

For

CREDAI – National Capital Region (Western U. P. Chapter)

Hotel Radisson Blu, Kausambhi, Indirapuram

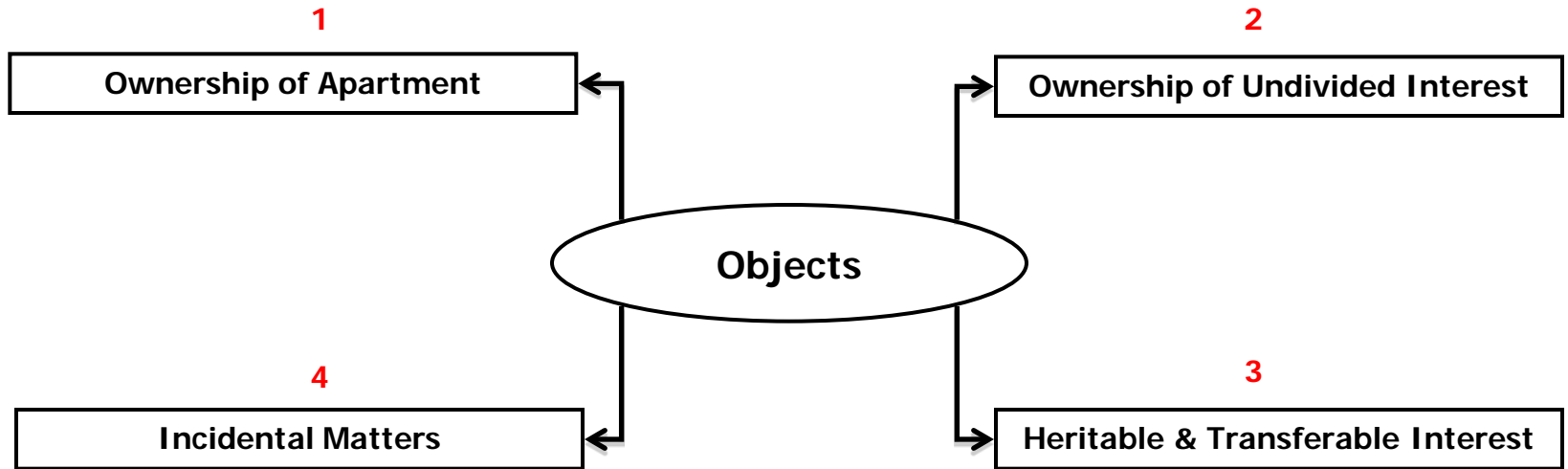
Friday, 24th January, 2014

Presented by

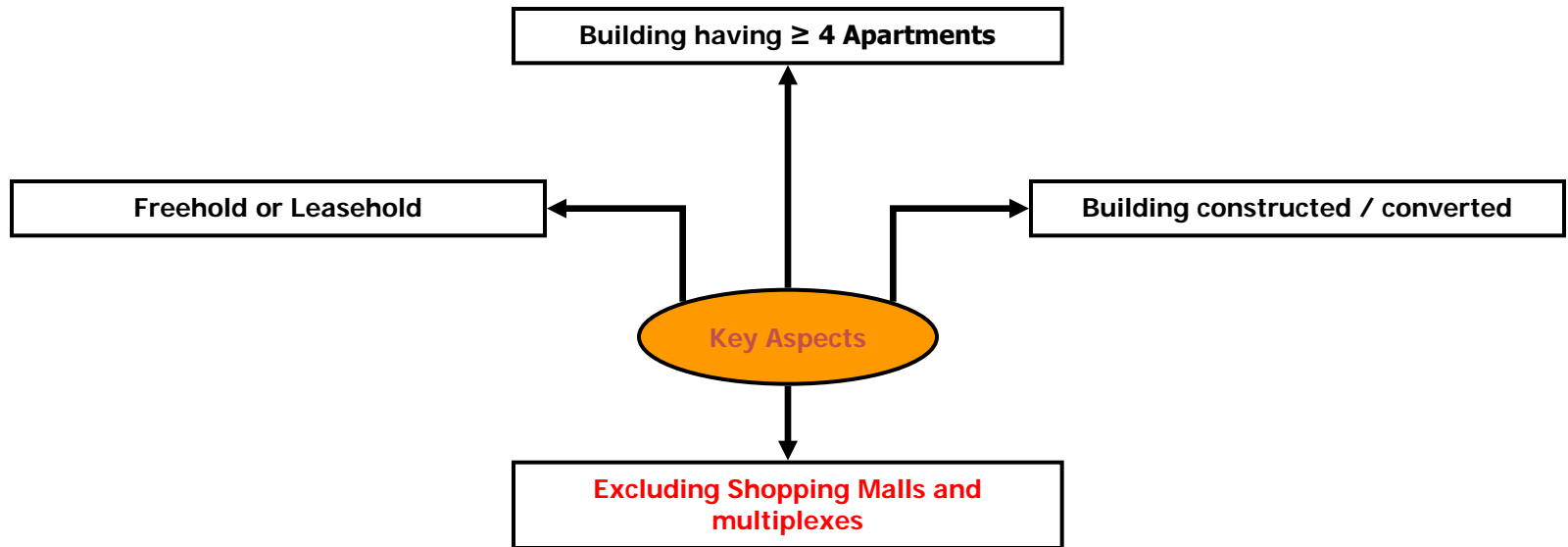
Jayshree Navin Chandra

Partner, ZEUS Law

Objects of the U. P. Apartment Act

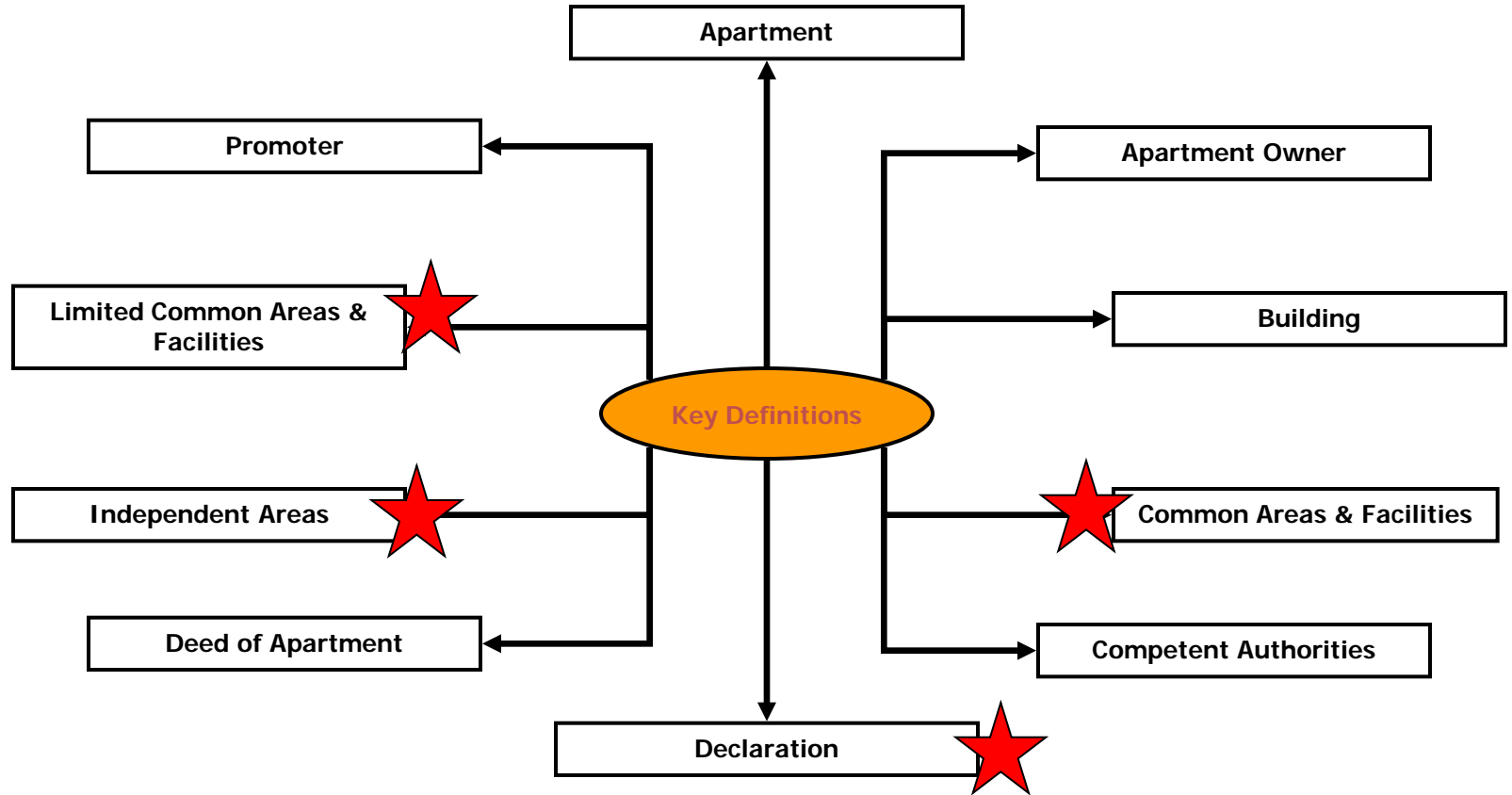


1. To provide ownership of an individual apartment in a building.
2. To provide ownership of undivided interest in the common areas and facilities (Common Areas) appurtenant to such apartment.
3. To make such apartment and interest heritable and transferable.
4. To deal with matters connected therewith or incidental thereto.

Applicability of the Act

The Provisions of this Act apply to all buildings having four or more 'Apartments' in any 'Building' constructed or converted into apartments and land attached to the Apartment, whether freehold or held on lease **excluding shopping malls and multiplexes**.

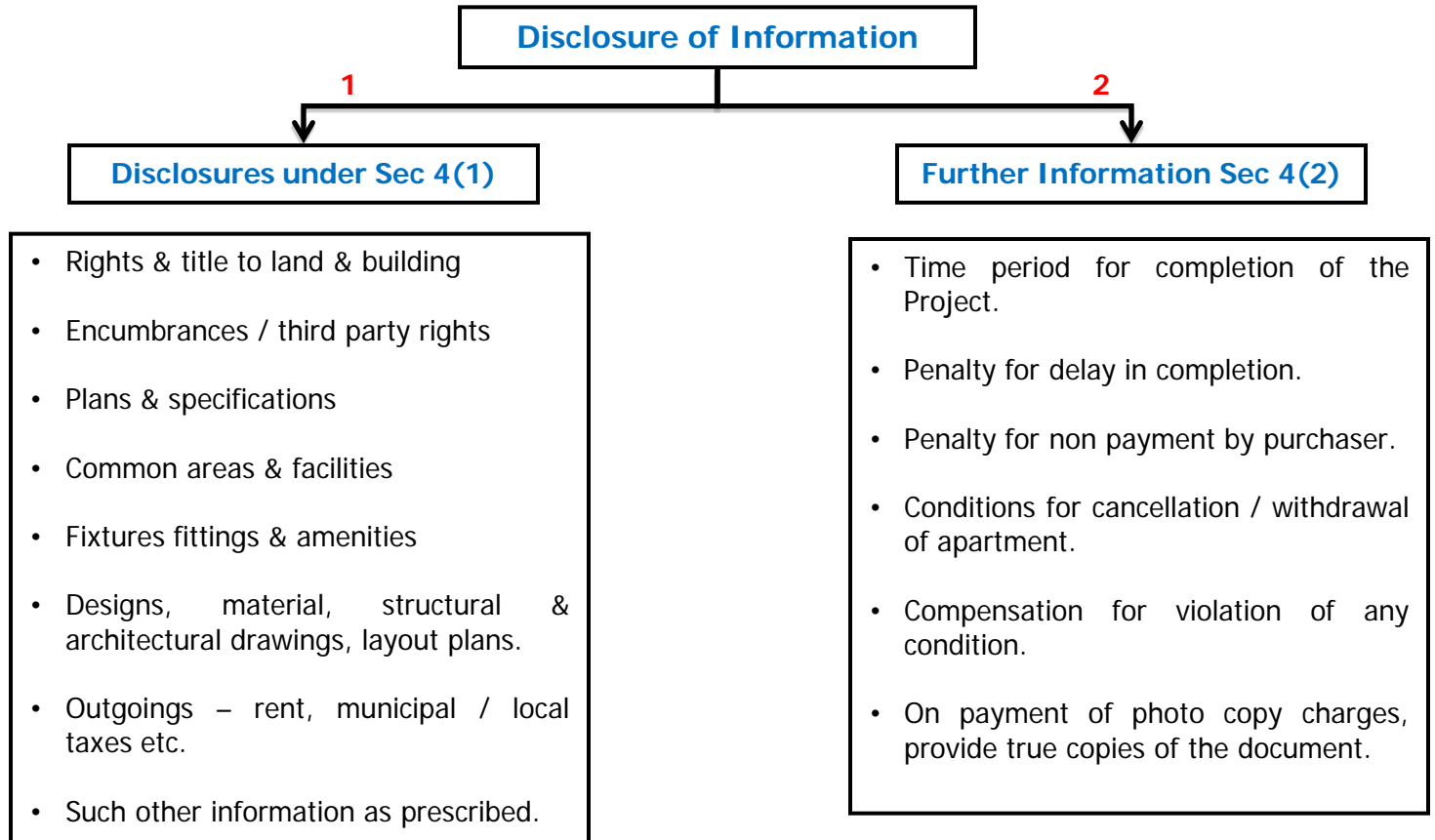
[Section 2 of the Act]



U. P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010

Law

Duties of Promoter

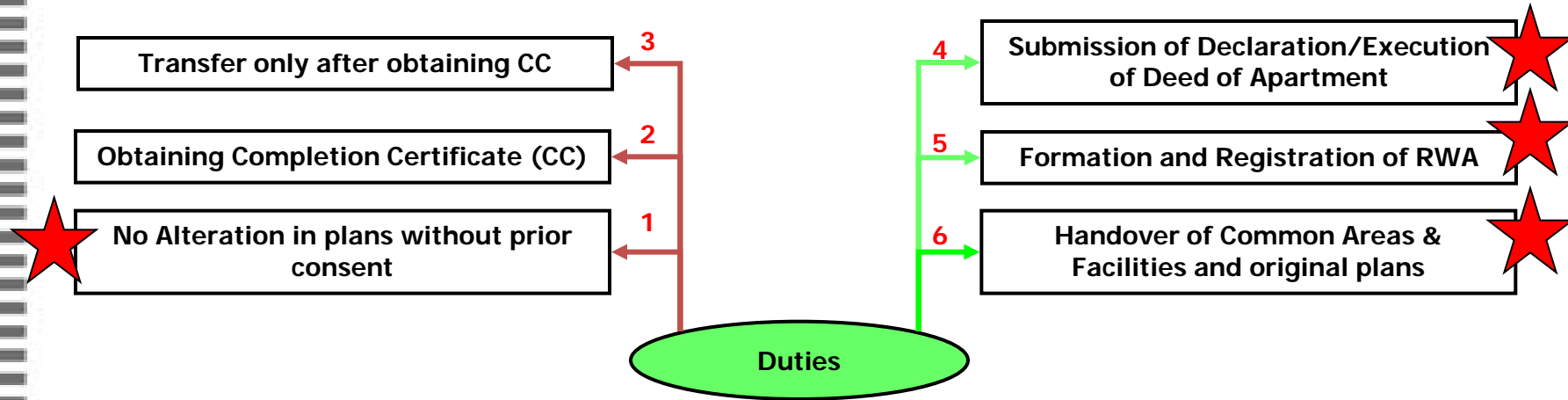


1. Information to be disclosed by the Promoter to the intending purchaser and Competent Authority – [under Section 4 (1) of the Act]

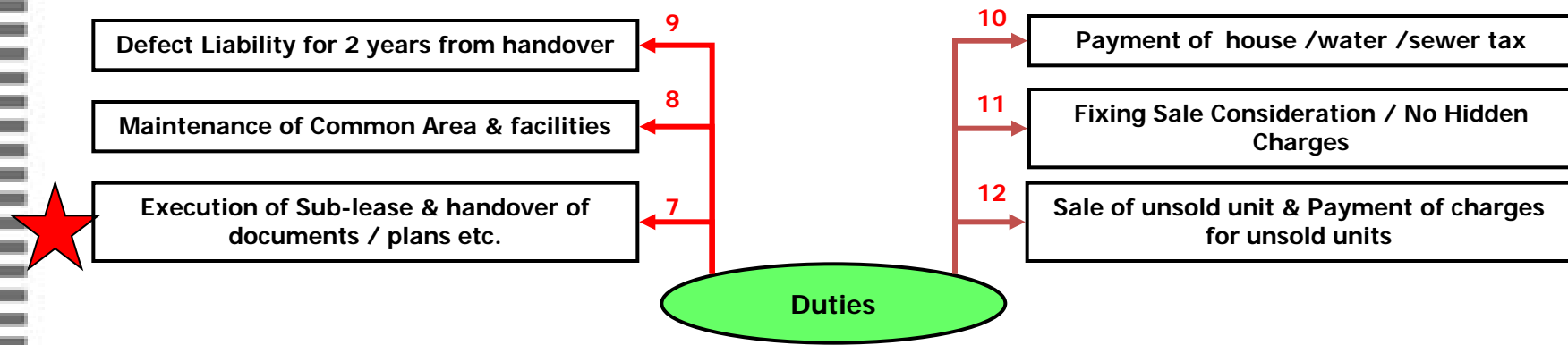
2. Further information to be provided by the Promoter to the intending purchaser – [under Section 4 (2) of the Act]

The above are some of the main disclosures and information to be provided by the Promoter – [under Section 4 of the Act]

Duties of Promoter



- Only minor alterations required due to architectural & structural reasons can be done by Promoter subject to proper declaration and intimation to owner.
Alteration in plans / specifications etc. other than this require prior approval of purchasers, project architect, project engineer & prescribed sanctioning authority.
- Promoter to obtain CC within 2 years from the date of sale agreement. [**Provision of Deemed (CC)**]
- Promoter can transfer any apartment only after obtaining CC.
- Promoter to submit declaration in **Form A with its Annexure 'A' to 'F' and Schedule 'A'** within a period of **12 months** from the date of approval of plans. Where building has been constructed or is under construction, prior to commencement of rules, within a period of **90 days** from the date of commencement.
No transfer / handover of possession without execution and registration of Transfer Deed.
- Joint obligation of Promoter and Apartment Owner to form association of apartment owners (RWA/Association). Promoter to register RWA after handover of such number of apartments as may be necessary to form Association or 33% of apartment, whichever is more, by way of sale, transfer or possession.
- After CC and handover of possession to apartment owners, Promoter shall handover common areas and facilities and also all original plans and documents to the Association. Handover of common areas and facilities to be completed within 1 year from CC or handover of 75% of apartments, which ever is earlier. [**Deemed Handover of common areas & facilities– under Section 14(5)**] 6



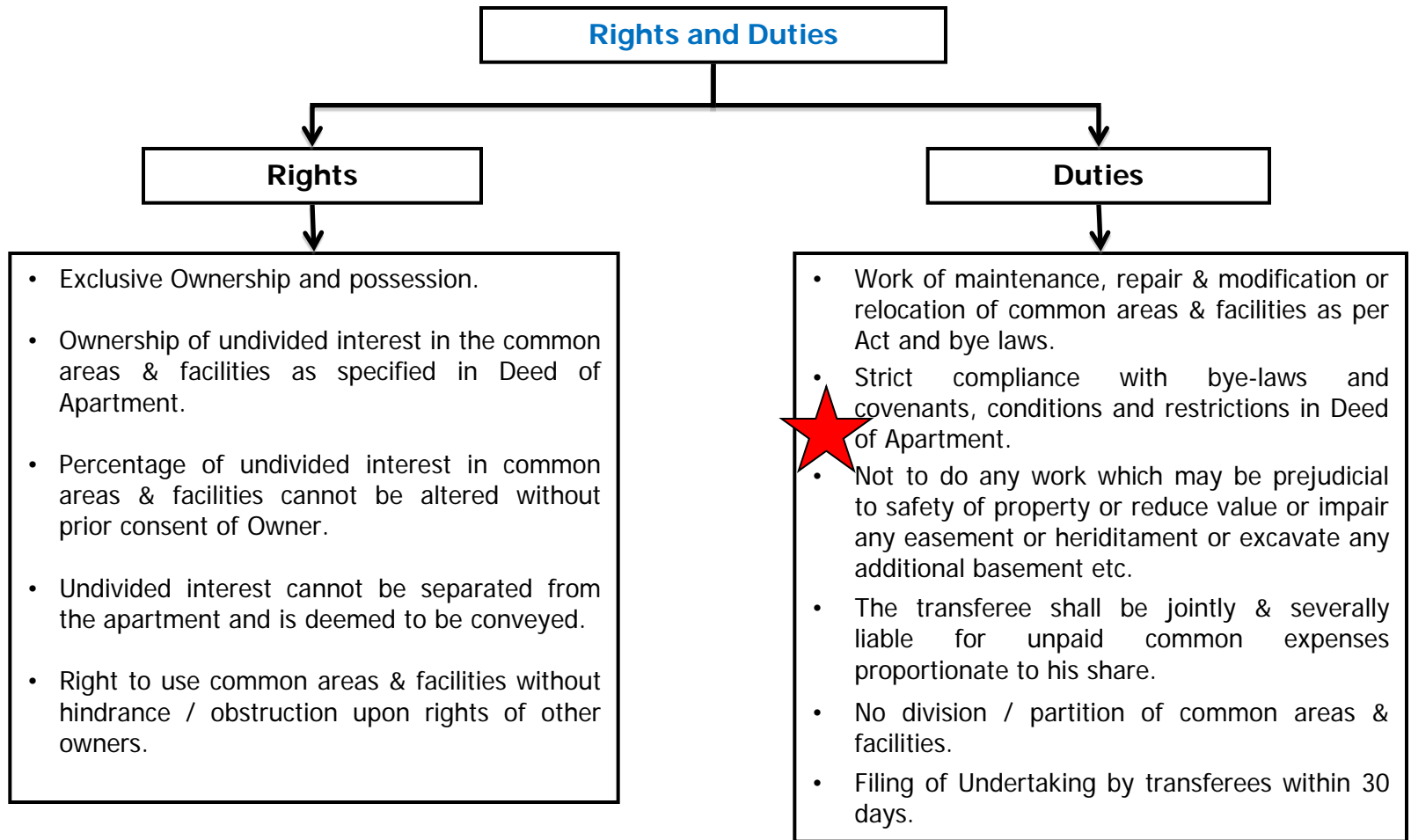
7. All sub lease to be granted on the same terms and conditions on which lease of land has been granted by the Lessor to the lessee. **No additional terms & conditions shall be imposed** by the lessee **except with the previous approval of the Lessor**. Provide relevant documents and plans to the sub-lessee.
8. Promoter shall maintain common areas & facilities till the RWA is formed and shall be entitled to levy proportionate maintenance changes as specified in the Declaration.
9. Promoter is responsible for **upto two years after handing over the apartments** regarding construction and structural defects in the building constructed by him and he shall get such defects removed at his own cost, failing which he shall be liable to pay compensation for the losses incurred by him for such defects.
10. The Promoter shall pay all local taxes including house tax, water tax, sewer tax, until and unless sub-leases have been executed in favor of the apartment owners.
11. Sale consideration shall be fixed either at the time of agreement to sale or when the purchases are made final in writing. There shall be no hidden charges.
12. Promoter is liable for sale of unsold units. Till the time units are sold, Promoter is liable to proportionately share the common expenses.

The above are some of the main duties of the Promoter under the Act

U. P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010

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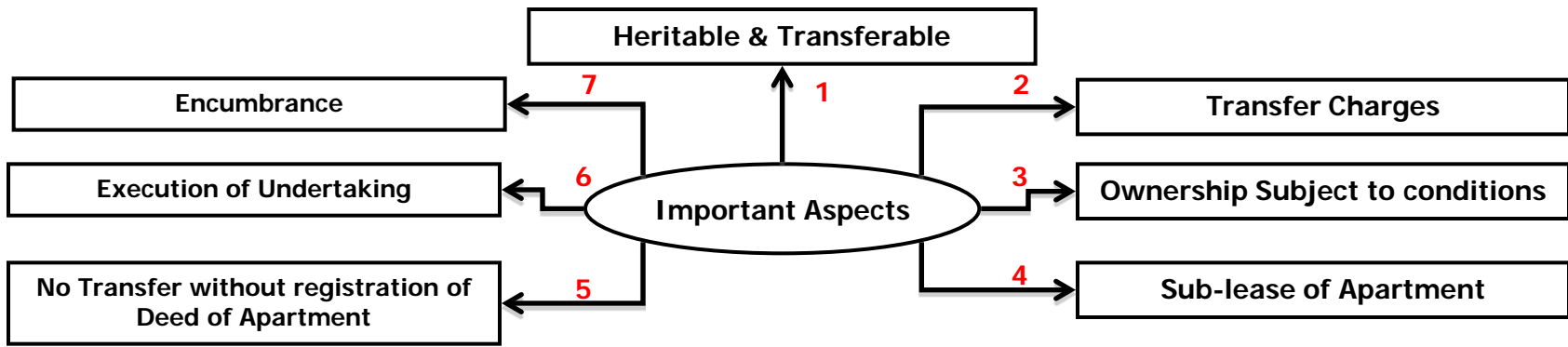
Rights and Duties of Apartment Owners



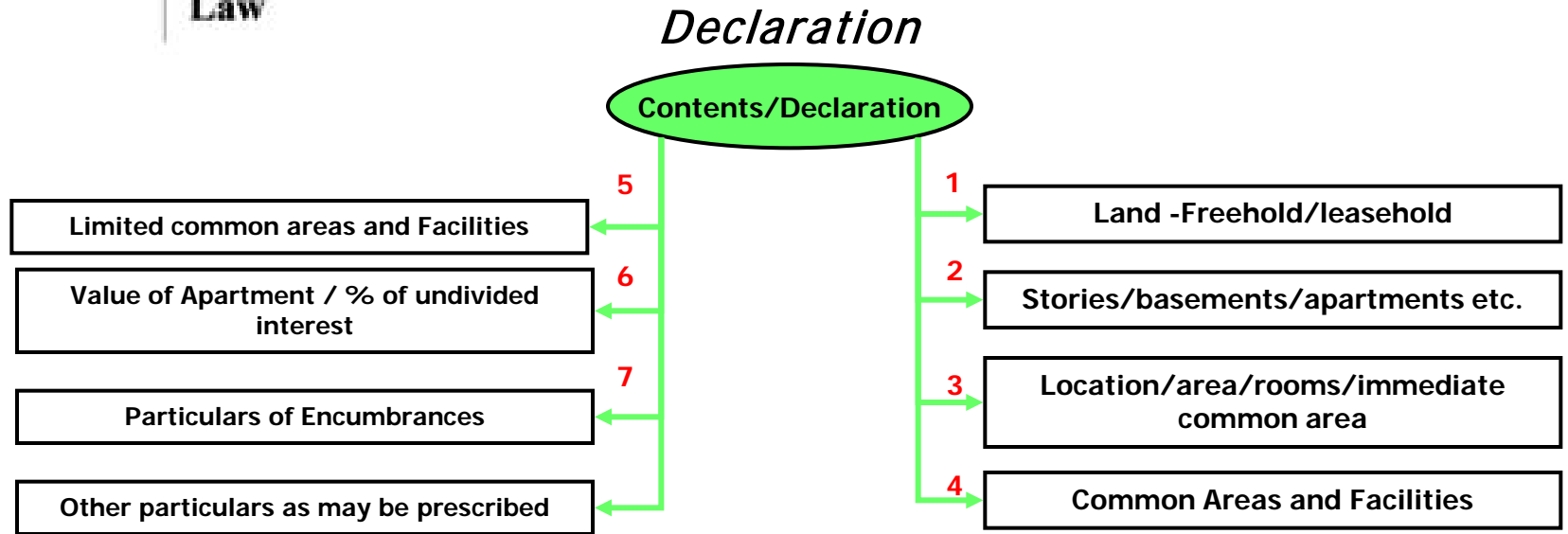
Failure to comply with bye-laws, covenants, conditions and restrictions shall be a ground for action to recover sums due for damages or for injunctive relief or both by Association or in particular case by aggrieved Apartment Owner.

The above are some of the rights and duties of the Apartment Owners [Section 5 of the Act]

Ownership, Heritability & Transferability



1. An Apartment Owner may transfer his apartment & undivided interest in common areas & facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner whatsoever & subject to same obligations, punishments, etc.
2. If allotment, sale or other transfer of any apartment has been made by any group housing co-operative society or association in favour of any member, the transferability shall be regulated by law which may provide a transfer fee at a maximum rate of 2% but not less than 1% of sale value. No transfer fee shall be levied in case of heritability.
3. The allottee / transferee is not entitled to the ownership / possession of apartment or undivided interest in common areas & facilities, until full payment of consideration with interest if any has been made.
There shall be no hidden charges. Sale consideration shall be fixed either at the time of ATS or when purchases are made final.
4. Sub-lease in respect of any land / apartment shall be granted on the same terms and conditions on which lease was granted by the Lessor to the Lessee. No additional terms and conditions shall be imposed by the Lessee except with the previous consent of Lessor.
5. No Promoter or apartment owner to transfer or hand over possession of any apartment, constructed after commencement of the Act, without executing transfer deed and getting it registered. Copy of declaration to be attached to such transfer deed.
6. Person acquiring an apartment under S. 10 shall execute (Form B) and register (30 days) an undertaking as provided in the rules.
7. Apartment owner has right to create encumbrance only against the apartment owned by him by executing & registering instrument.

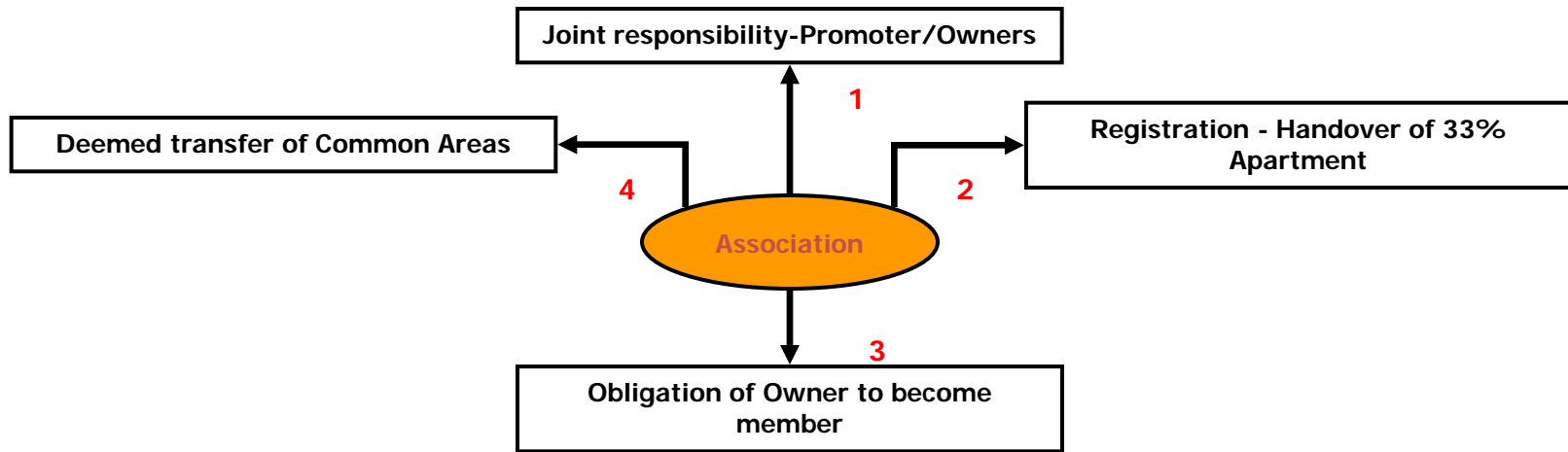


*The declaration to be submitted by promoter under Section 12(1) in Form 'A' with **Competent Authority within a period of 12 months** from the date of approval of the plans. Where building has been constructed or is under construction prior to the commencement of these rules, the declaration shall be submitted **within 90 days from the date of such commencement**.*

1. Description of Land on which the building and improvements are, or are to be located, and whether the land is freehold or leasehold.
2. Description of building stating the number of stories, basements, number of apartments, principal building material to be used.
3. Number of apartments, statement of their locations, approx. area, number of rooms, immediate common area etc.
4. Description of common areas and facilities.
5. Description of the limited common areas and facilities, if any, stating to which apartment, their use is reserved.
6. Value of property & of each apartment, percentage of undivided interest in common areas and the facilities appertaining to each apartment and its owner for all purposes, including voting.
7. Particulars of encumbrances, if any, on apartment and its undivided interest at the date of the declaration.

The above are the contents provided in the Act [Section 12 of the Act] – For complete content please see Form A.

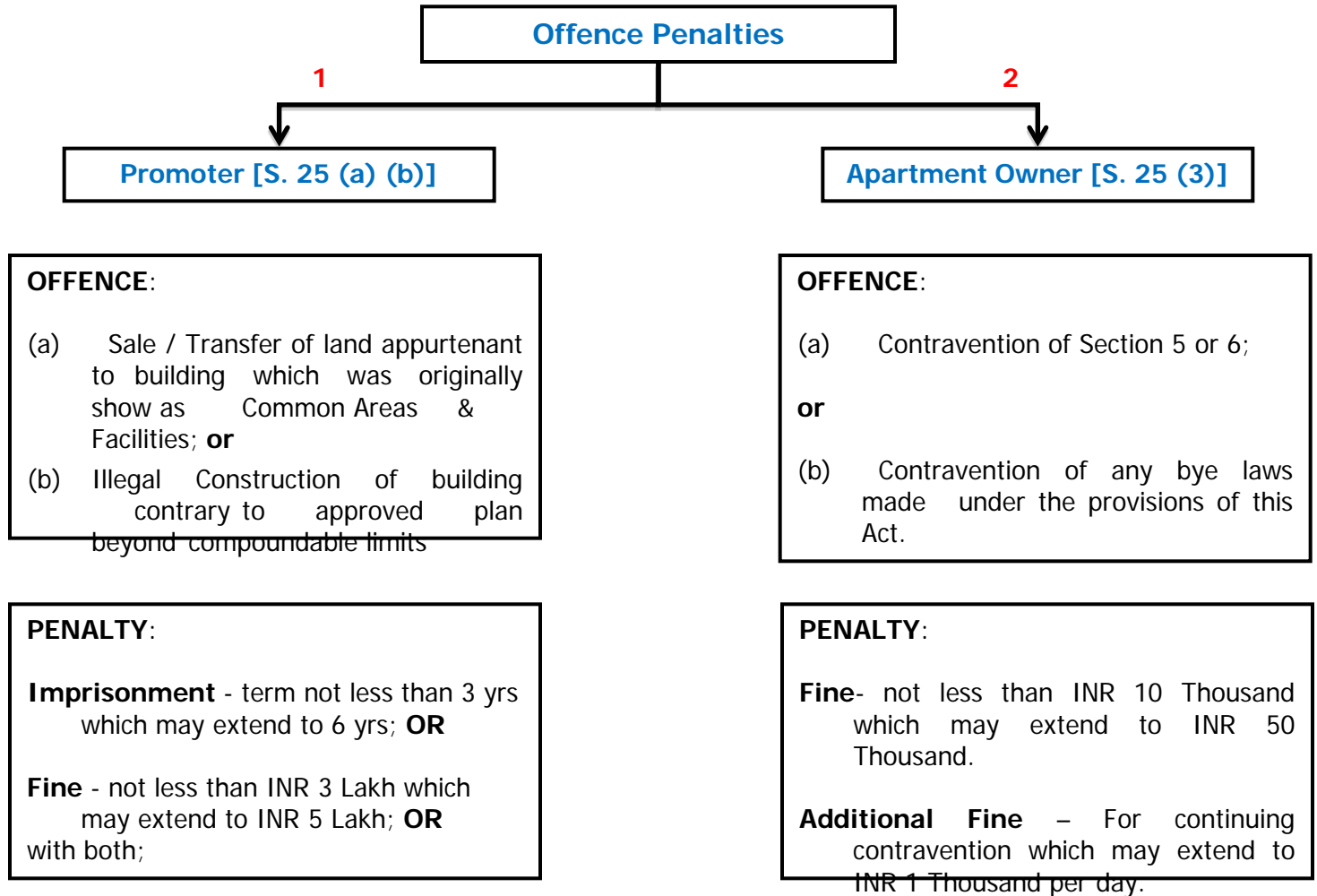
Association of Apartment Owners

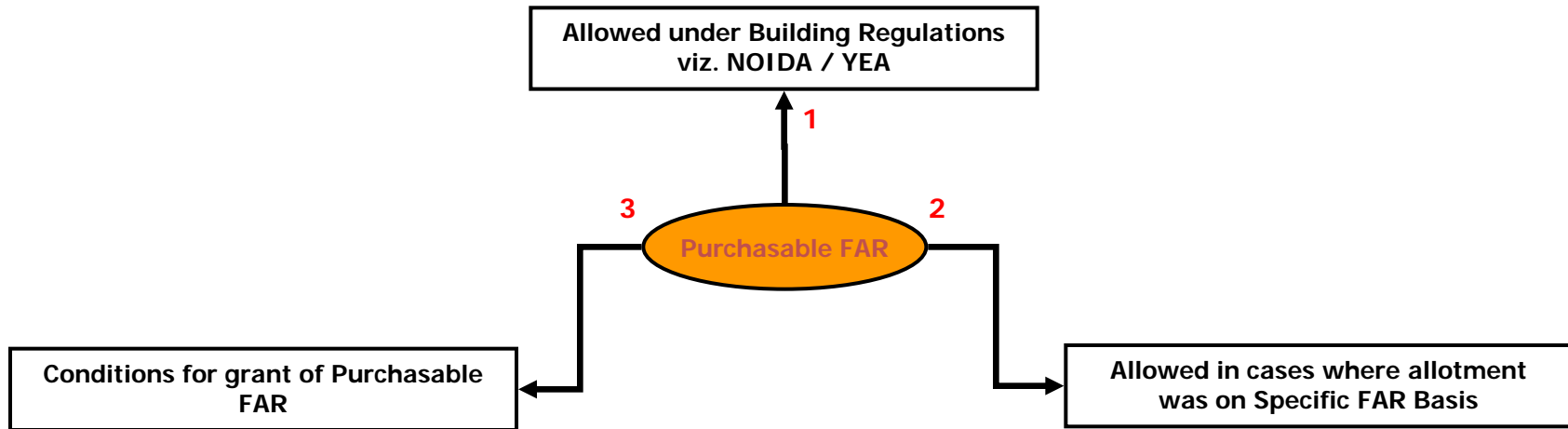


1. Joint responsibility of the promoter and the apartment owners to form the Association for the administration of the affairs in relation to the apartments and the property appertaining thereto and for management of common areas & facilities.
2. The promoter shall get the Association registered when such number of apartments have been handed over to the owners which is necessary to form an Association or 33% of apartments, whichever is more, by way of sale, transfer or possession, provided the building has been completed along with all infrastructure services and completion certificate obtained from the local authority.
3. Where an Association has not been formed, on date of execution of a deed of apartment in favour of prospective apartment owner, it shall be obligatory for a prospective apartment owner to become member of the Association within a period of **4 weeks on** receipt of a written intimation about the formation of such Association.
Where an Association exist on the date of transfer of an apartment, it will be obligatory for the prospective apartment owner to become member before execution of a deed of an apartment in his favour.
4. On formation of the Association, the management of the affairs of the apartments regarding their common areas and facilities shall be deemed to be transferred from the promoter to the Association which shall thereupon maintain them,
Provided that till all the apartments are sold or transferred, the promoter shall proportionately share the maintenance cost of common areas and facilities.

U. P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010

Law Penalties of Promoter and Apartment Owner



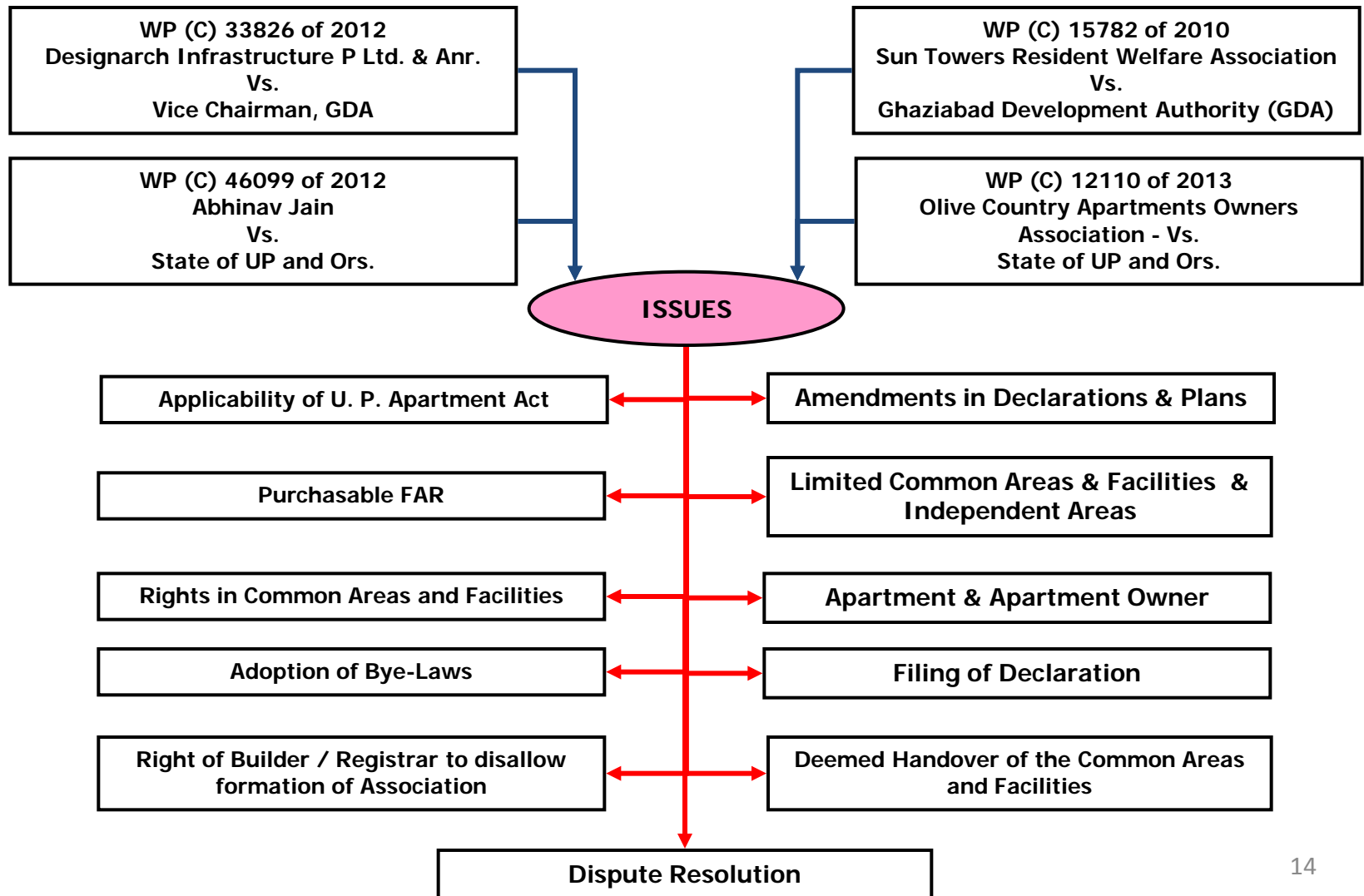
Concept of Purchasable FAR

1. Policy of purchasing additional FAR (i.e. Purchasable FAR) is provided under building regulations for NOIDA and YEA.

'Purchasable FAR' means the additional FAR, over the earlier specifically mentioned FAR for the allotted plot, within the limits of presently permissible FAR [Under Building Regulation for NOIDA]

U. P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010

Law *Judgment by Hon'ble Allahabad High Court*



U. P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010

Law

Judgment by Hon'ble Allahabad High Court

Issue No.	Issues	Decision
1.	Applicability of the U.P. Act	<ul style="list-style-type: none"> • U.P. Act is applicable to all buildings having four or more apartments. • Slight Confusion due to use of words 'three or more apartments' in the judgment. • A clarification and rectification in respect of the same may be sought from the Court.
2.	Amendments in Declaration & Plans	<ul style="list-style-type: none"> • No alterations in the Declaration, except in accordance with the U. P. Act, and without approval of development authority or regulating authority and thereafter approval of the Association ('RWA'). • NOC from the apartment owners before allowing any alteration in the building plans.
3.	Purchasable FAR	<ul style="list-style-type: none"> • Majority consent of apartment owners required for purchasing additional FAR. • Not permissible without any common benefits to the apartment owners. • Utilization / appropriation of additional FAR shall also be subject to the consent of apartment owners.
4.	Rights in limited Common Areas and Facilities' & Independent Areas	<ul style="list-style-type: none"> • Promoter to clearly specify/define 'independent areas' and 'limited common areas and facilities' under the Declaration. • Declaration along with its enclosures needs to be submitted while transferring the apartment to the apartment owners. • Deed of transfer should be duly registered. • Failure in complying with these provisions will disentitle the promoter from claiming these areas as 'independent area' and 'limited common area and facilities'.

U. P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010

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Judgment by Hon'ble Allahabad High Court

Issue No.	Issues	Decision
5.	Rights in Common Areas and Facilities	<ul style="list-style-type: none"> Apartment owner will be entitled to proportionate share in the common areas and facilities in the Building. The interest of apartment owner in common areas and facilities is not a separate / independent interest and is transferred along with the unit/flat.
6.	Definition of Apartment and Apartment Owners	<ul style="list-style-type: none"> Garage is to be considered as part of the flat/unit and developer/promoter and an apartment buyer cannot deal with or sell the garage independent of the flat/unit. Family members of the apartment owner (including the spouse and children of the apartment owner); Lawful tenant, authorizes employees of the company; and Promoter (for unsold apartments) <p>included in the definition of the apartment owner.</p>
7.	Formation & registration of Association of Apartment Owners and Adoption of Bye Laws	<ul style="list-style-type: none"> Obligation to form association of apartment owners has been imposed upon the promoter under the provisions of Section 14 (2) of the U.P. Act. If the promoter does not get the RWA registered, the apartment owners can get such RWA registered after giving reasonable notice to the promoter. Any changes in model bye-laws to be approved by owners of at-least 2/3rd of the total number of apartments. The model bye-laws are to be adopted in the first meeting of the association of apartment owners.

Judgment by Hon'ble Allahabad High Court

Issue No.	Issues	Decision
8.	Filing of Declaration	<ul style="list-style-type: none"> All the promoters have been directed to file the declaration under section 12 (1) of the U.P. Act. Promoters to file the declaration in Form-A with its Annexure 'A' to 'F' and Schedule 'A'. In case of completed or partly completed constructions with more than 3 allotted or occupied apartments, Promoter to file declaration, within 1 month from the date of approval of plans; <i>Slight confusion in this point. Needs to be clarified.</i> Where the building has been constructed or is under construction prior to the commencement of the Act and Rules as well as where 33% of the apartments have been occupied after its sale, transfer or delivery of possession within 90 days declaration to be filed .
9.	Right of Builder / Registrar to Disallow formation of RWA	<ul style="list-style-type: none"> No Promoter can resist / or delay the formation of Association. If the Promoter fails to form and register the Association, then the apartment owners can get such Association registered. Registrar cannot refuse to register RWA on the ground that RWA contains less than the minimum number of members as required under the Societies Registration Act; or RWA is in violation of any provisions of Societies Registration Act, as amended in the State of U.P.

U. P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010

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Judgment by Hon'ble Allahabad High Court

Issue No.	Issues	Decision
10.	Deemed Handover of Common Areas and Facilities to RWA	<ul style="list-style-type: none"> • In case of failure of the completion of handover proceedings, the common areas and facilities will be deemed to be transferred to RWA
11.	Dispute Resolution	<ul style="list-style-type: none"> • Disputes between the Promoter and the members of the RWA to be raised at the first instance in the meetings of RWA, for amicable resolution. • However, if such disputes could not be resolved amicably then the parties can approach the competent authority for directives and thereafter the Court. • Competent authority as defined under Rule 2 (c) means the Vice Chairman of the Development Authority in whose development area building is situated or the collector of district where no such development authority exists.

THANK YOU