minutes of the Board, or the committee, as the case may be, and the director or member shall not take any part in any deliberation or decision of the Board or the committee with respect to that matter.

#### CHAPTER IV

##### BUSINESS OF THE NATIONAL HOUSING BANK

Business  
of the  
National  
Housing  
Bank.

14. Subject to the provisions of this Act, the National Housing Bank may transact all or any of the following kinds of business, namely:—

(a) promoting, establishing, supporting or aiding in the promotion, establishment and support of housing finance institutions;

(b) making of loans and advances or rendering any other form of financial assistance whatsoever to housing finance institutions and scheduled banks; or to any authority established by or under any Central, State or

(c) subscribing to or purchasing stocks, shares, bonds, debentures and securities of every other description; Provincial Act and engaged in sine clearance.

(d) guaranteeing the financial obligations of housing finance institutions and underwriting the issue of stocks, shares, bonds, debentures and securities of every other description of housing finance institutions;

(e) drawing, accepting, discounting or rediscounting, buying or selling and dealing in bills of exchange, promissory notes, bonds, debentures, hundies, coupons and other instruments by whatever name called;

(f) forming, promoting and managing subsidiaries for carrying out all or any of its functions under this Act;

(g) undertaking research and surveys on construction techniques and other studies relating to or connected with shelter, housing and human settlement;

(h) formulating one or more schemes for the purpose of mobilisation of resources and extension of credit for housing;

(i) formulating one or more schemes for the economically weaker sections of society which may be subsidised by the Central Government or any State Government or any other source;

(j) organising training programmes, seminars and symposia on matters relating to housing;

(k) providing guidelines to the housing finance institutions to ensure their growth on sound lines;

(l) providing technical and administrative assistance to housing finance institutions;

(m) co-ordinating with the Life Insurance Corporation of India, the Unit Trust of India, the General Insurance Corporation of India and other financial institutions, in the discharge of its overall functions;

(n) exercising all powers and functions in the performance of duties entrusted to the National Housing Bank under this Act or under any other law for the time being in force;

(o) acting as agent of the Central Government, the State Government or the Reserve Bank or of any authority as may be authorised by the Reserve Bank;

(p) any other kind of business which the Central Government may, on the recommendation of the Reserve Bank, authorise;

(q) generally, doing of all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

15. (1) The National Housing Bank may, for the purpose of carrying out its functions under this Act—

(a) issue and sell bonds and debentures with or without the guarantee of the Central Government, in such manner and on such terms as may be prescribed;

(b) borrow money from the Central Government and from any other authority or organisation or institution approved by that Government on such terms and conditions as may be agreed upon;

(c) accept deposits repayable after the expiry of a period which shall not be less than twelve months from the date of the making of the deposit on such terms as may generally or specially be approved by the Reserve Bank; *provided that nothing contained in this clause shall apply to deposits accepted under the scheme formulated by the Bank in pursuance of clause (hh) of section 14.*

(d) borrow money from the Reserve Bank—

(i) repayable on demand or on the expiry of fixed periods not exceeding eighteen months from the date of the making of loan or advance, on such terms and conditions including the terms relating to security and purpose as may be specified by the Reserve Bank;

*(hh) formulating a scheme for the purpose of accepting deposits referred to in clause (c) of section 15 of the Voluntary Deposits (Facilities and Exceptions) Act, 1991 and crediting forty percent of the amount of such deposits to a special fund created under section 17.*

Borrowings and acceptance of deposits by National Housing Bank.

(ii) out of the National Housing Credit (Long Term Operations) Fund established under section 46D of the Reserve Bank of India Act, 1934 for any of the purposes specified in that section;

2 of 1934.

(e) receive for services rendered, such remuneration, commission, commitment charges, consultancy charges, service charges, royalties, premia, licence fees and any other consideration of whatever description;

(f) receive gifts, grants, donations or benefactions from Government or any other source.

(2) The Central Government may, on a request being made to it by the National Housing Bank, guarantee the bonds and debentures issued by the National Housing Bank as to the repayment of principal and the payment of interest at such rate as may be fixed by that Government.

Loans in foreign currency.

16. (1) Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1973 or in any other law for the time being in force relating to foreign exchange, the National Housing Bank may, for the purpose of making loans and advances under this Act, borrow in such manner and on such conditions as may be prescribed in consultation with the Reserve Bank and with the previous approval of the Central Government, foreign currency from any bank or financial institution in India or elsewhere.

6 of 1973.

(2) The Central Government may, where necessary, guarantee any loan taken by the National Housing Bank under sub-section (1) or any part thereof as to the repayment of principal and the payment of interest and other incidental charges.

Power to transfer rights.

17. The rights and interests of the National Housing Bank (including any other rights incidental thereto) in relation to any loan or advance made, or any amount recoverable, by it, may be transferred by the National Housing Bank, either in whole or in part, by the execution or issue of any instrument or by the transfer of any instrument by endorsement, or in any other manner in which the rights and interests in relation to such loan or advance may be lawfully transferred, and the National Housing Bank may, notwithstanding such transfer, act as the trustee within the meaning of section 3 of the Indian Trusts Act, 1882, for the transferee.

2 of 1982.

Power to acquire rights.

18. The National Housing Bank shall have the right to acquire, by transfer or assignment, the rights and interests of any housing finance institution (including any other rights incidental thereto) in relation to any loan or advance made, or any amount recoverable by such institution, either in whole or in part, by the execution or issue of any instrument or by the transfer of any instrument or in any other manner in which the rights and interests in relation to such loan or advance may be lawfully transferred.

Power to impose conditions for accommodation

19. In entering into any transaction under this Chapter with any borrowing housing finance institution, the National Housing Bank may impose such conditions as it may think necessary or expedient for protecting the interests of the National Housing Bank.

Power to inspect.

24. (1) The National Housing Bank may at any time and shall, on being directed so to do by the Reserve Bank, cause an inspection to be made by one or more of its officers or any housing finance institution to which the National Housing Bank has made any loan or advance or granted any other financial assistance, and its books, accounts and other documents; and the National Housing Bank shall supply to the housing finance institution a copy of its report on such inspection.

(2) It shall be the duty of every officer, employee or other person or persons in charge of the whole or part of the affairs of the housing finance institution to produce to any officer making an inspection under sub-section (1), all such books, accounts and other documents in his custody or power and to furnish within such time as the said officer may specify, any statements, information relating to the affairs of the housing finance institution as the said officer may require of him.

Power to collect credit information.

25. (1) The National Housing Bank may, for the purpose of the efficient discharge of its functions under this Act, at any time direct any housing finance institution to submit to it credit information in such form and within such time as may be specified by the National Housing Bank from time to time.

(2) Every housing finance institution shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any instrument regulating the constitution thereof or in any agreement executed by it, relating to the secrecy of its dealings with its constituents, be bound to comply with any directions issued under sub-section (1).

(3) The National Housing Bank may, for the purpose of the efficient discharge of its functions under this Act, collect from the Central and State Governments, local authorities, the Reserve Bank, any bank or such financial or other institutions as the Reserve Bank may specify in this behalf, credit information or other information.

*Explanation.*—For the purposes of this section and section 28, credit information means any information relating to—

(i) the amount of loans and advances and other credit facilities granted for the purpose of housing;

(ii) the nature of security taken for such loans, advances or other credit facilities;

(iii) the guarantees furnished; and

(iv) any other information which has a bearing on the credit-worthiness of the borrower.

Power to publish information.

26. The National Housing Bank, if it considers it in the public interest so to do, may publish any credit information or other information obtained by it under this Act, in such consolidated form or in any other form as it thinks fit.

Advisory services

27. The National Housing Bank may provide advisory services to the Central and State Governments, local authorities and other agencies connected with housing, in respect of—

(a) formulation of overall policies aimed at promoting the growth of housing and housing finance institutions;

(b) legislation relating to matters having a bearing on housing and human settlement.

CHAPTER V

PROVISIONS RELATING TO HOUSING FINANCE INSTITUTIONS RECEIVING DEPOSITS

2 of 1934. 28. In this Chapter the term 'deposit' shall have the meaning assigned to it in section 45I of the Reserve Bank of India Act, 1934.

Defin-  
tion of  
deposit.

29. (1) The provisions of this Chapter shall not apply to deposits accepted by a housing finance institution which is a firm or an unincorporated association of individuals.

Chapter  
not to  
apply in  
certain  
cases.

(2) For the removal of doubts, it is hereby declared that the firms and unincorporated associations of individuals referred to in sub-section (1) shall continue to be governed by the provisions of Chapter III of the Reserve Bank of India Act, 1934.

3 of 1934.

30. The National Housing Bank may, if it considers necessary in the public interest so to do, by general or special order,—

National  
Housing  
Bank to  
regu-  
late or  
prohibit  
issue of  
prosper-  
tus or  
adver-  
tisement  
soliciting  
deposits  
of  
money.

(a) regulate or prohibit the issue by any housing finance institution of any prospectus or advertisement soliciting deposits of money from the public; and

(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.

31. (1) The National Housing Bank may at any time direct that every housing finance institution accepting deposits shall furnish to the National Housing Bank in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the housing finance institution, as may be specified by the National Housing Bank by general or special order.

Power of  
National  
Housing  
Bank to  
collect  
informa-  
tion  
from  
housing  
finance  
institu-  
tions as  
to de-  
posits  
and to  
give  
direc-  
tions.

(2) Without prejudice to the generality of the power vested in the National Housing Bank under sub-section (1), the statements, information or particulars to be furnished under sub-section (1), may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, such deposits are received.

(3) The National Housing Bank may, if it considers necessary in the public interest so to do, give directions to housing finance institutions accepting deposits either generally or to any group of housing finance institutions accepting deposits, and in particular, in respect of any matters relating to, or connected with, the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.

(4) If any housing finance institution accepting deposits fails to comply with any direction given by the National Housing Bank, under

sub-section (3), the National Housing Bank may prohibit the acceptance of deposits by that housing finance institution.

(5) Every housing finance institution receiving deposits, shall, if so required by the National Housing Bank and within such time as the National Housing Bank may specify, cause to be sent at the cost of the housing finance institution, a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the housing finance institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the National Housing Bank.

Duty of housing finance institutions to furnish statements, etc., required by National Housing Bank.

32. Every housing finance institution shall furnish the statements, information or particulars called for, in such form as may be prescribed, and comply with any direction given to it, under the provisions of this Chapter.

Powers and duties of auditors.

33. (1) The auditor of every housing finance institution shall enquire whether or not the housing finance institution has furnished to the National Housing Bank such statements, information or particulars relating to or connected with deposits received by it, as are required to be furnished under this Chapter, and the auditor shall, except where he is satisfied on such enquiry that the housing finance institution has furnished such statements, information or particulars, make a report to the National Housing Bank giving the aggregate amount of such deposits held by the housing finance institution.

(2) Where, in the case of a housing finance institution, being a company, the auditor has made, or intends to make a report to the National Housing Bank under sub-section (1), he shall include in his report under sub-section (2) of section 227 of the Companies Act, 1956, the contents of the report which he has made, or intends to make, to the National Housing Bank.

1 of 1956.

34. (1) The National Housing Bank may, at any time, cause an inspection to be made by one or more of its officers or employees or other persons (hereafter in this section referred to as the inspecting authority) of any housing finance institution accepting deposits, for the purpose of verifying the correctness or completeness of any statement, information or particulars furnished to the National Housing Bank or for the purpose of obtaining any information or particulars which the housing finance institution has failed to furnish on being called upon to do so.

(2) It shall be the duty of every director or member of any committee or other body or any person for the time being vested with the management of the whole or part of the affairs of every housing finance institution accepting deposits or other officer or employee

thereof to produce to the inspecting authority all such books, accounts and other documents in his custody or power and to furnish that authority with any statement and information relating to the business of the institution as that authority may require of him, within such time as may be specified by that authority.

(3) The inspecting authority may examine on oath any director or member of any committee or body or any other person for the time being vested with the management of the affairs of the housing finance institution accepting deposits, or any officer or employee thereof, in relation to its business.

35. No person shall solicit on behalf of any housing finance institution either by publishing or causing to be published any prospectus or advertisement or in any other manner deposits of money from the public unless—

Deposits not to be solicited by unauthorised persons.

(a) he has been authorised in writing by the said housing finance institution to do so and specifies the name of the institution which has so authorised him; and

(b) the prospectus or advertisement complies with any order made by the National Housing Bank under section 30 and with any other provision of law for the time being in force applicable to the publication of such prospectus or advertisement.

36. The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Chapter V to override other laws.

## CHAPTER VI

### FUNDS, ACCOUNTS AND AUDIT

37. (1) With effect from such date as the Reserve Bank may specify, the National Housing Bank shall establish a fund to be called the General Fund and all payments by the National Housing Bank shall be made out of the said General Fund.

General Fund and other funds.

(2) The Board may, and shall, if so directed by the Reserve Bank, create a special fund or a reserve fund or such other funds as may be prescribed.

38. (1) The balance sheet and accounts of the National Housing Bank shall be prepared and maintained in such form and manner as may be prescribed.

Preparation of balance sheet, etc., of National Housing Bank.

(2) The Board shall cause the books and accounts of the National Housing Bank to be balanced and closed as on the thirtieth day of June each year.

39. After making provision for bad and doubtful debts, depreciation of assets and all other matters for which provision is necessary or expedient or which is usually provided for by bankers, the National Housing Bank shall transfer—

Disposal of surplus.

(i) for a period of fifteen years, following the accounting year during which the National Housing Bank is established, the amount

remaining (hereafter in this section referred to as surplus) such of the funds referred to in section 37 as the Reserve Bank may specify; and

(ii) after the expiry of the said period of fifteen years, the National Housing Bank shall, after making provision for the funds referred to in section 37, transfer the balance of surplus to the Reserve Bank.

**Audit.**

40. (1) The accounts of the National Housing Bank shall be audited by auditors duly qualified to act as auditors under sub-section (1) of section 228 of the Companies Act, 1956, who shall be appointed by the Reserve Bank, for such term and on such remuneration as the Reserve Bank may fix.

1 of 1956.

(2) The auditors shall be supplied with a copy of the annual balance sheet of the National Housing Bank and it shall be their duty to examine it together with the accounts and vouchers relating thereto and they shall have a list delivered to them of all books kept by the National Housing Bank and shall at all reasonable times have access to the books, accounts, vouchers and other documents of the National Housing Bank.

(3) The auditors may, in relation to the accounts of the National Housing Bank, examine any director of the Board or any officer or other employee of the National Housing Bank and shall be entitled to require from the Board or officers or other employees of the National Housing Bank such information and explanation as they may think necessary for the performance of their duties.

(4) The auditors shall make a report to the National Housing Bank upon the annual balance sheet and accounts examined by them and in every such report, they shall state whether in their opinion the balance sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and fair view of the state of affairs of the National Housing Bank and in case they had called for any explanation or information from the Board or any officer or other employee of the National Housing Bank, whether it was given and whether it was satisfactory.

(5) The National Housing Bank shall furnish to the Central Government and the Reserve Bank within three months from the date on which the annual accounts of the National Housing Bank are closed and balanced, a copy of its balance sheet as on the close of the relevant year together with a copy of the profit and loss account for the year and a copy of the auditors' report and a report of the working of the National Housing Bank during that year, and the Central Government shall, as soon as may be after they are received by it, cause the same to be laid before each House of Parliament.

(6) Without prejudice to anything contained in the preceding sub-sections, the Central Government may, at any time, appoint the Comptroller and Auditor-General of India to examine and report upon the accounts of the National Housing Bank and any expenditure incurred by him in connection with such examination and report shall be payable by the National Housing Bank to the Comptroller and Auditor-General of India.

41. The National Housing Bank shall furnish, from time to time, to the Reserve Bank such information and returns as the Reserve Bank may require.

Returns

42. The National Housing Bank shall make an annual report to the Central Government and the Reserve Bank on the trend and progress of housing in the country and in that report may make such suggestions as it may think necessary or expedient for the development of housing and the Central Government shall, as soon as may be after the report is received by it, cause the same to be laid before each House of Parliament.

Annual report on housing.

## CHAPTER VII

### MISCELLANEOUS

43. (1) The National Housing Bank may appoint such number of officers and other employees as it considers necessary or desirable for the efficient performance of its functions and determine the terms and conditions of their appointment and service.

Staff of National Housing Bank.

(2) The duties and conduct, terms and conditions of service and the establishment and maintenance of provident fund or any other fund for the benefit of the officers and other members of staff of the National Housing Bank shall be such as may be prescribed.

(3) The National Housing Bank may depute any officer or any member of its staff for such period and on such terms and conditions as it may determine, to any institution including a housing finance institution.

(4) Nothing contained in this section shall empower the National Housing Bank to depute any officer or member of its staff to any institution on any salary, emoluments or other terms and conditions which is or are less favourable to him than that or those to which he is entitled to immediately before such deputation.

2 of 1934.

(5) The National Housing Bank may, without prejudice to the provisions of section 54AA of the Reserve Bank of India Act, 1934, receive or take on deputation any officer or other employee from any institution including a housing finance institution for such period and on such terms and conditions as it may think necessary in the interest of the National Housing Bank.

44. (1) The National Housing Bank shall not, except as otherwise required by this Act or any other law, divulge any information relating to, or to the affairs of, its constituents except in circumstances in which it is, in accordance with the law or practice and usage customary among bankers, necessary or appropriate for the National Housing Bank to divulge such information.

Obligation as to fidelity and secrecy.

(2) Every director, member of a committee, auditor, advisor, officer or other employee of the National Housing Bank or of the Reserve Bank, whose services are utilised by the National Housing Bank under the provisions of this Act, shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the First Schedule to this Act.

Defects  
in  
appoint-  
ment  
not to  
inval-  
date  
s.t.,  
etc.

45. (1) No act or proceeding of the Board or of any committee of the National Housing Bank shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board or the committee, as the case may be.

(2) No act done by any person acting in good faith as a director of the Board or as a member of a committee of the National Housing Bank shall become invalid merely on the ground that he was disqualified to be a director or that there was any other defect in his appointment.

Protec-  
tion of  
action  
taken  
under  
the Act.

46. No suit or other legal proceeding shall lie against the National Housing Bank or any director or any officer or other employee of the National Housing Bank or any other person authorised by the National Housing Bank to discharge any functions under this Act for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or of any other law or provision having the force of law.

Indem-  
nity of  
direc-  
tors.

47. (1) Every director shall be indemnified by the National Housing Bank against all losses and expenses incurred by him in, or in relation to, the discharge of his duties, except such as are caused by his own wilful act or default.

(2) A director shall not be responsible for any other director or for any officer or other employee of the National Housing Bank or for any loss or expenses resulting to the National Housing Bank from the insufficiency or deficiency of the value of, or title to, any property or security acquired or taken on behalf of the National Housing Bank or the insolvency or wrongful act of any debtor or any person under obligation to the National Housing Bank or anything done in good faith in the execution of the duties of his office in relation thereto.

Exemp-  
tion  
from  
tax on  
income.

48. Notwithstanding anything contained in the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on income, profits or gains, the National Housing Bank shall not be liable to pay income-tax or any other tax in respect of its income, profits or gains derived.

41 of 1961.

Penal-  
ties.

49. (1) Whoever in any return, balance sheet, or other document or in any information required or furnished by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any book, account or other document, or to furnish any statement or information which, under the provisions of this Act, it is his duty to produce or furnish, he shall be punishable with fine which may extend to two thousand rupees in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to one hundred rupees for every day during which the failure continues after conviction for the first such failure.

(3) If any person—

(a) receives any deposit in contravention of any direction given or order made under Chapter V; or

(b) issues any prospectus or advertisement otherwise than in accordance with section 35 or any order made under section 30, as the case may be;

he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend,—

(i) in the case of a contravention falling under clause (a), to twice the amount of deposit received; and

(ii) in the case of a contravention falling under clause (b), to twice the amount of the deposit called for by the prospectus or advertisement.

(4) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act, or of any order, regulation or direction made or given or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to two thousand rupees and where a contravention or default is a continuing one, with further fine which may extend to one hundred rupees for every day, after the first, during which the contravention or default continues.

50. (1) Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Offences  
by  
companies

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Cogni-  
zance of  
offences.

51. (1) No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the National Housing Bank, generally or specially authorised in writing in this behalf by the National Housing Bank, and no court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Magistrate may, if he sees reason so to do, dispense with the personal attendance of the officer of the National Housing Bank filing the complaint but the Magistrate may in his discretion, at any stage of the proceedings, direct the personal attendance of the complainant.

2 of 1974.

Applica-  
tion of  
fine.

52. A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in, or towards payment of, the cost of the proceedings.

Bankers'  
Books  
Evidence  
Act  
18 of  
1891, to  
apply in  
relation  
to Na-  
tional  
Housing  
Bank.

53. The Bankers' Books Evidence Act, 1891, shall apply in relation to the National Housing Bank as if it were a bank as defined in section 2 of that Act.

Liquida-  
tion of  
National  
Housing  
Bank.

54. No provision of law relating to the winding up of companies shall apply to the National Housing Bank and the National Housing Bank shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct.

Power of  
the  
Board to  
make  
regula-  
tions.

55. (1) The Board may, with the previous approval of the Reserve Bank and in consultation with the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the fees and allowances that may be paid to the directors for attending the meetings of the Board or its committees under sub-section (5) of section 7;

(b) the times and places at which the Board may meet, and the rules of procedure that may be followed in regard to the transaction of business under sub-section (1) of section 11;

(c) the number of members that the Executive Committee may consist, the functions that it may discharge and times and places at which it shall meet and the rules of procedure that it may follow in the transaction of business under section 12;

(d) the manner and terms of issue and redemption of bonds and debentures under clause (a) of sub-section (1) of section 15;

(e) the manner in which and the conditions subject to which the National Housing Bank may borrow in foreign currency under sub-section (1) of section 18;

(f) the form in which the statements, information, etc., are to be furnished under section 32;

(g) the special fund, reserve fund and other funds to be created under sub-section (2) of section 37;

(h) the form and manner in which the balance sheet and accounts shall be prepared and maintained under sub-section (1) of section 38;

(i) the duties and conduct, salaries, allowances and conditions of service of the officers and other members of staff of the National Housing Bank under section 43;

(j) the establishment and maintenance of provident fund and any other fund for the benefit of officers and other members of staff of the National Housing Bank under section 43; and

(k) any other matter which is to be, or may be, prescribed.

(3) Any regulation which may be made by the Board under this Act may be made by the Reserve Bank, in consultation with the Central Government, before the expiry of three months from the date of establishment of the National Housing Bank, and any regulation so made may be altered and rescinded by the Board in the exercise of its powers under this Act.

(4) The power to make regulations conferred by this section shall include the power to give retrospective effect to the regulations or any of them from a date not earlier than the date of commencement of this Act, but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.

(5) The Central Government shall cause every regulation or scheme made under this Act to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or scheme or both Houses agree that the regulation or scheme should not be made, the regulation or scheme shall thereafter have effect only if such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under this regulation or scheme"

Power to  
remove  
diff-  
culties.

57. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the commencement of this Act.

**FIRST SCHEDULE**

See section 44(2)]

**DECLARATION OF FIDELITY AND SECRECY**

I,..... do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as director, member of the ..... committee, auditor, advisor, officer or other employee (as the case may be) of the National Housing Bank and which properly relate to the office or position held by me in or in relation to the said National Housing Bank.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the National Housing Bank nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the National Housing Bank and relating to the business of the said National Housing Bank or the business of any person having any dealing with the said National Housing Bank.

Signed before me.

(Signature)

**THE SECOND SCHEDULE**

(See section 56)

**AMENDMENTS TO CERTAIN ENACTMENTS**

**PART I**

**AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934**

(2 of 1934)

**AMENDMENTS**

1. In section 2, after clause (ccc), the following clause shall be inserted, namely:—

"(cccc) 'National Housing Bank' means the National Housing Bank established under section 3 of the National Housing Bank Act, 1957;"

1 section 17,—

(i) after clause (4D), the following clause shall be inserted, namely:—

“(4DD) the making to the National Housing Bank of loans and advances and generally assisting the National Housing Bank in such manner and on such terms as may be determined by the Central Board;”;

(ii) after clause (4G), the following clause shall be inserted, namely:—

“(4GG) the making of loans and advances to, and the purchasing of bonds and debentures of, the National Housing Bank out of the National Housing Credit (Long Term Operations) Fund established under section 46D;”;

(iii) after clause (8A), the following clause shall be inserted, namely:—

“(8AA) the promoting, establishing, supporting or aiding in the promotion, establishment and support of any financial institution, whether as its subsidiary or otherwise;”.

3. In the Explanation to sub-section (1) of section 42, in sub-clause (ii) of clause (c), after the words “or from the Reconstruction Bank”, the words “or from the National Housing Bank” shall be inserted.

4. After section 46C, the following section shall be inserted, namely:—

“46D. (1) The Bank shall establish and maintain a Fund to be known as the National Housing Credit (Long Term Operations) Fund to which shall be credited every year such sums of money as it may consider necessary.

National  
Housing  
Credit  
(Long  
Term  
Operations)  
Fund.

(2) The amount in the said Fund shall be applied by the Bank only to the following objects, namely:—

(a) the making to the National Housing Bank of loans and advances for the purpose of any business of the National Housing Bank;

(b) the purchasing of bonds and debentures issued by the National Housing Bank.”.

PART II

AMENDMENTS TO THE BANKING REGULATION ACT, 1949

(10 OF 1949)

AMENDMENTS

1. In section 5, after clause (ffc), the following clause shall be inserted, namely:—

“(ffd) “National Housing Bank” means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987;”.

2. In sub-section (1) of section 18, in the Explanation, in sub-clause (ii) of clause (a), after the words "or from the Reconstruction Bank", the words "or from the National Housing Bank" shall be inserted.

3. In section 34A, in sub-section (3), after the words "the Reconstruction Bank", the words "the National Housing Bank" shall be inserted.

4. In section 38AD, in sub-section (3), after the words "the Reconstruction Bank", the words "the National Housing Bank" shall be inserted.

5. In section 56, under clause (j), in the Explanation, in sub-clause (ii) of clause (a), after the words "the Reconstruction Bank", the words "the National Housing Bank" shall be inserted.

### PART III

#### AMENDMENT TO THE INDUSTRIAL DISPUTES ACT, 1947

(14 OF 1947)

#### AMENDMENT

In section 2, in clause (a), in sub-clause (i), after the words "the Industrial Reconstruction Bank of India", the words and figures "the National Housing Bank established under section 3 of the National Housing Bank Act, 1967" shall be inserted.

### PART IV

#### AMENDMENT TO THE PAYMENT OF BONUS ACT, 1965

(21 OF 1965)

#### AMENDMENT

In section 32, after sub-clause (f) of clause (ix), the following sub-clause shall be inserted, namely:

"(ff) the National Housing Bank;"

## Home Loan Account Scheme

### Introduction

1. To progressively meet the colossal housing shortage in the country, it is necessary to build at least **one million new housing units per annum**. It is proposed to achieve this level of annual addition to housing stock over a period of five years. The financial resources required for the purpose are estimated as under:-

Year	Rs. Crores
1989-90	1,000
1990-91	2,000
1991-92	3,000
1992-93	4,000
1993-94	5,000

2. Commercial banks were to lend Rs.300 crores in 1989 and this is expected to increase over the next five years. Resources will also be available from UTI, LIC and GIC. Even so, the available resources are unlikely to match the requirements referred to above. There is, therefore, need for mobilising additional resources from the public. This is sought to be done by kindling and sustaining the desire to own a house, which is strong in every individual, by encouraging them to save specifically for housing and match it with long term institutional credit support. For this purpose, as announced by the Finance Minister in his Budget speech on 28th February 1989, a scheme called **Home Loan Account Scheme** has been launched from 1st July 1989 by the National Housing Bank with the co-operation of scheduled banks, both commercial banks and co-operative banks participating in the scheme, all over India. The scheme is being gradually extended to all the eligible housing finance institutions.

### Home Loan Account (HLA)

#### 3.I. Who can open?

Any individual, major or minor, not owning a house anywhere in India, can open a Home Loan Account. The beneficiary will be required to give a declaration to the effect that the account being opened is the only account under the scheme and that she/he does not already own a house anywhere in India. In opening accounts for minors, parents/guardians will be encouraged to open accounts in the names of girls first to provide social security to them. A co-parcener of a Hindu Undivided Family jointly owning a house is also eligible to join the scheme. Non Resident Indians can also open Home Loan Accounts through either direct remittances or transfer from NRE accounts. All the other conditions of the scheme, including the interest rate, will be the same as applicable to resident Indians.

#### 3.II. Where to open?

The HLA of National Housing Bank can be opened with any branch, in India, of designated scheduled banks. An account opened with a branch of scheduled bank can be transferred to any other branch of the same bank. An account can also be transferred free of cost from one bank to another bank through mutual consent in case the member desires transfer of account to a place where the bank with which the account was opened does not have a branch.

#### 3.III. Rate of savings

The principle behind HLA is that a member joining it will save as much as she/he can, for a minimum period of 5 years. The scheme is open-ended and a member, including a minor, is

expected to save regularly until she/he decides to acquire a house/flat. The minimum contribution is Rs.30 per month. To facilitate participation in the scheme by all segments of the community, the contemplated contribution can also be made in quarterly, half-yearly or annual instalments subject to a minimum of Rs.90, Rs.180 or Rs.360 respectively. The member will have the option to vary her/his contribution as and when it is convenient for her/him to do so but the contribution will be in multiples of Rs.10.

### 3. iv. Interest on savings

The savings will earn interest @ 10 per cent per annum which will be added to the account annually (in the month of March) and treated as reinvested in the account. The interest rate is subject to change in the event of revision of interest rates by the RBI.

### 3. v. How much to save?

The amount of accumulated savings (including interest) on the basis of regular contributions for a period of five years will be as under :

Amount saved per month Rupees	Approximate savings after five years Rupees	Amount saved per month Rupees	Approximate savings after five years Rupees
30	2,300	300	23,200
50	3,900	500	38,600
100	7,700	1,000	77,200
150	11,600	1,500	1,15,800
200	15,400	2,000	1,54,500

The amount to be saved by a member should bear some relationship to the cost of plot/house/flat proposed to be acquired so that together with the loan contemplated under the scheme, the member's desire is fulfilled. This will necessitate the member to assess the cost realistically keeping in view the current trends in prices of land and cost of construction. Banks will also provide guidance on these trends in different parts of the country.

### 3.vi. Nomination facility

The account is not transferable to others. Nomination facility is available for the purpose of payment of accumulated savings, but not for any other benefit under the scheme.

## Defaults / Discontinuance

4. Regular payment on monthly/quarterly/half-yearly/yearly basis is the *sine qua non* of the scheme. If the member fails to make contribution for a continuous period of 12 calendar months, the original date of opening HLA will be shifted forward by the period of default and the minimum period of contribution will be extended correspondingly. In the event of a member discontinuing the contribution, the amount standing to the credit in the account will become payable only after five years from the date of opening the account.

## Withdrawal of amount

5. The object of the scheme is to encourage the member to save over a period of years, the amount required to be provided by her/him as margin money for any housing loan. The accumulated savings can thus be set off against any margin requirement for a housing loan either under this scheme or any other housing loan scheme. The amount saved under the

scheme is tied to a housing facility and can be utilised only for building or buying a house or flat. However, part withdrawals will be permitted, for paying registration fees for specific schemes or for purchase of a plot allotted by a public agency or a co-operative housing society or in any project financed by NHB subject to regulations stipulated by the concerned agency for completion of construction of the house or flat within the specified period. Such payments will be made by the bank through cheque/draft in favour of the concerned agency. If for any reason such as the account holder acquiring or inheriting one in the meantime, she/he does not choose to buy/construct a flat/house after five years, she/he may withdraw the accumulated savings on completion of the said period of five years.

### **Eligibility for loan**

6. i. Under the scheme, after subscribing for a minimum period of five years or any time thereafter, the member will be eligible for a loan from the concerned bank to acquire a new house/flat. However, in the case of a minor, the loan will be admissible only after attaining majority, subject to all other conditions, especially the repaying capacity. In the intervening period of five years from the commencement of the scheme, the bank will give housing loans to members on a preferential basis, but on terms stipulated by the Reserve Bank of India. Members will be permitted to withdraw the accumulated balance in the account after five years, for the purpose of acquiring a house/flat even if they do not avail of the loan facility.

6. ii. The minimum period will be reduced to three years in case the member is allotted a house/flat in any project financed by the NHB. In such a case HLA will be closed and accumulated balance remitted by Cheque/Demand Draft to the authority undertaking the project alongwith loan amount.

### **Amount of loan & Rate of interest**

7. The maximum amount of loan to be given by a bank under the scheme, after the member subscribes for a minimum period of five years (or three years, as the case may be), will be a multiple of the amount of accumulated savings (including up-to-date interest) as follows:

<i>Loan as a multiple of accumulated savings</i>	<i>Amount of Loan (Rs.)</i>	<i>Rate of Interest (%) per annum</i>
4 times	Upto 50,000	10.5
3 times	50,001 to 1,00,000	12.0
2 times	1,00,001 to 2,00,000	13.5
1.5 times	above 2,00,000	14.5

The amount saved will be allowed to be withdrawn along with the loan. The amount will, however, be limited to the repaying capacity of the beneficiary as assessed by the bank. It may not normally exceed 2½ times the annual income. Otherwise, there will be no ceiling on the amount of loan.

#### **Notes:**

1. In order that the benefit of the loan is available to only regular savers banks may, at their discretion, fix a lower amount of loan in case the savings in the later years are disproportionately large as compared to savings in the earlier years.
2. In the case of withdrawals permitted under paragraph 5 above the accumulated savings will be enhanced by the amount withdrawn, for the purpose of fixing the amount of loan.
3. The amount of loan will be related to the accumulated savings upto the time of obtaining a housing loan, not just the balance at the end of five years.

8. The rate of interest will be related to the amount of loan and is not on slab basis. Different interest rates are prescribed keeping in view the repaying capacity of the lower income groups and the tax concessions admissible to the higher income groups. These rates of interest are 1.5 to 2.0 percent lower than the present interest rates charged by scheduled banks for housing loans. The interest rates will be subject to change by NHB in the event of revision of interest rates by the RBI.

9. A loan under this scheme will not bar a loan from any other source including a loan from a bank on usual terms. Thus, a member can obtain a loan from her/his employer or a co-operative society or any other agency and still avail of a loan under this scheme. Similarly she/he can avail of loan under this scheme and obtain a bank loan on usual terms for the balance requirements. In such cases, the bank will give additional loan on a priority basis but subject to usual conditions.

10. To build confidence of the members in the scheme, NHB will ensure the grant of loan by the bank subject to the bank satisfying itself with the credit-worthiness of borrower. The scheme envisages an agreement between NHB and each scheduled bank for mobilising savings on behalf of NHB and for providing loans by the bank.

### **Other conditions**

11. i. The loan will be subject to all other conditions laid down by the Reserve Bank of India for grant of housing loans by banks. The RBI has recently liberalised credit for housing in respect of margin, security and instalments of repayment so as to make housing loans more affordable by lower income groups. The repayment period has also been extended to 15 years. HLA scheme will be an additional facility with assured loan at a lower rate of interest.

11. ii. The house/flat either acquired or built with the loan obtained under the scheme cannot be sold for a period of five years after completion or till the entire loan is repaid, whichever is later. Relaxation of this provision may be made by NHB in case of dire distress subject to such conditions as it may deem fit to impose.

12. Loans granted under the scheme are proposed to be covered by a Group Insurance Scheme to protect the legal heirs from having to bear the burden of repayment of loan in the event of the death of the borrower. The premium will be borne by the scheduled bank in respect of borrowers who obtain loans upto Rs.50,000 and by the borrowers in respect of larger loans.

### **Pass book**

13. Each member will be given a pass book by the concerned bank. The pass book will contain details of monthly savings, interest accumulation, loan disbursement, repayment of instalments etc.

### **Income Tax concessions**

14. The Government of India issued notification specifying HLA Scheme for the purposes of Section 80 C (now Section 88) of the Income Tax Act, 1961, for the assessment year 1990-91 and the subsequent assessment years. Accordingly, the savings under the scheme would qualify for tax concession. The accrued interest treated as reinvested in the account will also be eligible for the concession. Further, savings made on behalf of a minor child by a parent out of her/his income chargeable

to tax will qualify for the same concession. The repayment of principal of the loan will also be a permissible deduction, upto Rs.10,000 per annum, under Section 80 C (now Section 88). Interest on the loan is eligible for deduction in the computation of income from house property under Section 24 of the Income Tax Act.

Similarly, the amount of accumulated savings under the scheme together with interest will be exempt from Wealth Tax under Section 5 of the Wealth Tax Act, subject to the overall ceiling of Rs.5 lakhs.

15. As the scheme is open to all including minors and as withdrawals from the accounts will arise only when the members actually acquire a plot/house/flat, it is expected that there will be continuous accretion of funds adequate to meet the demand for loans under the scheme. However, when lending by a bank exceeds the total savings mobilised under this scheme, NHB will fill the resource gap at the average lending rate of the respective bank under the scheme in the previous year.

16. The funds available to a bank under the scheme will be kept separately and will be used only for the purpose of lending to members for housing. Initially, there will be a time-lag between introduction of the scheme and demands made on it for housing loans. In the intervening period, those funds would be utilised by the bank as refinance from NHB under any approved scheme. The intention is that the balance resources will be utilised for giving loans for land development and to industries directly connected with housing such as prefab house plants, tile/brick makers and the like, as per suitable refinance schemes formulated by the NHB. As a consequence, the resources mobilised through this scheme will lead to augmentation/increase in the availability of land and the capacity of industries providing building materials. Surplus funds which cannot be utilised for any refinance scheme of NHB will be lodged with the NHB.

### **Co-ordination with housing agencies**

17. At the time of opening the account, a member is required to indicate the likely place where she/he proposes to acquire residential accommodation and the size thereof. These intentions will facilitate appropriate physical planning for land and infrastructure subject to constraints like congestion, but there is no commitment by NHB to offer a plot/house/flat. Intending members of the scheme will be cautioned that demand for plots/houses/flats in metropolitan areas will take long time to fructify and, in some places, may not be possible at all.

The NHB will endeavour to fund projects of public agencies for acquisition and development of land including on-site infrastructure so as to augment the supply of buildable land. Such funding will be subject to the following conditions:

- i. preference will be given for the development of housing in rural areas and small and medium towns.
- ii. in the land to be developed, not less than half the area will be earmarked for smaller plots of size less than or equal to 60 sq.m. (100 sq.m. in rural areas). At the same time, not less than 75 per cent of the plots will be of size less than or equal to 60 sq.m. (100 sq.m. in rural areas) and no plot will measure more than 200 sq.m.
- iii. of the houses/flats to be built, not less than 75 per cent will have built-up accommodation less than or equal to 40 sq.m. and no house/flat will have built-up accommodation of more than 120 sq.m.

HLA scheme is, however, open to any one not owning a house and is not restricted to those seeking the assistance of public agencies. In other words, members can seek dwelling accommodation through any source or by private negotiations and avail of the loan facility under this scheme.

18. After the introduction of the scheme, State Governments will be requested to advise the State Housing Boards and other public agencies engaged in development of housing not to open any general registration scheme, that is, schemes for which land is not identified. As and when specific schemes for development of identified land or construction of houses/flats are taken up, these agencies may open specific registration schemes. Individuals who are registered under the existing general registration schemes may be required to open Home Loan Accounts before they apply for specific registration schemes. NHIB will endeavour to evolve guidelines for prescribing eligibility conditions for such specific schemes in consultation with the Central and State Governments. Opening of a HLA may be prescribed as one of the eligibility conditions for allotment of a plot/house/flat by a public agency.

19. State Governments will be requested to give preferential allotment, on the following basis:

- i. those who have registered prior to 31.12.1988 and opened HLA ;
- ii. others who have registered prior to 31.12.1988 ;
- iii. those who have registered on or after 1.1.1989 and opened HLA ; and
- iv. others.

If there are reservations for specific classes or categories of persons, preferential allotment will be made on the above basis within each such class or category.

20. Among the members of HLA scheme, allotment will be made strictly on the basis of the month of opening the HLA, that is, those who open accounts in July, 1989 **anywhere in India**, will have precedence over those who open accounts in August, 1989 and so on. A certificate from the concerned bank will be required to be submitted for this purpose.

21. Special efforts will be made to clear the back-log of registration of the public agencies under their existing schemes, with a view to enabling the members to acquire plots/houses/flats as soon as possible after they have saved money for five years.

### **A national scheme**

22. The scheme may eventually replace all the existing savings-linked housing loan schemes by banks because the Home Loan Account Scheme will have **nation-wide appeal**. Individuals participating in such savings schemes will have the option to transfer their accumulated savings to this scheme but the date of opening HLA will be the date of priority. Individuals participating in similar savings schemes of Housing Boards or other agencies may also transfer their accumulated savings to HLA on conditions to be decided on the merits of each scheme. The National Housing Bank will thus emerge as a catalyst for stimulating land development and house construction throughout the country though it does not engage itself directly in these activities. The scheme, with the assurance of a loan to the member, has the potential of becoming a **self-financing mechanism for the housing sector**.

## Guidelines for Housing Finance Companies

The National Housing Bank was established on July 9, 1988 under the National Housing Bank Act, 1987 as a principal agency to promote housing finance institutions and to provide financial and other support to them. The NHB is keen that not only more housing finance institutions should come up but also that they should be sound, healthy, viable and cost effective. Accordingly, NHB has evolved the following guidelines for promotion of housing finance companies (HFCs) in the private and joint sectors. Only those HFCs which conform to these guidelines would be eligible for financial support from NHB.

### Organisation and main activity

2. HFC should be a public limited company formed with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes. It should be engaged only in financial activity. 75 per cent of its lending should be by way of loans for housing.

### Minimum paid-up capital requirements

3. HFC should normally have minimum paid-up capital of Rupees one crore to be subscribed in the following proportions and maintained at all times:

	<i>not less than</i>
i. Promoters' contribution	30%
ii. Scheduled banks/public financial institutions/ Government/HFCs approved by the NHB	20%

- Notes :**
- a. If HFC is unable to secure equity participation as stipulated at (ii), promoters' contribution should not be less than 50 per cent of the paid-up capital.
  - b. Participation by the scheduled banks is subject to directives issued by RBI.
  - c. Prior approval of NHB should be obtained before one HFC contributes to the equity of another HFC.

4. On merits of each case, NHB will consider participating in equity of HFC to the extent of 20 per cent of its paid-up capital.

5. i. HFC's name should not bear any resemblance to the name of any construction company with which promoters of HFC may be associated.

ii. HFC should not be a subsidiary of a construction company.

iii. HFC should not have or promote, as its subsidiary, a construction company.

iv. Chairman, Managing Director or any whole-time Director of an HFC should not hold any of these offices in a construction company with which HFC's promoters may be associated or vice versa.

NHB may relax, at its discretion, the conditions stipulated in this paragraph in the case of HFCs which have equity participation by scheduled banks etc. mentioned in para 3 (ii) above.

### Board of Directors

6. Normally, the bank/financial institution/HFC/Government having equity participation will have its nominees on the Board of HFC. If for any reason, such Directors are less than two in number, the NHB will have the right to nominate two Directors on the HFC's Board. In the case of HFC which is unable to secure equity participation as stipulated at para 3(ii), NHB will have the right to nominate two Directors on HFC's board. The appointment of HFC's Chief

Executive will also be subject to NHB's prior approval. HFC's Memorandum and Articles of Association should contain a provision to this effect.

### **Borrowings**

7. HFC's total external borrowings whether by way of deposits, issue of debentures/bonds, loans and advances from banks or from financial and other institutions but excluding any loan obtained from NHB, should not exceed 10 to 15 times their net owned funds i.e. paid-up capital and free reserves less deferred revenue expenditure and intangible assets. The limits will be as below:

<i>Net owned funds</i>	<i>Total borrowings</i>
upto Rs.10 crores	10.0 times
above Rs.10 crores and upto Rs.20 crores	12.5 times
above Rs.20 crores	15.0 times

### **Credit rating**

8. HFC should satisfy such criteria as may be prescribed by NHB.

### **Acceptance of deposits**

9. HFC should mobilise resources mainly by way of deposits from households with minimal reliance on borrowings from institutions. Since housing loans are for relatively long periods, it is also necessary that there is no undue mismatch between the duration of deposits and the lending portfolio. Under the Housing Finance Companies (NHB) Directions, 1989, issued on June 26, 1989 HFCs can accept a deposit of money from the public repayable after a period of more than twenty four months but not later than eighty four months from the date of acceptance or renewal of such deposit at interest rate not exceeding 14 per cent per annum. In the case of a deposit receivable in instalments, its period will be computed from the date of receipt of first instalment.

### **Loans**

10. The main objective of promoting HFCs is to make access to institutional finance for home-seekers easier. The bulk of HFC's lending should, therefore, be directly to individuals or groups of individuals. Their motto should be to render quality service to individual households.

### **Lending rates**

11. HFC's interest rates on housing loans should be as prescribed by the Reserve Bank of India from time to time. Rates of interest w.e.f. 22nd September, 1990 are :

<i>Amount of loan *</i>	<i>Rate of interest (%)</i>
Upto and inclusive of Rs.7,500	10.0
Over Rs.7,500 and upto Rs.15,000	11.5
Over Rs.15,000 and upto Rs.25,000	12.0
Over Rs.25,000 and upto Rs.50,000	14.0
Over Rs.50,000 and upto Rs.2.00 lakhs	15.0
Over Rs.2.00 lakhs	minimum 16.0

\* The rate of interest will be related to the amount of loan and is not on slab basis.

12. Front-end charges including application or registration fee, processing fee, administrative fee, out-of-pocket expenses in connection with technical inspection and any other fee, charge or expense, under whatsoever name, should not exceed 2 per cent of the loan. There should be no minimum amount prescribed under any head. Document registration charges, stamp duty, etc. are not included in the front-end charges.

### **Administrative cost**

13. HFC should aim at keeping its administrative cost as low as possible. In any case, such cost in the long run should not exceed 1.5 per cent of the outstanding loans.

### **Prepayment charges**

14. Normally, no prepayment charges should be levied except in cases where prepayment of loan is on account of sale of the housing unit financed or there is reason to believe that the prepayment is made to secure some undue advantage.

### **Auditors**

15. HFCs, barring Government companies, should obtain prior approval of the NHB before appointing, re-appointing or removing any Auditor or Auditors.

### **Security for depositors**

16. Every HFC should maintain in the form of liquid assets (with a scheduled bank and/or in unencumbered approved securities) at least 10 per cent of its outstanding deposits, on a day to day basis.

### **Advertisement rules**

17. Issue of advertisements soliciting deposits of money from the public is governed by the Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advt.) Rules, 1977 made by the Government of India in consultation with the Reserve Bank of India under Section 58 A of the Companies Act 1956 (1 of 1956).

### **Financial assistance from NHB**

18. NHB extends to eligible HFCs refinance facilities under schemes announced from time to time. At present, NHB provides 100 per cent refinance in respect of housing loans for acquisition/construction of new housing units with built-up area not exceeding 40 sq. m. or cost (including cost of land) not exceeding Rs.1.5 lakhs. 100 per cent refinance is also provided for housing loans upto Rs.30,000 for upgradation and major repairs. Further, the NHB has powers to grant ad-hoc financial assistance to HFCs to meet short-term gaps in resources. NHB will gradually extend the Home Loan Account Scheme to all eligible HFCs. NHB will also refinance Land Development & Shelter Projects financed by HFCs under NHB's guidelines.

## **Tax concessions**

19. In respect of each housing finance company, which is approved by the Central Government for the purpose, the following tax concessions are available:

**i. For housing finance companies :**

A public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes, can create a special reserve within an amount not exceeding 40 per cent of the total income and, such a reserve is admissible as a deduction in computing income chargeable to income tax under the head Profits & Gains of Business or Profession vide Section 36-(i)(viii) of the Income Tax Act.

**ii. For investment by an individual or person in shares of housing finance company :**

a. Investments in the new equity shares of such companies, whose cost of acquisition in the aggregate does not exceed Rs.25,000 is eligible for a tax rebate under Section 88-A under the Income Tax Act. The rebate from the tax payable will be equivalent of 20 per cent of the cost of such shares.

b. Dividend received on shares of housing finance company will qualify for a deduction of upto Rs.13,000 under Section 80-L of the I.T.Act (along with other eligible deductions).

**iii. For deposits placed with housing finance companies :**

a. Deposits with or investments in any bonds issued by such companies from income derived from property held under trust wholly for charitable or religious purposes, qualify as an eligible mode of investment under Section 11(5) of the I.T. Act.

b. Deposits made with such companies are exempt from Wealth Tax under Section 5(1)(xxvii) of the Wealth Tax Act within the overall ceiling of Rs.5 lakhs specified therein.

c. Interest on deposits by an individual or person with such companies will qualify for deduction of upto Rs.10,000 per annum under Section 80-L of the I.T. Act (along with other eligible deductions).

**iv. For loans taken from housing finance companies :**

Repayment towards the principal amount of loan taken from any housing finance company for housing purposes is eligible for a tax rebate under Section 88 of the I.T.Act upto a limit of Rs.10,000. Subject to the aforesaid ceiling, the rebate- from the tax payable- will be equivalent to 20 per cent of the amount repaid. The interest payable on the housing loan is a deductible expense under income from house property under Section 24 of I.T.Act.

## **Guidelines for Land Development & Shelter Projects Professional Developers**

**1.** National Housing Bank has formulated guidelines for Land Development and Shelter Projects by public agencies in April, 1989. Housing Finance Institutions, to be promoted and regulated by the NHB, will be expected to pay attention to meet the credit needs of public, co-operative and private agencies engaged in land development and housing construction. The guiding principle is to counteract speculation and facilitate the supply of serviced land for housing. Recognising the important role of the developers in housing, NHB has now formulated guidelines for financing land development and shelter projects by the professional developers.

**2.** The developers may undertake projects of land development either for plotted development or for group housing or a mix of both i.e. individual plots and group housing pockets. Integrated projects for land development, which include land acquisition, on-site infrastructure and apportioned cost of off-site infrastructure (wherever necessary) only will be considered. Proposal for land acquisition alone will not be entertained.

### **General**

- 3.1** Land development and shelter project will be financed only on such land as is in physical possession of the developer without any encumbrance and encroachment. Projects can also be considered where the land is being procured through negotiations and understanding of sales has been reached. The cost of land, if it has already been paid by the developer, can be included in the project cost.
- 3.2** As a pre-condition for approval of land development and shelter projects, the developer will be required to give preferential allotment of plots developed or houses built, to the members of the Home Loan Account (HLA) Scheme of the National Housing Bank, at predetermined prices. Among the members of HLA, allotment will be made strictly on the basis of the month of opening the HLA, that is, those who opened accounts in July, 1989 anywhere in India, will have precedence over those who opened accounts in August, 1989 and so on. A certificate from the concerned bank will be required to be submitted for this purpose.
- 3.3** The developers will be free to sell the developed plots/houses/flats to the extent of not more than 20 per cent of the saleable land as approved in the project or not more than 20 per cent of the total built-up space, whichever is less, subject to the condition that the developers will simultaneously develop the whole area or construct all the dwelling units. The plot/houses/flats on the balance 80 per cent of the saleable land or 80 per cent of the built-up space shall be sold at pre-determined prices to be approved by NHB at the time of appraisal of the project.
- 3.4** Preference will be given to projects for land development and housing with smaller size of plots/dwelling units, preferably in small and medium towns.
- 3.5** The project proposal should have the approval of the planning and local authority, wherever applicable, and be in line with the proposed development of the area.
- 3.6** Projects of only those developers, who engage qualified professionals required to execute the project will be considered. Appropriate parameters and technology should be adopted to economise the cost of infrastructure.

- 3.7** Investment in land development and housing projects should be time bound to ensure lower costs to the beneficiaries. Normally, a period not exceeding three years is envisaged. Construction of houses, where taken up, is expected to commence as soon as possible after the land becomes suitable for the purpose. The project period will be determined at the time of approval of the project on a realistic basis taking into account all relevant facts. Once fixed, however, it is expected to be adhered to through strict monitoring. Projects not executed according to agreed time schedule will attract higher rate of interest on loan.
- 3.8** An open advertisement will be inserted by the developers in the local newspapers inviting members of HLA and others to apply for allotment. Members of HLA will have first preference for allotment. Where sufficient number of members of the HLA do not apply for allotment, the developer will be free to sell the remaining plots/houses/flats to the general public, who apply for the same, by draw of lots, but at the pre-determined prices, in consultation with the financing institution.
- 3.9** During the construction of project, a display board at site should prominently indicate that:

*The project is financed by*  
 \_\_\_\_\_ *Bank/HFI*  
*Under National Housing Bank Scheme*  
*for the members of the HLA Scheme of NHB.*

### **Layout pattern**

- 4.1** Normally projects with a construction of 20 dwelling units or more will be considered for financing. Preference will be given to a project on land allotted to a developer by the public agencies and where trunk/peripheral infrastructure is available.
- 4.2** In the land to be developed, at least 75 per cent of the plots should be of size less than or upto 60 sq.m. per dwelling unit and remaining 25 per cent of the plots may be more than 60 sq.m. and no plot shall normally be more than 200 sq.m. The size of 60 sq.m. of plot can be relaxed marginally so long as the overall cost of the plot does not exceed Rs. 50,000. At the same time, minimum 50 per cent of the net residential area should be allocated to small plots. Further, keeping in view the living habits, availability and cost of land, for the projects to be taken up in rural, hilly and tribal areas and in small and medium towns, the proportion of the lower size plots may be relaxed so long as the average size of the plots is not more than 100 sq.m. (relaxable marginally, if the average cost of plot does not exceed Rs. 75,000).
- 4.3** The mix of plots/houses proposed in the project, should have a wide range of different sizes so as to cater to households of all income levels.
- 4.4** The layout should generally conform to the following land use:

	land under each use
<i>saleable</i>	
residential, work places, schools, institutions, shops, community places etc.	65 – 70% minimum
<i>non-saleable</i>	
roads, pedestrian paths, drains, public and semi-public open spaces.	30 – 35% maximum

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## Infrastructure provisions

- 5.1** Minimum acceptable standards should be adopted using appropriate technological development in planning, design and use of materials so as to keep the cost within affordable limits.
- 5.2** The approach of providing services on incremental basis may also be considered, wherever technically feasible and financially sound. The initial cost of services may be kept low by providing basic minimal level of infrastructure which could be upgraded over a period of time.
- 5.3** Infrastructure provisions should be in conformity with the master plan/interim development plan, if any.
- 5.4** Wherever the infrastructure is linked with external source/network such as water supply, sewage disposal, electricity etc., a certificate from the appropriate authorities regarding their availability within the time frame and cost will be required, which can be included in the project cost.

## Construction of houses

- 6.1** Along with area development, shelter component may also be included in the project with the following criteria :
- i. Every dwelling unit should have access to water supply and toilet facilities.
  - ii. Use of appropriate, innovative and cost effective building materials and construction technology and efficient structural design will be encouraged.
  - iii. Use of building materials based on agricultural or industrial wastes and those which replace or substantially reduce the use of timber will be preferred.
- 6.2** 75 per cent of the dwelling units should have a built up accommodation ranging upto 40 sq.m. (or within an overall cost of Rs.1.5 lakhs) and no house/flat, will have built-up accommodation of more than 120 sq.m. At the same time, 50 per cent of the net built-up area should be allocated to the small dwelling units.
- 6.3** Minimum density of 100 dwelling units per hectare (125 dwelling units per hectare, in metropolitan cities with population of more than 10 lakhs) will have to be achieved. Low-rise high-density development will be preferred.
- 6.4** The above guidelines will be applicable to all land development and shelter projects with land area measuring two hectares and above. For smaller plots, measuring less than two hectares in area, flexible norms, within reasonable limits, can be adopted to respond to the special needs or the potential of the neighbourhood.

## Pricing

- 7.1** The pre-determined prices will ensure a fair return on investment by the developer. The prices charged from the beneficiaries shall not include any speculative element, i.e. they would be based on the documented price of land or current registration price or price fixed by the Registration Department for purposes of payment of stamp duty (supported by relevant certificate), cost of construction as per specifications pre-

determined, appropriate escalation during the project period, cost of funds and a reasonable profit margin. No increase on the pre-determined prices will be allowed.

- 7.2** At the time of approving the predetermined prices for various categories of houses/flats, NHB may insist on an element of cross subsidisation in favour of smaller units without affecting the overall financial viability of the project.

## Financing of Project

- 8.1** National Housing Bank will finance the developer through a bank/HFI. NHB will finance the project upto 80 percent of the project cost(para 3.2). The loan will be released in stages according to the progress of the work after the developer has invested his own share of investment i.e. 20 percent of the project cost. Funds will be made available by the bank/HFI to the developer in the form of loan, for the project period (which will be three years, including the period required for allotment and handing over). All such loans by the bank/HFI will be fully refinanced by NHB. The loans will have to be fully secured.

- 8.2** The loan for individual component/units whether serviced plots, constructed dwelling units, will be charged interest rates in accordance with the interest rates structure prescribed by the Reserve Bank of India from time to time. Rates of interest w.e.f. September 22, 1990 are :

Amount of loan *	Rate of interest (%)
Upto and inclusive of Rs.7,500	10.0
Over Rs.7,500 and upto Rs.15,000	11.5
Over Rs.15,000 and upto Rs.25,000	12.0
Over Rs.25,000 and upto Rs.50,000	14.0
Over Rs.50,000 and upto Rs.2.00 lakhs	15.0
Over Rs.2.00 lakhs	minimum 16.0

*The lending rate structure relates to the aggregate loan for each unit which the agency avails from HUDCO, other HFI's and scheduled banks. The rate of interest will be related to the amount of loan and is not on slab basis.*

- 8.3** On completion of project, The plots/houses will be sold to the allottees on outright sale basis. The allottees can avail of loans from any agency they like, even at lower rates of interest. For example, in the case of housing loans under HLA, the interest rates chargeable are as under :

Amount of loan	Rate of Interest (%)
Upto Rs.50,000	10.5*
Rs.50,001 to Rs.1,00,000	12.5
Rs.1,00,001 to Rs.2,00,000	13.5
more than Rs.2,00,000	14.5

*Savings under HLA scheme carry interest rate of 10 per cent. The differential is, thus, only half a percent. Further, a concessional rate of 10 per cent will be charged for housing loans upto Rs.7,500 taken by economically weaker sections.*

- 8.4** If the amount of loan under the HLA scheme is not sufficient, banks/HFIs may provide a supplementary loan at the rate of interest prescribed by RBI for normal housing loan as given in para 8.2 above. All such loans by the banks/HFIs will be fully refinanced by the

National Housing Bank. Where the allottee is not a member of HLA or is not eligible for loan under HLA due to not having completed the minimum period of subscription to HLA, the bank/HFI with whom the HLA has been opened, will sanction a housing loan at the rate of interest prescribed by RBI for normal housing loans. All such loans will also be fully refinanced by NHB. The loan so sanctioned to the allottees will be adjusted against the loan made to the developer. Thereafter members will be responsible for making regular repayment of their loan and interest thereon to the bank/HFI.

- 8.5** The plots developed/houses built under the scheme cannot be sold for a period of five years after taking possession. This provision may be relaxed in case of dire distress subject to such conditions as may be deemed fit to be imposed.

### **Operation & maintenance**

- 8.** The project report should bring out an appropriate system or methodology for the purpose of maintaining the services either on co-operative basis or through the local authority.

### **Project implementation**

- 10.** The time schedule for the implementation of the project should be carefully worked out and supported with CPM/PERT chart or Bar chart with appropriate linkages, showing the physical progress and investment pattern.

### **Organisational and management requirements**

- 11.** Details of the existing organisation and of managerial capacity and capability should be incorporated in the project report.
- 12.** Land development and shelter projects will be considered flexibly, subject to three basic parameters :
- i. It should be an integrated project for land development (including land assembly) and on-site infrastructure to develop buildable sites and construction of houses..
  - ii. 80 per cent of developed land/built-up space will be sold with preferential allotment to members of HLA scheme of NHB at pre-determined prices.
  - iii. 75 per cent of the houses built shall have built-up accommodation ranging upto 40 sq.m.( or within an overall cost of Rs. 1.5 lakhs) and no dwelling unit shall have a built-up accommodation of more than 120 sq.m.

### **Submission of projects**

- 13.** The proposals for land development and shelter projects may be sent in two stages:
- i. *Planning proposal* indicating location, access to infrastructure services, conceptual layout and land use pattern, use of low cost technology, approximate cost and time frame and any other relevant information required for preliminary appraisal of the project.
  - ii. *Detailed project report* may be sent with detailed layout and designs, duly approved by planning and local authority wherever applicable, design brief, cost estimates, pricing, PERT/CPM/Bar chart, organisational structure, cash flow, and other relevant details to enable complete appraisal of the project.

Main Features of Ownership Flats Act**Liabilities of Promoter**

Under the Act, a promoter who intends to construct or constructs a block or building of flats would in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and documents as provided in the Act. The provision applies whether all or some of the flats are to be taken or are taken on ownership basis. Under the Act, a promoter, who constructs or intends to construct such block or building of flats has to make a full and true disclosure of the nature of his title to the land on which the flats are constructed or are to be constructed. It is a condition precedent that the title has to be duly certified by an Attorney-at-Law, or by an Advocate of not less than three years standing. Under the Act, the promoter has to make full and true disclosure of all encumbrances on the land, including any right, title interest or claim of any party in or over such land. The promoter has to give inspection within seven days of the notice of demand, of the plans and specifications of the building built or to be built on the land. It is a condition precedent in this behalf that the plans and specifications should be approved by the local authority by which he is required so to get approved under any law for the time being in force. The promoter has to disclose the nature of fixtures, fittings and amenities including the provision for one or more lifts provided or to be provided. If the promoter is himself the builder the promoter has to disclose on reasonable notice or demand, the prescribed particulars as respects the design and the materials to be used in the construction of the building. If the promoter is not himself the builder the promoter has to disclose on reasonable notice or demand all agreements entered into by him with the architects and contractors regarding the design, materials and construction of the building. In this behalf it is provided that where there is no written agreement the details of all agreements should be disclosed. Under the Act, the promoter has to specify in writing the date by which the possession of the flat is to be handed over and he has to hand over such possession accordingly. The promoter has to prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions, if any, on which the flats are taken or agreed to be taken. The promoter has to state in writing, the precise nature of the organisation of persons to be constituted and to which title is to

Maharashtra Ownership Flats Act, 1963

be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats. The Act provides that the promoter should not allow persons to enter into possession until a completion certificate is duly given by the local authority. It is also provided in the Act that no person shall take possession of a flat until such completion certificate has been duly given by the local authority. The promoter has to make a full and true disclosure of all out-goings including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, and interest on any mortgage or other encumbrances. Under the Act the promoter has to make full and true disclosure of such other information, and document as prescribed by the Rules under the Act. It is the obligation of the promoter to give on demand true copies of the documents referred to above at reasonable charge. The Rules made under the Act provide that the promoter should produce the original document before the person intending to take or taking one or more flats. Such person can ask the promoter all relevant questions for seeking further information or clarification in respect of any document or matter required to be disclosed, produced or furnished. The promoter shall be legally bound to answer all such question to the best of his knowledge and belief. In the matter of disclosure of the outgoings by the promoter, the Act provides that he shall state the basis on which any estimated figures or other information is given. The Rules contain a specific provision that the promotion should on demand and upon payment of reasonable charge therefore give to any person intending to take or taking one or more flats true copies of all documents of title relating to the land one which the flats are constructed or are to be constructed, which are in the promoter's possession or power. The other documents which are also to be so given are the title certificate by an Attorney-at-Law or an Advocate referred to above, the documents relating to encumbrances on such land, the plans and specifications of the building built or to be built on the land, a list of fixtures, fittings and amenities including the provisions for lifts provided or to be provided for the flat, a list of flats which are already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions, if any, on which the flats are taken or agreed to be taken, and a list of all outgoings as referred to above and the basis on which any estimated figures or other information is given to the person intending to take or taking the flat.

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Main Features of Ownership Flats Act**Special Liabilities of Promoter**

Under the Act, a promoter who intends to construct or constructs a block or building of flats has to enter into a written agreement for sale with each of the persons who are to take or have taken such flats. This is a condition precedent to accepting any sum of money as advance payment or deposit, which also is not to be more than 20 per cent of the sale price. In this behalf it is provided that the agreement shall be registered under the Indian Registration Act, 1908 and also that such agreement should contain the prescribed particulars and also that there should be annexed to such agreement the prescribed documents or the copies thereof. The agreement *inter alia* has to contain certain particulars. In case the building is yet to be constructed, the agreement has to contain the particulars regarding the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force. The other particulars which the agreement should *inter alia* contain are, the date by which the possession of the flat is to be handed over to the purchaser, the price to be paid by the flat purchaser and the intervals at which instalments thereof may be paid, the precise nature of the organisation to be constituted of the persons who have taken or are to take the flats, the nature, extent and description of the common areas and facilities, the nature extent and description of limited common areas and facilities, the percentage of undivided interest in the common areas and facilities appertaining to the apartment agreed to be sold, a statement of the use for which the apartment is intended and restriction on its use, if any.

The Act also provides that copies of the title certificate issued by an Attorney-at-Law or Advocate and the plans and specifications of the flat to be sold should be attached to the agreement. The Act further provides that unregistered agreements are admissible as evidence of part performance under section 53A of Transfer of Property Act or suit for Specific Performance of a Contract or for Collateral purposes.

The Act enjoins the promoter to maintain a separate account in any bank of sums taken by him from persons intending to take or who have taken flats as advance or deposit. This provision also extends to any sums so taken towards the share capital for the formation of a co-operative society or a company or towards the outgoings including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, and interest on any mortgage or other encumbrances. The promoter has

to hold moneys for the purposes for which they were given and it is his obligation to disburse the moneys for those purposes. The Act contains provisions as respect the responsibility for payment of outgoings till property is transferred to the persons taking over the flats or to the organisation of any such persons. A promoter, while he is in possession, and where he collects from persons who have taken over flats or are to take over flats sums for the payment of outgoings even thereafter, has to pay all outgoings until he transfers the property. The outgoings would include ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment and interest on any mortgage or other encumbrances, if any:

#### **Consent of flat Purchasers necessary for Additions and Alterations**

After the plans and specifications of the building as approved by the local authority are disclosed or furnished to the person who agrees to take one or more flats, the promoter is prohibited from making any alterations in the structures described therein in respect of the flat or flats which are agreed to be taken without the previous consent of that person. Similarly, after such disclosure or furnishing, the promoter is also prohibited from making any other alterations in the structure of the building, and from constructing any additional structures, without the previous consent of all the persons who have agreed to take the flats. The Act provides, a period of one year from the date of handing over possession for bringing to the notice of the promoter the defects in the building or material used, and the unauthorised charge in the construction. In cases in which the defects and unauthorised changes are rectifiable, the promoter has to rectify the same without further charge to the persons who have agreed to take the flats. In other cases such persons would be entitled to receive reasonable compensation for such defects or changes. The Act has made provisions for reference of disputes as regards such defects and changes and compensation payable, for decisions by Arbitrators.

#### **Failure to Give Possession**

The Act provides that if the promoter fails to give possession of a flat duly completed by specified or further agreed date or if the promoter for reasons beyond his control and of his agents' control is unable to give possession of the flat by specified or further agreed date and a period of three months thereafter, or a further period of three months

main features of Ownership Flats Act

if those reasons still exist then, and in any such case, the promoter is liable on demand to refund the amounts already received by him in respect of the flat with interest at 9% per annum. This right to claim refund is without prejudice to any other remedies for which the purchaser of the flat may be entitled. Further, under the Act, the amounts received and the interest are a charge on the land and the construction, if any, thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances.

**Restrictions on Creating Mortgage etc.**

The Act provides that no promoter should, after he executes an agreement to sell any flat, mortgage or create a charge on the flat or the land, without the previous consent of the persons who take or agree to take the flats. In this behalf the Act further provides that if any such mortgage or charge is made or created without such previous consent after the agreement between the promoter and flat purchaser is registered, it shall not affect the right and interest of such persons.

**Formation of Society or Company**

The Act provides that as soon as minimum number of persons required to form a society or a company have taken flats the promoter should submit an application to the Registrar of Co-operative Societies or Registrar of Companies for registration of the organisation of persons who take flats as a co-operative society or, as the case may be, as a company. Such application has to be made within the prescribed period of four months from the date on which the minimum number of persons to form such organisation have taken the flats. Under the Act the promoter has also to join in making the Application as a member in respect of flats which have not been taken. In this behalf it is further provided in the Act that the right of the promoter to dispose of the remaining flats in accordance with the provisions of the Act is not affected. The Act has specifically provided that if any property consisting of building or buildings is constructed or to be constructed and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970, then and in such case it would not be lawful to form an Co-operative Society or Company.

**Promoter to Convey Title etc.**

A promoter has to take all necessary steps to complete

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Maharashtra Ownership Flats Act, 1963

his title and convey to the organisation of persons who take flats, his right title and interest in the land and building. The conveyance has to be made either to a co-operative society or a company or an association of flat-takers or apartment owners, and if no period for the execution of the conveyance is agreed upon, within four months from the date on which the co-operative society or the company is registered or, as the case may be, the association of flat-takers is duly constituted.

**Flat Taker's General Liabilities**

Under the Act, a flat taker has to pay his proportionate share of the Municipal taxes, water and electricity charges, ground rent (if any) and other charges in accordance with his agreement with the promoter. Further, where a co-operative society or a company of persons taking the flats is to be constituted, the flat-taker has to co-operate in the formation of such society or company, as the case may be. Under the Act, contravention of these provisions by the flat-taker is made punishable with fine.

**Withholding etc. of Essential Supply or Service**

The Act provides that no person who is a promoter or a person in charge of management or connected with the management of a block or building of flats, or responsible for the maintenance thereof shall, without just and sufficient cause, either by himself or through any person, cut-off, withhold, or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat or by any person in occupation thereof through or under him. The prohibition also applies to a person in charge of management or connected with the management of a block or building of flats, whether such charge held or connection existing is as member of a managing committee, director, secretary or otherwise. In the Act provision exists for making an application to Court for restoration of such supply or service. Court would make enquiry and issue orders. Continuance of the default, after the date specified by the Court for restoration of supply or service may entail punishment with daily fine. Under the Act, the Applications for restoration of supply or service have to be made (a) in Greater Bombay, to the Court of Small Causes; Bombay (b) in any area for which a Court of Small Causes is and (c) elsewhere, to the Court of the Civil Judge (Senior Division). No appeal lies from an order made on such application. But, in Greater Bombay a bench of two Judges of the Court of Small Causes, Bombay and elsewhere the District Court

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### Main Features of Ownership Flats Act

may for the purpose of satisfying itself that the order made was according to law, call for the purpose of satisfying itself that the order made was according to law, call for the case in which such order was made and pass such order as thought fit. Under the Act, cutting off, withholding, or in any manner curtailing or reducing any essential supply or service enjoyed is made punishable with imprisonment upto three months or with fine or with both. The Act has clarified that essential supply or service includes the supply of water, electricity, lights in passages and on stair-cases and lifts and conservancy or sanitary service. It has also clarified that withholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority.

**Offences.**-Failure of the promoter without reasonable excuse to comply with any provisions of the Act and the Rules and, contravention by the promoter of any provisions of the Act and Rules are made punishable under the Act. The Act provides that a promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in Section 5 of Act shall be punished with imprisonment extending to four years, or with fine, or with both. The Act further provides that if the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business by the company, as well as the company, shall be deemed to be guilty of the offence.

#### **This Act and Transfer of Property Act**

The Act has laid down that the provisions of the Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882, and shall take effect notwithstanding anything to the contrary contained in any contract.

#### **Flats Already in Existence-and Housing Boards**

As respect flats which on the commencement of the Act have already been constructed, or converted, the provisions of certain section of the Act apply with certain modifications as specified in the Act. Nothing contained in the Act applies to the Maharashtra Housing Board and the Vidarbha Housing Board.