



KHYBER PAKHTUNKHWA

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PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 13th July, 2020.

No. PA/Khyber Pakhtunkhwa/Bills-103/2020/838.— The Khyber Pakhtunkhwa Local Government (Second Amendment) Bill, 2020 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 7th July, 2020 and assented to by the Governor of the Khyber Pakhtunkhwa on 13th July, 2020 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA LOCAL GOVERNMENT (SECOND AMENDMENT) ACT, 2020. (KHYBER PAKHTUNKHWA ACT NO. XXIII OF 2020)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 13th July, 2020).

AN ACT

*further to amend the Khyber Pakhtunkhwa
Local Government Act, 2013.*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Local Government Act, 2013 (Khyber Pakhtunkhwa Act No. XXVIII of 2013), for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Local Government (Second Amendment) Act, 2020.

(2) It shall come into force at once.

2. Amendment of section 2 of the Khyber Pakhtunkhwa Act No. XXVIII of 2013.--
-In the Khyber Pakhtunkhwa Local Government Act, 2013 (Khyber Pakhtunkhwa Act No. XXVIII of 2013), hereinafter referred to as the said Act, in section 2,-

(a) after clause (d-ii), the following new clause (d-iii) shall be inserted, namely:

“(d-iii) “Development Authority” means and includes the Peshawar Development Authority, the Galiyat Development Authority, the Kaghan Development Authority and any other urban area development authority, established under relevant laws for the time being in force or any other local area authority, established under any law and charged with the responsibility of local area development and provision of municipal services within its respective territorial jurisdiction;” and

(b) after clause (v), the following new clauses shall be inserted namely:

“(v-i) “private housing scheme” means an area of land, measuring not less than one hundred and sixty (160) kanals, to be developed by any private promoter or developer and divided or proposed to be divided by way of sale or through lease or transfer of physical possession of plots, houses or apartment buildings for residential, commercial or industrial purposes, construction of flats in the form of group housing or for construction of integrated commercial complexes but does not include any area of abadideh of a village or land divided or proposed to be divided-

(i) for the purpose of agriculture; or

(ii) by a company, institution or factory for creation of housing for its employees; provided that there is no profit motive nor ownership of the houses is transferred to the employees and their rights to accommodation are restricted to the period of their employment with company, institution or factory;

(v-ii) “private promoter or developer” means any private individual, association of persons, registered firm, company or corporation having majority ownership or control of private individuals and may include-

(i) the owner of land, on which a private housing scheme is developed;

- (ii) the builder who constructs or causes to be constructed any apartment building, consisting of apartments, or converts an existing building or apart thereof into apartments, for the purpose of selling all or some of the apartments to other person, and includes his assigns;
- (iii) the developer, who develops any land into a private housing scheme, whether or not he also construct structure on any of the plots, for the purpose of selling to other person, all or some of the plots, whether open or with structures thereon;
- (iv) the property dealer or estate agent, who offers or sells apartments or plots on behalf of land owner or builder or colonizer or any other person, by whatever name he may be called;
- (v) any person, whether natural or juristic, who claims to be acting as the holder of the power of attorney from the owner of the land on which the building is constructed or a housing scheme is developed; and
- (vi) whoever styles or presents himself as a private promoter or developer or by any other name;”.

3. Insertion of new section 23B of the Khyber Pakhtunkhwa Act No. XXVIII of 2013.---In the said Act, after section 23A, the following new section shall be inserted, namely:

“23B. Approval of private housing schemes.---(1) Notwithstanding and without prejudice to the generality of his powers and functions, so enumerated in section 23A, the Chairman, Tehsil Local Government, shall have the power to receive application from a private promoter or developer for approval of any private housing scheme.

(2) The application for establishing and development of any private housing scheme shall be accompanied by such fee, documents, plans, securities and other requirements, as may be prescribed by rules.

(3) Upon receiving the application under sub-section (1), the Chairman, Tehsil Local Government, may make such local inquiries and receive such technical or other feedback from the Tehsil Municipal Administration, as he may deem necessary, in the manner and within the timelines, as may be prescribed by rules.

(4) The Chairman, Tehsil Local Government, after consultation with the Tehsil Municipal Administration, if finds the application deficient in any manner, he may either reject the application or require the private promoter or developer to meet such deficiencies with in such period, as may be prescribed.

(5) Once the Chairman, Tehsil Local Government, is satisfied that the requirements for the grant of approval for establishing and development of the private housing scheme are met, he may place the application for approval before the Tehsil Council, which may approve the application with simple majority.

(6) The Tehsil Council, in case of dis-approval of the application, shall identify deficiencies or further requirements, preventing grant of approval of such application and shall send it back to Chairman with observations and a timeline to be intimated to the private promoter or developer to meet such deficiencies or other requirements.

(7) Once the Tehsil Council approves the application or the private promoter or developer meets the deficiencies or further requirements so intimated under sub-section (6) to the satisfaction of Chairman, Tehsil Local Government, he shall issue a No Objection Certificate to the private promoter or developer for establishment and development of the private housing schemes on such terms and conditions as may be specified in such No Objection Certificate and such other parameters, as may be prescribed:

(8) In case of violation of any terms and conditions as specified under sub-section (7), the No Objection Certificate so granted, shall be liable to cancellation at any time, in a manner as may be prescribed.

(9) Notwithstanding anything contained in this Act or any other law for the time being in force, prior to making an application under sub-section (1) for grant of No Objection Certificate for establishment and development of any private housing scheme, a private promoter or developer may, with intentions to undertake market research and analysis, apply for permission to undertake a local consumer survey within territorial limits of any Tehsil.

(10) Application, for market survey under sub-section (9), shall be submitted to the Chairman, Tehsil Local Government, with a detailed plan of survey, methodology to outreach the consumer base, means to employed to undertake such survey, proposed advertisement if any, proposed questionnaire for such survey and other relevant details.

(11) While processing and granting application for permission to undertake any survey under sub-section (9), the Chairman, Tehsil Local Government, shall ensure that while conducting such survey, the private promoter or developer shall in no manner holdout to the general public that he is possessing a No Objection Certificate granted under sub-section (7) or he shall, necessarily, receives such No Objection Certificate from the Tehsil Local Government for establishment of a private housing scheme:

Provided that permission to undertake a market survey under sub-section (9) shall only be granted to such private promoter or developer, who has demonstrable past experience of successfully establishing and launching private housing schemes at any other part of the country, is having substantial equity and net worth to undertake such projects demonstrable human resource capacity and meets any further requirements that the Chairman, Tehsil Local Government, at his discretion, proposes before granting such permission.

(12) In case the private promoter or developer also proposes to receive any amount on account of membership or registration fee from the consumers respondent of the

survey to determine their seriousness, in furtherance of his market analysis through market survey under sub-section (9), he shall be liable to return such amounts to the respondents of the survey within a period of six months or adjust the same towards applications for allotments of such respondent consumer in case he receives an NOC under sub-section (7) for the private housing scheme and such respondent consumer is interested to seek allotment of any housing unit or plot therein:

Provided that in case of a proposal to receive any amount on account of membership or registration fee from consumers respondents of a survey under sub-section (9), the private promoter or developer shall further be obliged to furnish an unconditional bank guarantee in favor of the Chairman, Tehsil Local Government to the tune of Rupees five hundred (500) million, forfeitable for return or recovery of such amount:

Provided further that in case of failure to return any such amount to any respondent consumer or in case of any deficiency in case of encashment of the bank guarantee, the amount of fees paid by the consumers or any unpaid part thereof shall be recoverable from private promoter or developer as arrears of land revenue.

(13) It shall be the responsibility of the Tehsil Municipal Administration to oversee, supervise and exercise regulatory control upon the establishment of development of any private housing scheme during the implementation phase, in the manner as may be prescribed.

(14) In case the proposed site of the private housing scheme to be applied for, simultaneously falls within territorial limits and jurisdiction of any Development Authority, notwithstanding anything contained in any law governing such Development Authority and the rules or regulations made there under, the application for grant of approval of such scheme shall be governed under this section:

Provided that in case the proposed site of the private housing scheme falls within the territorial limits of a Development Authority, the powers of the Chairman, Tehsil Local Government, shall be exercised by the Director General or the Chief Executive of such Development Authority by whatever name described and the powers of Tehsil Council shall be exercised by the board or the governing authority, as the case may be, of such Development Authority.”.

4. Amendment of section 25A of the Khyber Pakhtunkhwa Act No. XXVIII of 2013.---In the said Act, in section 25A,-

- (a) in sub-section (1), for the word, figure and alphabet “ section 23A”, the word, figures and alphabets “sections 23A and 25A” shall be substituted; and
- (b) in sub-section (2), the existing clause (a) shall be re-numbered as clause (a-i) and before clause (a-i), as so re-numbered, the following new clause shall be added, namely:

- “(a) approve or return any application for grant of No Objection Certificate for establishment and development of any private housing scheme, within their respective territorial jurisdiction, in the manner applicable so applicable to the Tehsil Council mutatis mutandis under this section.”

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

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