

**THE HIMACHAL PRADESH HOUSING AND URBAN
DEVELOPMENT AUTHORITY ACT, 2004**

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**THE HIMACHAL PRADESH HOUSING AND URBAN
DEVELOPMENT AUTHORITY ACT, 2004**

(ACT NO. 9 OF 2004)¹

(Received the assent of the Governor on the 1st May, 2004 and published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 6th May, 2004, pp. 373-433).

An Act to re-enact the law to provide for the creation of a Development Authority to plan and develop land and create infrastructure to meet with the housing needs of different income groups and to provide for development schemes for mobilizing public and private resources for the promotion of housing colonies and related infrastructure and to provide for the creation of appropriate Authority and mechanism for planned development of housing colonies.

Amended, Repealed or otherwise effected by:-

H.P. Act No. 2 of 2005² assented to by the Governor on 23rd January, 2005, published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 24th January, 2005, pp. 3549-3555, effective from 15th May, 2004.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Fifty-fifth Year of the Republic of India, as follows:-

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Housing and Urban Development Authority Act, 2004.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall come in to force on such date³ as the State Government may, by notification, appoint.

2. Definitions.- In this Act, unless the context otherwise requires,-

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1. Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 25th February, 2004, pp. 3503-3504 and 3530-3531.
 2. Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 20th December, 2004, pp. 2827 and 2832.
 3. Act came into force from 15th May, 2004 vide Notification. **No.** HSG-1A(3)-3/95-I, dated the 13th May, 2004, published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 15th May, 2004, p. 526.

- (a) “adjoining area” means such area as may be specified to be an ‘adjoining area’ under section 18 of this Act;
- (b) “Authority” means the Himachal Pradesh Housing and Urban Development Authority established under section 3 of this Act;
- (c) “Authority’s premises” means any premises belonging to, or vesting in the Authority or taken on lease by the Authority or any premises which is entrusted to, or in the possession or control of the Authority for the purposes of this Act;
- (d) “building” includes any structure or erection or part of a structure or erection, which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not;
- (e) “bye- laws” means bye-laws made under section 52 of this Act;
- (f) “Chairman” means the Chairman of the Authority;
- (g) “Chief Executive Officer” means an officer appointed under section 11 of this Act;
- (h) “committee” means any committee appointed under section 12 of this Act;
- (i) “Competent Authority” means any person or officer appointed by the State Government by notification, to exercise and perform all or any of the powers and functions under this Act;
- (j) “financial year” means the year commencing on the 1st day of April and ending on the 31st day of March of the ensuing year;
- (k) “land” includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;
- (l) “Local Authority” means a Municipal Corporation, a Municipal Council, a Town Improvement Trust, a Cantonment Board, a Nagar Panchayat, a Zila Parishad, a Gram Panchayat or any other Authority entrusted with the functions of Local Authority under any law for the time being in force;
- (m) “member” means the member of the Authority and includes its Chairman, Vice-Chairman and acting Chairman;
- (n) “notification” means a notification published in the Official Gazette;

- (o) “premises” means any land occupied by any building or a part of a building and includes,-
 - (i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building; and
 - (ii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof;
- (p) “prescribed” means prescribed by rules made under this Act;
- (q) “Promoter” means a person or a company or a society who,-
 - (i) constructs or causes to construct a building consisting of apartments or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assigns; or
 - (ii) develops land into a colony and also carves out plots, for the purpose of selling to other persons;
- (r) “regulations” means the regulations made under section 51 of this Act;
- (s) “rules” means the rules made under section 61 of this Act;
- (t) “scheme” means any scheme framed under this Act;
- (u) “Secretary” means the Secretary of the Authority;
- (v) “State Government” means the Government of Himachal Pradesh; and
- (w) “Vice-Chairman” means the Vice-Chairman of the Authority.

CHAPTER-II

ESTABLISHMENT AND CONSTITUTION OF THE AUTHORITY

3. Establishment of the Authority.- (1) With effect from such date as the State Government may, by notification appoint in this behalf, establish for carrying out the purposes of this Act, an Authority to be known as the Himachal Pradesh Housing and Urban Development Authority with the headquarter at such place as the State Government may specify.

(2) The Authority shall by the name aforesaid, be a body corporate having perpetual succession and a common seal, and, subject to any restriction by or under this Act or the rules made thereunder, shall have the powers to acquire, hold, administer and transfer property movable or immovable, and to enter into contracts, and shall by the said name sue and be sued and do all such things as are necessary for which it is constituted.

(3) For the purposes of this Act and the Land Acquisition Act, 1894 (1 of 1894), the Authority shall be deemed to be a Corporation.

4. Constitution of the Authority.- (1) The Authority shall consist of the following members:-

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|-----|--|---------------------|
| (a) | Chairman and the Vice-Chairman to be appointed by the State Government, by notification. | |
| (b) | Secretary (Finance) to the Government of Himachal Pradesh | -Ex-officio member. |
| (c) | Secretary (Housing) to the Government of Himachal Pradesh | -Ex-officio member. |
| (d) | Secretary (Urban Development) to the Government of Himachal Pradesh | -Ex-officio member. |
| (e) | Secretary (Town and Country Planning) to the Government of Himachal Pradesh | -Ex-officio member. |
| (f) | The Engineer-in-Chief Himachal Pradesh Public Works Department | -Ex-officio member. |
| (g) | The Engineer-in-Chief, Himachal Pradesh Irrigation and Public Health Department | -Ex-officio member. |
| (h) | Three non-official members to be appointed by the State Government, by notification. | |
| (i) | The Chief Executive Officer shall be the Member-Secretary of the Authority. | |

(2) The Chairman or the Vice-Chairman may at any time resign his office by submitting his resignation to the State Government.

5. Term of office of the Chairman, the Vice-Chairman and the non-official members.- (1) The Chairman, the Vice-Chairman and the non-official members of the Authority shall hold office during the pleasure of the State Government.

(2) The Chairman and the Vice-Chairman shall perform such duties and exercise such powers as may be prescribed.

6. Disqualifications.- A person shall be disqualified for being appointed or for continuing as the Chairman or the Vice-Chairman or the non-official member of the Authority, if he-

- (a) has been convicted by a Criminal Court for an offence involving moral turpitude; or
- (b) is an un-discharged insolvent; or
- (c) is a defaulter of the Authority or any other financial institution established under any law; or

- (d) is of unsound mind; or
- (e) is the employee of the Authority; or
- (f) directly or indirectly, himself or through any partner, employer or employee has any share or interest in any contract or employment with, by or on behalf of the Authority; or
- (g) is not a citizen of India.

Explanation.- For the purpose of clause (e) of this section, the Chairman and the Vice-Chairman of the Authority shall not be deemed to be an employee of the Authority.

7. Remuneration and allowances to the Chairman, the Vice-Chairman and the non-official members.- (1) The Chairman and the Vice-Chairman shall be paid such remuneration and allowances, as may be prescribed.

(2) Every non-official member shall receive such allowances, as may be prescribed.

(3) The remuneration and allowances to the Chairman, the Vice-Chairman or non-official members, as the case may be, shall be paid from the fund of the Authority.

8. Acting Chairman.-Whenever there occurs a temporary vacancy in the office of the Chairman, the Vice-Chairman shall act as the Chairman during the period of such vacancy and in the absence of both, the State Government may appoint an acting Chairman out of the non-official members of the Authority.

9. Vacancy of a non-official member.- If a non-official member,-

- (a) becomes subject to any of the disqualifications mentioned in section 6 of this Act; or
- (b) tenders his resignation in writing to the State Government and the same is accepted; or
- (c) is absent without the permission of the Chairman from three consecutive meetings of the Authority,

he shall cease to be a non-official member, from such date as the State Government may declare.

10. Filling up of vacancy.- Any vacancy of the Chairman or the Vice-Chairman or a non-official member shall be filled in as early as practicable.

11. Appointment of officers, officials and creation of posts.- (1) The State Government may appoint Chief Executive Officer of the Authority on such terms and conditions, as may be prescribed.

(2) The Authority may create posts, as it may deem necessary, for the efficient performance of its functions with the prior approval of the State Government.

(3) The method of appointment, essential qualifications, the scale of pay and allowances and other conditions of service of officers and employees of the Authority shall be such, as may be determined by the regulations.

12. Appointment of committee.- (1) Subject to any rules made in this behalf under this Act, the Authority may, from time to time, appoint one or more committees for the purpose of securing the efficient discharge of its functions and in particular for the purpose of securing that the said functions are discharged with due regard to the circumstances and requirements of a particular local area.

(2) Any committee appointed under sub-section (1) shall meet to discharge the functions assigned to it in such manner, as may be directed by the Authority.

13. Meeting of the Authority.- (1) The Authority shall meet at such time and place as it deems fit, subject to the following:-

- (a) an ordinary meeting shall be held once in every three months;
- (b) the Chairman may, whenever he thinks fit, call special meeting either himself or on the directions of the State Government;
- (c) every meeting shall be presided over by the Chairman and in his absence by the Vice-Chairman and in the absence of both, by the acting Chairman;
- (d) all questions at any meeting shall be decided by a majority of the members present and in case of equality of votes, the person presiding over the meeting shall be entitled to exercise a casting vote; and
- (e) the minutes of the proceedings of every meeting shall be recorded in a book to be provided for the purpose under the signature of the Chairman of the meeting and the Chief Executive Officer.

(2) The quorum for a meeting of the Authority shall be two-third of the total members of the Authority.

14. Temporary association of person with the Authority for particular purpose.- (1) The Authority may take the advice of any expert in a specialized field, as it may deem necessary, on such terms and conditions and on payment of such fees, as may be decided by the Authority.

(2) A person associated with the Authority under sub-section (1) for any purpose shall have the right to take part in the deliberations of the Authority relevant to that purpose but shall not have the right to vote.

(3) The State Government may by order, depute its representatives to attend any meeting of the Authority and to take part in the deliberations of the Authority, on such items as the State Government may specify, but such representatives shall not have the right to vote.

(4) The Authority may appoint a consultant as may be considered necessary, for specialized or specific job(s), for a limited period on such terms and conditions and on payment of such fees, as may be decided by the Authority.

15. Power to make contracts.- The Authority may enter in to such contracts as it may consider necessary or expedient for carrying out any purpose of this Act.

16. Execution of contract.- Every contract shall be signed on behalf of the Authority by the Chief Executive Officer or by any other officer authorized by the Authority, by a special or general order:

Provided that no contract shall be signed by any officer unless the contents of the contract are approved by the Authority.

CHAPTER-III

FRAMING AND FINALISING OF SCHEMES FOR EXECUTION

17. Powers and duties of the Authority to undertake housing and development schemes.- (1) Subject to the provisions of this Act and the control of State Government, the Authority may,-

- (a) frame the schemes on its own;
- (b) frame a scheme on the request of a Promoter;
- (c) adopt a scheme proposed by a Promoter; and
- (d) incur expenditure and undertake works in any area in which this Act is enforced for the framing and execution of such housing and development schemes, as it may consider necessary.

(2) The housing and development schemes may be of one of the following types or combination of any two or more of such types of schemes or of any special features thereof, namely:-

- (a) a land development scheme;
- (b) a city or town or village development scheme;
- (c) a housing scheme;
- (d) an industrial area development scheme;
- (e) a commercial/tourism scheme; and
- (f) an infrastructural development scheme.

(3) The State Government may, on such terms and conditions, as it may think fit to impose, entrust to the Authority the framing and execution of any deposit work or any housing and development scheme whether provided by this Act or not and the Authority shall thereupon, undertake the framing and execution of such schemes as if it had been provided for by this Act.

(4) The Authority may, with the previous approval of the State Government, on such terms and conditions, as may be agreed upon, take up framing or execution of any deposit work or any housing and development scheme, on behalf of a Local Authority or a Co-operative Society or a person.

18. Matters to be provided for in a development scheme.-Subject to the provisions of this Act, a development scheme may provide for all or any of the following matters, namely:-

- (a) acquisition by purchase, exchange or otherwise, of any property necessary for or affected by the execution of the scheme;
- (b) acquisition by purchase, exchange or otherwise, of any land, division of the same into plots and the sale thereof after developing itself or through a Promoter, in accordance with the scheme;
- (c) laying or re-laying out of any land comprised in the scheme;
- (d) distribution or re-distribution of sites belonging to owners of property comprised in the scheme;
- (e) the closure or demolition of dwellings or portions of dwellings unfit for human habitation;
- (f) demolition of obstructive buildings or portions of buildings;
- (g) the construction and re-construction of buildings, their maintenance and preservation;
- (h) sale, letting or exchange of any property comprised in the scheme;
- (i) construction and alteration of streets and back lanes;
- (j) drainage, water-supply and lighting of the area included in the scheme;
- (k) parks, playing fields and open spaces for the benefit of any area comprised in the scheme and the enlargement of existing parks, playing fields, open spaces and approaches;
- (l) sanitary arrangements required for the area comprised in the scheme including the conservation and prevention of any injury or contamination to rivers or other sources and means of water supply;

- (m) accommodation for any class of inhabitants, industries, institutions, offices, Local Authorities, Co-operative Societies or Corporate Bodies;
- (n) advance of money for the purpose of the scheme;
- (o) facilities for communication and transport;
- (p) collection of such information and statistics as may be necessary for the purposes of this Act; and
- (q) any other matter for which in the opinion of the State Government, it is expedient to make provision with a view to provide housing accommodation and or to the improvement or development of any area comprised in the scheme or any adjoining area.

Explanation.-For the purposes of this section, the State Government may on the recommendation of the Authority, by notification, specify the area, surrounding or adjoining area of a housing scheme, to be the “adjoining area”.

19. Provision for economically weaker section.- The State Government may reserve atleast 5% of the developed area or built up houses for economically weaker section on such terms and conditions, as may be prescribed by regulations.

20. Publication of development scheme.- (1) Before finalization of any development scheme, the Authority shall, by notification, publish the draft scheme and the same shall specify the plan showing the area proposed to be included in the development scheme alongwith surrounding lands and shall be open to inspection for the public during office hours at the office of the Authority for 30 days from the date of publication thereof.

(2) If within 30 days from the date of publication of the draft scheme, any person communicates in writing to the Authority any suggestion or objection relating to the scheme, the Authority shall consider such suggestion or objection and may modify the draft scheme as it may deem fit.

(3) The Authority shall, by notification, publish the scheme finalized under sub-section (2).

(4) The publication of a notification under sub-section (3) shall be conclusive evidence that the said scheme has been framed.

21. Transfer of management to the Authority, for the purposes of housing and development schemes vested in a Local Authority.- (1) Whenever any street, square or other land or any part thereof, owned and possessed by a Local Authority is required for the purposes of any housing or development scheme as published in the Official Gazette under section 20 of this Act, the Authority shall give notice to the concerned Local Authority to transfer the management of such street, square or other land or part thereof, as the case may be, to the Authority.

(2) Where the Local Authority agrees the transfer of the management of such street, square or other land or part thereof, the same shall vest in the Authority.

(3) Where there is any dispute, the matter shall be referred to the State Government and the State Government shall, after hearing the parties concerned decide the matter, whose decision thereon shall be final.

(4) Notwithstanding such vestment, the Local Authority concerned shall continue to render the municipal services as usually provided by it and such vestment shall not affect the duties and obligations of such Local Authority in or over any drain or water works falling in the management vested in the Authority.

22. Power of Authority to turn or close public path or street.- (1) The Authority may turn, divert, discontinue the public use of or permanently close, any public path or street or any part thereof vested in it.

(2) Whenever the Authority discontinues the public use of or permanently closes any public street or any part thereof, vested in it, it shall as far as practicable provide some other reasonable means of access to be substituted in lieu of the use by those entitled to the use of the street or part thereof.

(3) When any public street vested in the Authority is permanently closed under sub-section (1), the Authority may utilize the same as per the scheme.

23. Vesting in Local Authority of streets laid out or altered and open space provided by the Authority under housing and development schemes.- (1) Whenever the State Government is satisfied,-

- (a) that any street laid out or altered by the Authority has been duly levelled, paved, metalled, fledged, channeled, sewered and drained as required for the housing and development scheme;
- (b) that such lamps, lamp posts, and other apparatus as the Local Authority concerned considers necessary for the lighting of such street as ought to be provided by the Authority have been so provided; and
- (c) that water and other sanitary conveniences have been duly provided in such street,

it may declare the street to be a public street, and the street shall thereupon vest in the Local Authority concerned and shall thereafter be maintained, repaired, lighted and cleaned by the Local Authority concerned.

(2) When any open space for the purposes of ventilation or recreation has been provided by the Authority in executing any housing and development scheme, the Authority shall transfer such open space to the Local Authority concerned on completion of the scheme and thereupon such open space shall vest in and be maintained by the Local Authority:

Provided that the Local Authority may require the Authority before any such open space is so transferred, to enclose, level, turf, drain and layout such space and provide footpath therein and if necessary, provided lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Authority and the Local Authority in respect of any of the matters referred to in this section, the matters shall be referred to the State Government whose decision thereon shall be final.

24. Other duties of the Authority.- (1) It shall be the duty of the Authority to take necessary measures to maintain, allot, lease or otherwise use the Authority premises and to collect rents, compensation and damages in respect thereof.

(2) The Authority may,-

- (i) provide technical advice to the State Government and scrutinize projects under other housing schemes, when required by the State Government to do so;
- (ii) undertake research on various problems connected with housing schemes in general and find out in particular the economical methods of constructing houses suited to local conditions ;
- (iii) undertake comprehensive survey of problems of housing; and
- (iv) do all the things for,-
 - (a) unification, simplification and standardization of building materials;
 - (b) encouraging prefabrication and mass production of house components;
 - (c) organization or undertaking the production of building materials; and
 - (d) securing a steady and sufficient supply of workmen trained in the work of design and construction of housing infrastructure including buildings.

CHAPTER –IV

FINANCE, ACCOUNT AND AUDIT

25. Fund of the Authority.- (1) The Authority shall have its own fund.

(2) The Authority may accept grants, subsidies and donations from the Central or the State Government or a Local Authority or any individual or body, whether incorporated or not, for all or any of the purposes of this Act.

(3) The State Government may give such grants, as it may consider necessary, to the Authority.

(4) All money received by or on behalf of the Authority by virtue of this Act, all proceeds of land or any other kind of property sold by the Authority, all rents and interests, profits and other money accruing to the Authority including the loans raised by it shall constitute the fund of the Authority.

(5) Except as otherwise directed by the State Government, all money and receipts specified in this section and forming part of the fund of the Authority shall be deposited in any Nationalized Bank or any other Bank having National Computerized network or in Himachal Pradesh State Co-operative Bank or invested in such securities as may be approved by the State Government.

(6) Such account shall be operated upon by such officers, as may be authorized by the Authority.

26. Application of the fund.- Subject to the provisions of this Act, all property, fund and all other assets vested in the Authority shall be applied by it for the purpose of this Act.

27. Power of the Authority to borrow.- (1) The Authority may, from time to time, with the previous sanction of the State Government, borrow money from any source by issue of bonds, debenture, loans or such other instruments, on such terms and conditions, as it may deem fit, for the purposes of this Act.

(2) Every debenture, bond or instrument shall be signed by the officer duly authorized by the Authority.

(3) The Authority may, from time to time, on the request of the State Government, raise loans to it for execution of any work or scheme.

(4) The State Government may give guarantee subject to such conditions as it thinks fit, for the repayment of the principal and the payment of interest thereon with respect to the money borrowed under sub-section (1) or loan raised under sub-section (3), by the Authority.

28. Accounts and audit.- (1) The accounts of the Authority shall be prepared and maintained in such form and in such manner, as may be prescribed.

(2) The Authority shall cause to be prepared for each financial year an annual statement of accounts in such form, as may be prescribed.

(3) The accounts of the Authority shall be audited by an agency as may be authorized by the State Government or by an auditor duly qualified to act as an auditor of Companies under section 226 of the Companies Act, 1956 (1 of 1956).

(4) The auditor shall send copy of the report together with audited copy of accounts to the Authority, which shall, as soon as may be, after the receipt of the audit report forward the same to the State Government.

(5) The State Government shall cause the audit report together with audited copy of accounts to be laid before the State Legislature, as soon as may be, after the receipt of the same under sub-section (4).

29. Special audit of accounts.- (1) Notwithstanding anything contained in section 28 of this Act, the State Government may order special audit of accounts of the Authority by such person as it thinks fit.

(2) Where an order is made under sub-section (1), the Authority shall present or cause to be presented for special audit such accounts and shall furnish to the person appointed under sub-section (1), such information as the said person may require.

30. Annual report and budget.- (1) The Authority shall during each financial year prepare, in such form and at such time, as may be prescribed, an annual administrative report giving a true and full account of its activities during the previous financial year, and an account of the activities likely to be undertaken by it in the current financial year and copies of such report shall be forwarded to the State Government.

(2) The State Government shall cause every such report to be laid before the State Legislature, as soon as may be, after the receipt of the report under sub-section (1).

(3) The Authority shall prepare the annual budget in the prescribed manner for every financial year and the same shall be approved by it and sent to the State Government within 15 days from its approval.

31. Provident fund.- (1) The Authority shall established Contributory Provident Fund for the officers and officials of the Authority and such Provident Fund shall be deemed to be the Authority's Provident Fund for the purposes of the Provident Fund Act, 1925 (19 of 1925) and shall be administered by the officers of the Authority.

(2) The Authority shall, in respect of each of its employees, who is a subscriber to the said fund, pay to the said fund such portion of the contribution, in such manner, as the State Government may, from time to time, prescribe.

CHAPTER-V

ACQUISITION AND DISPOSAL OF LAND BY THE AUTHORITY

32. Acquisition of land.- When any land is required for the purposes of this Act, the State Government may, at the request of the Authority, proceed to acquire it under the provisions of Land Acquisition Act, 1894 (1 of 1894) and on payment by the Authority of the compensation awarded under that Act and of any other charges incurred in acquiring the land and thereupon the land shall vest in the Authority.

33. Disposal of land.- (1) Subject to any direction issued by the State Government under this Act, the Authority may dispose of by way of sale, exchange, lease or auction any land acquired by it or transferred to it by the

State Government after undertaking or carrying out such development as provided in housing and development scheme, in such manner, as may be prescribed and subject to such terms and conditions, as it thinks fit.

(2) Subject to the provisions, of sub-section (1), the Authority may sell, lease or otherwise transfer whether by auction or allotment any land or building belonging to it on such terms and conditions as it may, from time to time, determine.

(3) The consideration money for any transfer under this section shall be paid to the Authority, in such manner, as may be prescribed by regulations.

(4) Any land or building, or both, as the case may be, shall continue to belong to the Authority until the entire consideration money together with interest and any other amount, if any, due to the Authority, on account of the transfer of such land or building or both, is paid.

(5) Subject to the provisions of regulations, the transferee shall not further transfer any of his rights in the land or buildings except with the prior permission of the Authority on an application accompanied by such fees, as may be prescribed.

34. Recovery of arrears as land revenue.- Where any person makes any default in the payment of any sum due to the Authority under this Act or the rules or regulations made thereunder, which is not paid on demand on the date on which it becomes due or on the day fixed by the Authority, shall be recovered from him, as arrears of land revenue.

CHAPTER-VI

IMPLEMENTATION OF SCHEMES

35. Implementation of the schemes by the promoter.- Subject to the provisions of this Act and the rules or regulations made there under, the Authority may, for the implementation of the scheme, permit a Promoter to undertake any housing and development scheme.

36. Power to grant licence to the Promoter.- (1) The Authority may, with the prior approval of the State Government, grant a licence, in the prescribed form, to the Promoter to undertake a scheme on such terms and conditions as may be mutually agreed upon after following such procedure and on payment of such licence fee, as may be prescribed.

(2) If the licence is granted, the Promoter shall execute the scheme as finalized by the Authority under section 20 of this Act.

(3) After the scheme has been executed, necessary completion certificate shall be issued by the Authority that the scheme has been executed as finalized by it under section 20 of this Act.

(4) Upon the issue of the completion certificate by the Authority, it shall transfer the ownership of the land, in the manner prescribed, to the Promoter.

37. Registration of the Promoter.- The Authority shall register a Promoter for the execution of any housing and development scheme for such period and on such terms and conditions, as may be prescribed.

38. Application for grant of licence.- (1) Any registered Promoter may make an application in writing for grant of a licence to undertake or carry out any scheme to the Authority in such form accompanied by such documents and fee and in such manner, as may be prescribed.

(2) The Authority may, after making such enquiry as it considers necessary, by an order in writing,-

- (a) award the execution of scheme after the applicant has furnished to it a bank guarantee equivalent to 10% of the estimated cost of the development work and has entered into an agreement on such terms and conditions as may be agreed upon including the provisions to ensure-
 - (i) that the development work shall be within the framework of the approved scheme and shall conform to the provisions of the regulations and building bye-laws; and
 - (ii) that the time schedule within which the housing and development work is to be completed shall be adhered to; or
- (b) refuse to award the execution of scheme after affording the applicant an opportunity of being heard.

39. Allotment of building or plot by the Promoter.- Subject to the provisions of this Act and rules made thereunder, the Promoter may transfer the building or plot, to the prospective allottees, on such terms and conditions, as may be prescribed by regulations.

40. Maintenance charges of amenities.- Where the Authority is providing or maintaining any amenities, utility, service or facility, the Authority shall charge from the allottee maintenance charges, in the manner prescribed.

41. Reference to Arbitrator in case of dispute.- If any dispute arises out of any agreement entered into between the Authority and the Promoter or between the Promoter and the allottee, the same shall be referred for arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996(26 of 1996).

CHAPTER-VII

RELATIONS BETWEEN THE STATE GOVERNMENT, THE AUTHORITY AND THE LOCAL AUTHORITIES

42. Powers of Authority to require Local Authority to assume responsibility for maintenance of amenities.- (1) Where any area has been developed by the Authority or by the Promoter, the same shall be entrusted to

the Local Authority within whose limits the area so developed is situated for discharging its municipal functions.

(2) If any amenity has not been provided by the Authority or by the Promoter which otherwise should have been provided, the Authority or the Promoter, as the case may be, shall pay an amount equivalent to the cost of such amenities to the Local Authority.

(3) Where money has been collected by the Authority or by the Promoter for the proposed amenities but not utilized, the same shall be transferred to the Local Authority for providing the same.

43. Power to give directions.- The State Government may give to the Authority such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act and it shall be the duty of the Authority to comply with such directions.

44. Revisional powers.- The State Government may, at any time either on its own motion or on application made to it in this behalf, call for the records of any case disposed of, or order passed by the Authority, for the purpose of satisfying itself as to the legality or propriety or correctness of any order passed or direction issued and may pass such order or issue such direction in relation thereto, as it thinks fit:

Provided that the State Government shall not pass an order without affording an opportunity of being heard to the aggrieved party.

CHAPTER-VIII

LEVY OF DEVELOPMENT FEE AND PENALTY FOR NON-CONSTRUCTION OF BUILDING ON PLOTS

45. Levy of development fees.- Subject to the provisions of this Act and the rules made thereunder, the Authority may, with the previous sanction of the State Government, by order, levy development fee to recoup the expenditure incurred by it on the amenities provided or to be provided in future by the Authority:

Provided that different rates of development fees may be levied for different parts of the scheme area.

46. Penalty for non-construction of buildings.- Subject to the provision of this Act and the rules made thereunder, the authority may impose penalty, not exceeding 5 percentum of the cost of the plot per year, on the allottee if he fails to construct the building on the plot within the specified period:

Provided that before passing any order under this section, the Authority shall provide reasonable opportunity of being heard.

CHAPTER-IX**DEVELOPMENT, CONTROL AND USE OF LAND**

47. Power to stop construction.- (1) Where any encroachment on Authority's land is made, erection of any building or execution of any work has been commenced or is being carried on (but has not been completed), without or contrary to the sanctioned building plan or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or bye-laws made thereunder, the Chief Executive Officer or any other officer authorized by him in addition to any other action that may be taken under this Act, by order, require the person at whose instance erection of the building or the work has been commenced or is being carried on, to stop the same forthwith.

(2) If an order made under sub-section (1) is not complied with, the Chief Executive Officer or any other officer authorized by him may require any police officer to remove such person and all his assistants and workmen from the premises within such time, as may be specified in the requisition, and such police officer shall comply with the requisition accordingly.

(3) After the requisition under sub-section (2) has been complied with, the Chief Executive Officer or any other officer authorized by him may, if he thinks fit, deploy by written order, a police officer or officer or other employee of the Authority, to watch the premises in order to ensure that the erection of the building or the execution of the work is not continued and the cost of such deployment shall be paid by the person at whose instance such erection or execution is continued or against whom an order under sub-section (1) is made.

(4) Where the owner of the building submits the revised plan, after the work has been stopped by him or the work is completed by him and the deviations from the sanctioned plan are minor in nature, the Chief Executive Officer may, subject to the special or general directions of the State Government, compound the cases of deviations on payment of such sum, as may be prescribed.

Explanation.- For the purpose of sub-section (4), the expression "minor in nature" in relation to deviations shall not include,-

- (a) addition of a storey beyond the sanctioned plan; and
- (b) erection of a building,-
 - (i) on any land vested in the Authority; or
 - (ii) by covering any public road, street, path or drain.

(5) Notwithstanding anything to the contrary contained in this Act, the Authority may, after affording a reasonable opportunity of being heard, refuse or withdraw the civic amenities including water and sewerage connection, if the owner of the building make deviation from the sanctioned plan by addition of a storey beyond the sanctioned plan, erection of a building on any land vested in the Authority, or by covering any public road, street, path or drain.

48. Power of Chief Executive Officer to require alteration of work.- (1) The Chief Executive Officer may, at any time, during the erection of any building or execution of any work or at any time within three months after the completion thereof, by a written notice specify any matter in respect of which such erection or execution is without or contrary to the sanctioned plan or is in contravention of any condition of such sanctions or any of the provisions of this Act or bye-laws made thereunder and require such person either-

- (a) to make such alteration as may be specified in the said notice with the object to bring the building or work in conformity with the said sanctioned plan, conditions and provisions thereof; or
- (b) to show cause as to why such alterations should not be made within the period stated in the notice at his risk and cost, by the Authority.

(2) If the person or the owner does not reply to the show cause notice within the period specified therein, issued under sub-section (1), he shall be bound to make the alterations specified in the notice.

(3) If the person or the owner replies to the show cause notice within the specified period, the Chief Executive Officer shall by an order either cancel the notice issued under sub-section (1) or confirm the same subject to such modifications, as he thinks fit.

CHAPTER-X

MISCELLANEOUS

49. Notice of suit against the Authority.- No person shall institute any suit against the Authority or against any officer or servant of the Authority for anything done or purported to have been done in pursuance of this Act, without giving to the Authority, officer or servant, two months' previous notice in writing of the intended suit and of the cause thereof.

50. Valuation of assets and liabilities of the Authority.- The Authority shall at the end of every ten years have a valuation of its assets and liabilities made by valuer appointed with the approval of the State Government:

Provided that it shall be open to the State Government to direct a valuation to be made at any time as it may consider necessary.

¹[50-A. Abolition of the Himachal Pradesh Housing Board and transfer of its assets and liabilities.- (1) On and with effect from the date of establishment of the Authority under section 3 of this Act, the Himachal Pradesh Housing Board established under the Himachal Pradesh Housing Board Act, 1972 (10 of 1972) shall stand abolished.

1. Section 50-A inserted vide H.P. Act No. 2 of 2005, effective from 15th May, 2004.

(2) On and with effect from the date of abolition of the Himachal Pradesh Housing Board under sub-section (1) –

- (a) the members including the Chairman of the Himachal Pradesh Housing Board shall cease to hold office;
- (b) all properties, funds and dues which are vested in or realizable by the Himachal Pradesh Housing Board shall vest in and be realizable by the Authority; and
- (c) all liabilities which are enforceable against the Himachal Pradesh Housing Board shall be enforceable against the Authority.

(3) Nothing in this section shall affect the liabilities of the State Government in respect of loans or debentures guaranteed under Himachal Pradesh Housing Board Act, 1972.

(4) All contracts, agreements, and other instruments entered into immediately before the abolition of the Himachal Pradesh Housing Board under sub-section (1) and to which the Board is a party or which are in favour of the Board shall be deemed to have been entered into by, with or for the Authority.

(5) All suits, appeals or other legal proceedings instituted or which could have been instituted by or against the Himachal Pradesh Housing Board, immediately before its abolition under sub-section (1), shall be continued or instituted by or against the Authority.

Explanation.- For the purpose of this sub-section, legal proceedings includes any proceeding under the Land Acquisition Act, 1894 (Central Act No. 1 of 1894).

(6) All employees of the Himachal Pradesh Housing Board shall, on and from the date of its abolition under sub-section (1), become employee of the Authority, and shall hold office in the Authority on the same terms and conditions of service and shall continue as such unless and until their terms and conditions of service are altered by the Authority with the previous approval of the State Government.

(7) Notwithstanding anything contained in sub-section (6), where any employee of the Himachal Pradesh Housing Board, by notice in writing given to the Authority at any time before the expiry of three months next following the date of abolition of the Himachal Pradesh Housing Board under sub-section (1), has intimated his intention of not becoming an employee of the Authority, he shall cease to be an employee of the Authority and shall be entitled to get such gratuity, provident fund and other retirement benefits as are ordinarily admissible to him under the rules or authorization of the Himachal Pradesh Housing Board immediately before its abolition.

(8) If any dispute or doubts arises as to which of the properties, rights or liabilities of the Himachal Pradesh Housing Board transferred to the Authority or as to which of the employees serving under the Board are to be

treated as employees of the Authority under this section, such dispute or doubt shall be referred to the State Government whose decision thereon shall be final.]

51. Power to make regulations.- (1) The Authority may, from time to time, with the prior approval of the State Government, make regulations consistent with this Act and the rules made thereunder.

(2) If it appears to the State Government that it is necessary and desirable for carrying out the purposes of this Act to make any regulation under sub-section (1) or to amend any regulation made under that sub-section, it may call upon the Authority to make or amend such regulation within such time, as it may specify.

(3) If the Authority fails to make or amend such regulation within the time specified, the State Government may, make such regulation or amend the regulation so made and the same shall be deemed to have been made or amended by the Authority under sub-section (1).

52. Power to make bye-laws.- (1) The Authority may make building bye-laws, consistent with this Act and the rules made thereunder, which may be necessary or expedient for the purposes of carrying out its duties and functions under this Act.

(2) No building bye-laws made by the Authority shall come into force until it has been confirmed by the State Government with or without modification.

(3) All building bye-laws made under this section shall be published in the Official Gazette.

53. Offences and penalties.- (1) if any person,-

- (a) obstructs any person, with whom the Authority has entered into a contract, in the performance of his duty or of anything which is empowered or required to do under this Act; or
- (b) removes any mark set-up for the purpose of indicating any level or direction necessary to the execution of the work authorized under this Act,

he shall on conviction be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

(2) If any infrastructure such as retaining wall, parapet, railing, sewerage line, water supply line, drainage, electric line, plants, street or furniture etc. is damaged by any individual, the cost of the repair alongwith 50% of the cost of repair as service charges shall be recovered from him, failing which he shall on conviction be punishable with imprisonment for a term not exceeding three months.

(3) Whoever contravenes a bye-law made under section 52 of this Act, shall, on conviction be punishable with imprisonment for a term which

may extend to six months or with fine which may extend to one thousand rupees, or with both.

54. Authority for prosecution.- No court shall take cognizance of any offence punishable under this Act, except on the complaint of, or, upon information received from, the Authority or any person authorized by the Authority by order in this behalf.

55. Members, officers and officials of the Authority to be public servants.- All members, officers and officials of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

56. Protection of action taken in good faith.- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or purported to have been done under this Act.

57. Authentication.- All permissions, orders, decisions, notices and other documents of the Authority shall be authenticated by the Chief Executive Officer or any officer authorized by him in this behalf.

58. Relation of Authority with police.- It shall be the duty of every police officer,-

- (i) to communicate without delay to the Chief Executive Officer or the head of the local office of the Authority, as the case may be, any information which he receives of a design to commit or of the commission of any offence under this Act and the rules or the regulations made thereunder; and
- (ii) to assist the member or any officer or other employee of the Authority in the lawful exercise of any power vested in such member, officer or other employee under this Act or any rules or regulations made thereunder.

59. Power to delegate.- (1) The Authority may by a resolution, authorize that any power exercisable by it under this Act or the rules or the regulations made thereunder, except the power to make regulations, may also be exercised by such officers of the Authority, as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.

(2) The State Government may, by notification, direct that any power exercisable by it under this Act, except the powers to make rules, may also be exercised by such officers in such cases and subject to such conditions, if any, as may be specified therein.

60. Supersession of Authority.- (1) If the State Government is satisfied that the Authority has made default in performing of any duty imposed on it by or under this Act, it may fix a period for the performance of that duty.

(2) If in the opinion of the State Government, the Authority fails or neglects to perform the duty within the period so fixed for its performance under sub-section (1), it shall be lawful for the State Government, to supersede and reconstitute the Authority.

(3) After the suppression of the Authority and until it is reconstituted, the powers, duties and functions of the Authority under this Act shall be carried on by the State Government or by such officer or officers as the State Government may, appoint for this purpose.

61. Power to make Rules.- (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the forgoing power such rules may be made for all or any of the following purposes, namely:-

- (a) the remuneration or allowances to the Chairman, the Vice-Chairman and the non-official members and conditions of service of the Chairman and the Vice-Chairman;
- (b) the rates of subscription, contributions and other conditions to regulate the provident fund established under section 31;
- (c) the manner and form in which contracts shall be entered into under section 15;
- (d) the form and the time within which the annual administrative report and budget to be laid before the Authority under section 30 and the other particulars to be contained therein;
- (e) the manner of publication of housing and development schemes under section 20;
- (f) the form and manner of preparation and maintenance of accounts under section 28;
- (g) the manner in which the Authority shall be superseded and reconstituted under section 60; and
- (h) any other matter which is or may be prescribed under this Act.

(3) All rules made under this Act shall be subject to previous publication.

(4) All rules made under this Act shall be laid as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than 14 days which may be comprised in one session or in two successive sessions and, if before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modifications in any of such rules or resolves that any such rules should not be made, such rules shall thereafter, have effect only in such modified forms or be of no effect, as the case may be.

62. Repeal and savings.- On and from the date of commencement of this Act, the Himachal Pradesh Housing Board Act, 1972 (10 of 1972) shall stand repealed (hereinafter referred to as the ‘repealed Act’):

Provided that the repeal shall not effect,-

- (a) the previous operation of the repealed Act, or anything duly done or suffered thereunder, or
- (b) any right, privilege, obligation or liability required, accrued or incurred under the repealed Act, or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed Act, or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or, remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act has not been enforced:

Provided further that subject to the preceding proviso anything done or any action taken (including any appointment, or delegation made, notification, notice, order, instruction, or direction issued, rules, regulations, bye-laws, forms, or schemes framed, certificate obtained, registration affected, fee or rate levied), under the repealed Act shall, in so far as it is in force immediately before coming in to force of this Act and is not inconsistent with the provisions of this Act be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act.
