

Ordinance ____ of 2019

An

Ordinance

to provide for housing and real estate development and other activities related to land and construction through the establishment of Naya Pakistan Housing and Development Authority.

WHEREAS the Constitution of the Islamic Republic of Pakistan, 1973, requires the State to endeavor to provide housing, a basic necessity of life, to its citizens;

AND WHEREAS it is expedient to establish the Naya Pakistan Housing and Development Authority for the purposes of planning, development, construction and management of real estate development schemes and projects, including housing, and matters connected therewith and ancillary thereto so as to pursue philanthropic and other objectives on profit and non-profit basis and to carry out refurbishment, uplift or establishment and maintenance of infrastructure, roads etc. and the performance of other civic and municipal ventures or tasks;

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of powers conferred by clause (1) of Article 89 of the Constitution of Islamic Republic of Pakistan, 1973, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. Short title, extent, commencement and application.— (1) This Ordinance shall be called the Naya Pakistan Housing and Development Authority Ordinance, 2019.

- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Application.— This Ordinance shall apply to the works, lands and buildings owned or acquired by, vested in or in the possession of the Federal Government in the specified area and the schemes developed or redeveloped under this Ordinance.

3. Definitions.— In this Ordinance,-

- (a) “Acting Chairman” means the Acting Chairman of the Authority appointed in terms of sub-sections (6) or (7), respectively, of section 10;
- (b) "Adjudicator" means an Adjudicator of the Authority appointed in accordance with section 41;
- (c) “Appellate Tribunal” means the Appellate Tribunal of the Authority established pursuant to this Ordinance;
- (d) "Authority" means Naya Pakistan Housing and Development Authority established under this Ordinance;
- (e) "certificate of title" includes a certificate of title with regard to the entitlement to an immovable property in terms of a lease, tenancy, license, allotment or allocation or any other mode of grant issued by the Registrar, in the manner and on such terms and conditions as may be prescribed;
- (f) “Chairman" means the Chairman of the Authority;
- (g) "enforcement inspector" means an employee of the Authority designated as enforcement inspector in accordance with section 38;
- (h) “Federal Land Bank” means the Federal Land Bank constituted under section 16;
- (i) "finance" shall have the same meaning as assigned thereto in the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001);
- (j) "financial institution" shall have the same meaning as assigned thereto in the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001);
- (k) "Fund" means Naya Pakistan Housing and Development Authority Fund created under this Ordinance;

- (l) “house finance” means finance provided by financial institutions to individuals for the construction, refurbishment or purchase of residential houses, units or apartments or for purchase of residential plot and construction thereon;
- (m) “management association” means a body, association, trust, body corporate, society or any other entity, registered or otherwise, established and mandated by the Authority, in the prescribed manner, for managing a scheme or part thereof;
- (n) "member" means a member of the Policy Board;
- (o) "Policy Board" means the Policy Board of the Authority constituted under this Ordinance;
- (p) "prescribed" means prescribed by rules or regulations under this Ordinance;
- (q) “Patron” means the Patron of the Authority;
- (r) “Registrar” means a registrar appointed under Section 22 of this Ordinance;
- (s) "Schedule" means a Schedule appended to this Ordinance;
- (t) "scheme" means a scheme or schemes, plan, facility or project, on profit or non-profit basis, comprising development or re-development of:
 - (i) new or existing cities, towns and islands, or
 - (ii) mix-use, housing, commercial and/or public amenity plots, buildings and/or units and related infrastructure, or
 - (iii) infrastructure and services including transportation systems and road networks, traffic management systems, healthcare facilities, educational facilities, recreational and cultural facilities, municipal and civic facilities and services, communications systems and facilities, utilities infrastructure and network (including water supply, drainage, sewerage, sanitation), or
 - (iv) energy generation, procurement, transportation, transmission and distribution systems including for electric power (through any energy source) and gas (LNG/RLNG, LPG etc.), or
 - (v) industrial estates and parks, and
 - (vi) all facilities, systems and works incidental or ancillary thereto, planned, made, undertaken and/or supervised and/or approved by the Authority under this Ordinance;

- (u) “Secretary” means the Secretary of the Authority appointed in accordance with section 6 (7) of this Ordinance;
- (v) “section” means a section of this Ordinance; and
- (w) "specified area" includes an area in which the Authority may pursue a scheme;

CHAPTER II

INCORPORATION AND FUNCTIONS

4. Authority.— (1) The Patron shall, by notification in the official Gazette, establish the Naya Pakistan Housing and Development Authority.

(2) The Authority shall be a corporation having perpetual succession, a common seal and may sue or be sued in the name mentioned in sub-section (1) of this section 4.

(3) The head office of the Authority shall be at Islamabad and the Authority may establish regional and/or such offices in such other parts of Pakistan as it may deem necessary.

5. Functions of the Authority.— (1) The Authority, as may be prescribed, shall:-

- (a) identify immovable properties and projects suitable for the development of schemes;
- (b) recommend to the Federal Government to provide or procure immovable property or a project through any means permissible under law, including compulsory acquisition; purchase, lease or license through private agreement; donation by any private party or any state land or project by any government or other public authority, on such terms as may be mutually agreed between the Federal Government and the relevant transferor or provider;
- (c) cause studies, surveys, experiments or technical researches to be undertaken or contribute towards the cost of any such studies, surveys, experiments or technical researches, undertaken by any other entity;
- (d) if necessary, prepare and approve a master or site plan of a specified area containing zoning, spatial or town planning, infrastructure development, land

use and building control regulations in consonance with the planning under the applicable building and town-planning dispensation;

- (e) undertake, design, approve and execute a scheme or schemes in specified areas;
- (f) prescribe transparent criteria and procedure for registration, membership, possession, transfer and cancellation of immovable property in a scheme;
- (g) facilitate the low income segment for availing housing under this Ordinance or any other specific programme or otherwise through the provision of loans or other facilities;
- (h) develop procedures for allocation, allotment, lease or auction, if any, of any type of immovable property, including the procedure to transact or exchange the actual property or allotment/allocation file thereof;
- (i) ensure maximum use of indigenous labour and construction material in the development of schemes;
- (j) formulate and, from time to time, vary the organogram, job descriptions, human resource policies and terms and conditions of employment of all employees of the Authority;
- (k) create or abolish posts and oversee the performance of its employees;
- (l) take disciplinary action against employees in the prescribed manner;
- (m) establish committees for assistance and advice in relation to the performance of its functions and determine the membership and terms of reference of a committee;
- (n) develop and maintain public amenities and common areas in a scheme;
- (o) maintain updated record of immovable property including title, leasehold rights, mortgage, easement, license, tenancy and possession thereof;
- (p) publish geo-tagged title, leasehold rights, mortgage and other rights or interests in an immovable property on its website;
- (q) collect all levies, taxes, duties, fees and charges on the transfer, or possession of an immovable property, or any encumbrance thereon, under any law after agreeing on an arrangement with the relevant agency;

- (r) exercise control over maintenance of buildings, their common areas and amenities in a scheme;
 - (s) impose, levy and collect fines, fees, tolls, penalties, surcharges and charges as may be prescribed;
 - (t) coordinate with similar agencies or bodies at the federal, provincial and local level for the achievement of the objectives of this Ordinance;
 - (u) to undertake schemes for the purposes of raising funds for various objects of the Ordinance including funding for subsidies in low cost housing projects and creation of employment and opportunities; and
 - (v) perform any ancillary function or a function assigned to the Authority under the rules and regulations.
- (2) The Authority, as may be prescribed, may-
- (a) raise funds through any means considered appropriate in the circumstances including through real estate investment trusts, bonds, sukuk and other forms of finances obtained on the basis of participation term certificate (PTC), musharika certificates, term finance certificates (TFC) or any other financial or debt instruments or securities;
 - (b) raise funds and obtain finance or loans from donor agencies, governmental bodies, and financial institutions, including on the security of its Fund or any portion thereof;
 - (c) provide or facilitate and support the provision of finance, including housing finance, for the achievement of the objectives of the Ordinance;
 - (d) generate electricity or obtain utilities in bulk or otherwise and carry out, maintain, arrange, manage and provide all facilities, services and utilities, including water, gas and sewerage in schemes;
 - (e) manage and maintain utilities;
 - (f) assign any function to a local government or local authority and vice versa on mutually agreed terms and conditions;
 - (g) outsource any function through public private partnership or any other mode;

- (h) hire or utilize services for undertaking of schemes including design, technical evaluation and monitoring thereof;
- (i) provide and release receipts, guarantees, indemnity bonds, cheques and enter into contracts, deeds, instruments, arrangements, joint ventures and agreements with any person or grant concessions, for the working of the Authority, for the preparation, planning, development, execution, implementation and maintenance of schemes and for carrying out the purposes of this Ordinance;
- (j) to set up agencies, companies, subsidiaries, trusts, societies, associations, joint-ventures (whether contractual or incorporated) or any other vehicles for the purposes of carrying out its objectives;
- (k) incur any expenditure and procure plant, machinery, equipment, instruments and necessary materials;
- (l) plan, approve and execute mergers and amalgamations with other housing schemes or cooperative housing societies subject to the approval of the competent authorities of those housing schemes or housing societies for such merger or amalgamation;
- (m) impose, vary, and recover development charges and transfer fees in respect of any immovable property within any scheme;
- (n) lease, purchase, procure, sell, exchange, mortgage, rent out or otherwise dispose of or deal with any property under the management and control of the Authority;
- (o) cancel or re-plan any scheme or part thereof;
- (p) do all such acts, deeds and things that may be necessary or expedient for the purpose of proper preparation, planning, development, execution, implementation, management and maintenance of schemes;
- (q) frame, amend or repeal service, conduct of business and other regulations necessary for carrying out the purposes of the Ordinance;
- (r) make recommendations to the Patron for prescription of rules under this Ordinance;

- (s) institute, commence, prosecute, defend, compromise, settle any and all actions, disputes, suits and legal proceedings whether civil or criminal before any court, tribunal, administrative body or authority; and
 - (t) exercise any other power that is necessary for the performance of any function.
- (3) Except where any powers and functions of the Authority are specified in this Ordinance to be exercised or performed by the Policy Board or the Patron, all the powers and discretions of the Authority shall be exercised, and the functions and duties of the Authority shall be performed, by the Chairman.

CHAPTER III

PATRON, POLICY BOARD AND ADMINISTRATION

6. Patron and Policy Board.— (1) The Prime Minister of the Islamic Republic of Pakistan shall be the Patron of the Authority, who shall review the performance of the Authority and may, from time to time, give to the Authority general policy directions to implement the same, subject to the terms of this Ordinance.

(2) The Patron shall, by notification in the official Gazette, constitute the Policy Board comprising not less than five and not more than eleven members (including the Chairman), for a term of five years. In case of any casual vacancy, a member (other than the Chairman) may, in the like manner, be nominated by the Patron for the remaining unexpired term of the outgoing member.

(3) The Chairman shall preside over the meetings of the Policy Board, however, in his absence, a member nominated by the Chairman may so preside.

(4) A member, unless disqualified under this Ordinance from holding office, may be re-appointed by the Patron in the above manner, provided that no individual shall serve for more than two consecutive terms as a member.

(5) Two thirds ($2/3^{\text{rd}}$) of the members, including the Chairman [or his nominee under sub-section (3) of this Section 6] present in person or through video-conference or tele-conference, shall constitute the quorum for a meeting of the Policy Board. Subject to

quorum, the decisions of the Policy Board shall be taken by majority of the members present and voting, provided that in the event of a tie, the Chairman [or his nominee under subsection (3) of this Section 6 presiding at such meeting] shall have a second and casting vote.

(6) The Policy Board shall meet at least once in every calendar quarter and a meeting of the Policy Board shall be held on such date and at such time and place, as the Chairman may determine.

(7) The Chairman shall appoint a Secretary of the Authority on such terms and conditions as may be prescribed and who shall perform such functions as the Chairman may direct. The Secretary of the Authority shall also be the secretary of the Policy Board and shall maintain or cause to be maintained, in the prescribed manner, the record of each meeting of the Policy Board including the minutes of the meetings as approved by the Chairman.

(8) The Chairman may invite any person other than a member to attend a meeting of the Policy Board for the purposes of advising or assisting the Policy Board on any agenda item taken up for consideration at such meeting.

(9) A member may resign from his office at any time by writing under his hand addressed to the Patron and such resignation shall be effective from the date of its acceptance by the Patron.

(10) No Act or Proceeding of the Policy Board shall be invalid merely by reason of any vacancy in or defect in the constitution of the Policy Board

7. Disqualification of members.— The Patron shall not nominate a person as a member, who:-

- (a) is or, at any time, has been convicted of an offence involving moral turpitude;
- (b) is or, at any time, has been adjudicated as an insolvent;
- (c) is found to be a lunatic or of unsound mind or otherwise physically incapacitated; or
- (d) is in a situation of irreconcilable conflict of interest with the Authority.

8. Removal of a member.— (1) The Patron may remove a member (including the Chairman) during the term of office, if such member is-

- (a) disqualified from being a member; or
- (b) absent from three consecutive meetings of the Policy Board without leave of absence from the Policy Board; or
- (c) found guilty of misconduct.

(2) The Patron shall not remove a member (including the Chairman) under subsection (1) without a show cause notice, provision of an opportunity of hearing and recording of reasons in writing.

9. Functions of the Policy Board.— (1) Subject to subsection (1) of section 6, the Policy Board shall have the responsibility of laying down the policies, plans and guidelines for carrying out the purposes of this Ordinance.

- (2) Without prejudice to the generality of the functions mentioned in subsection (1), the Policy Board shall-
 - (a) establish and maintain strategic direction of the Authority;
 - (b) oversee implementation of strategic objectives of the Authority;
 - (c) monitor performance and review achievements of the Authority;
 - (d) approve the audited accounts of the Authority;
 - (e) arrange for, and oversee, the provision of funds for the Authority;
 - (f) approve feasibility studies and proposals for development of scheme or schemes in specified areas;
 - (g) take measures for capacity building of the Authority for performing its objectives under this Ordinance; and
 - (h) transact such other business of the Authority as the Patron or the Chairman may place before it.

10. Chairman and Acting Chairman.— (1) The Patron shall appoint a Chairman of the Authority on such terms and conditions as may be prescribed.

(2) The Chairman shall be a person of sound integrity and competence, meeting one of the following:-

- (a) that he is a serving or retired officer of the Federal Government in the BPS-22 or equivalent; or
- (b) that he is a serving or retired officer of the Armed Forces, not below the rank of a Lieutenant-General or equivalent; or

Explanation: The serving officers from the civil bureaucracy and the Armed Forces will be eligible to be appointed as the Chairman on deputation or secondment basis, as per the applicable laws and rules.

- (c) that he is an experienced professional or business person, not having less than thirty years of experience in his field and possesses:-
 - (i) a Masters degree recognized by the Higher Education Commission of Pakistan, in the field of accounting, finance, business administration, management, commerce, engineering, economics, planning, law; or
 - (ii) the qualification of chartered accountancy, cost and management accountancy, barrister-at-law, solicitor.

(3) The Chairman shall not be more than sixty two years of age on the date of first appointment as Chairman.

(4) The Patron shall constitute an evaluation committee, comprising at least one Minister and at least two Secretaries, respectively, of the Federal Government, for the purposes of evaluating and recommending suitable candidates to the Patron for appointment as Chairman. For this purpose, the evaluation committee shall, on behalf of the Patron, solicit applications from candidates through advertisement and recommend at least three names to the Patron. If the Patron is not satisfied with the recommendations of the evaluation committee, he may require further recommendations in the like manner.

(5) The Chairman shall, subject to this Ordinance, hold office for a term of five years and may be reappointed by the Patron for an additional term of five years.

Explanation: In the event of reappointment as Chairman, sub-section (3) of this section, shall not apply.

(6) In case of death, resignation or removal of the Chairman, the Patron shall, in his discretion, appoint an Acting Chairman to exercise the powers and discretions and discharge the functions and duties of the Chairman under this Ordinance, till a new Chairman is appointed, which shall be done within three months of the occurrence of the vacancy.

(7) Immediately upon the notification of establishment of the Authority under section 4 of this Ordinance and pending appointment of the first Chairman, the Patron, in his discretion, may appoint an Acting Chairman to exercise the powers and discretions and discharge the functions and duties of the Chairman under this Ordinance.

Explanation: An Acting Chairman, appointed under this Ordinance, shall not be precluded from appointment as the permanent Chairman.

11. Functions and Powers of Chairman.— The Chairman shall be the chief executive officer of the Authority responsible for the management, administration and operations of the Authority and, subject to the provisions of this Ordinance, shall exercise all powers and discretions and perform all functions and duties of the Authority under the Ordinance.

12. Appointments of employees.— (1) The Authority may, in such manner and on such terms and conditions as may be prescribed by regulations, appoint, remove and regulate the working of, the employees, consultants and advisers of the Authority as may be necessary for purposes of this Ordinance.

(2) The Authority may, from time to time, request the Federal Government to arrange for the secondment or deputation of employees of the Federal Government to the Authority for the purposes of this Act and the Federal Government may depute such employees, subject to their relevant service rules and regulations.

13. Delegation of functions.— The Chairman may, through a written order, delegate any power, functions or duties of the Authority to any other employee of the Authority and may at his discretion, through a written order, revoke and rescind such delegation.

14. Conflict of interest.— (1) A member of the Policy Board other than the Chairman, shall not directly or indirectly receive any remuneration for his position as the member except the reasonable expenses incurred by the member in the performance of duties under this Ordinance and such fee for attending the meetings as may be prescribed.

(2) The pecuniary interests of the immediate family members or close personal or business associates of a member or an employee of the Authority shall also be considered to be the pecuniary interest of the member or employee.

(3) A member or an employee of the Authority shall be in conflict of interest if the member or employee:-

- (a) is an employee or a consultant of a business entity that has, or of a trade association of business entities that have, a substantial pecuniary interest in any of the functions of the Authority;
- (b) owns, controls or has directly or indirectly more than ten per cent equity in a business entity that has a substantial pecuniary interest in any of the functions of the Authority;
- (c) receives more than twenty-five per cent of his individual income from a business entity that has a substantial pecuniary interest in any of the functions of the Authority; or
- (d) benefits either directly or indirectly, financially or otherwise, from any other organization for being the member or employee of the Authority.

(4) An employee of the Authority shall disclose a potential, real or perceived conflict of interest as soon as he becomes aware of the potential conflict, to the Chairman. A member of the Policy Board (other than the Chairman) shall disclose a potential, real or perceived conflict of interest as soon as he becomes aware of the potential conflict, before the Policy Board or any of its committees seized of the matter. The Chairman shall disclose a potential, real or perceived conflict of interest as soon as

he becomes aware of the potential conflict, to the Patron. Any uncertainty or doubt on part of the disclosing party with respect to the existence of conflict of interest shall be decided by the corresponding person or forum as applicable to whom disclosure is to be made in terms of this sub-section.

(5) A member shall not take part in the proceedings of the Policy Board in which any question of conflict of interest of the member is on the agenda.

(6) The disclosure of conflict of interest and the decision of the Chairman, Policy Board or the Patron, as the case may be, shall be specifically recorded in writing and form part of the records of the Authority.

15. Committees and sub-committees.— (1) The Chairman may constitute committees and sub-committees and assign specific tasks to the said committees or sub-committees for efficient performance of the functions of the Authority. The committees or sub-committees, so constituted, shall perform their mandated tasks in the manner to be specified by the Chairman.

(2) A committee or sub-committee may comprise one or more members of the Policy Board, employees of the Authority and/or such experts or persons as the Chairman may consider appropriate for the relevant mandate of the said committee or sub-committee.

(3) The committees or sub-committees, as applicable, shall submit their reports to the Chairman.

CHAPTER IV

FEDERAL LAND BANK ETC.

16. Federal Land Bank.— (1) The Federal Government, on the recommendation of the Authority, shall constitute a Federal Land Bank and for such may arrange or procure immovable property for the purposes of a scheme through any means permissible under law, including provision of state land by any government or public department, authority, agency or any corporation or entity falling thereunder, on such terms as may be mutually agreed between the Federal Government and the relevant transferor or provider; compulsory acquisition; purchase, lease or license through private agreement or donation by any private party, in the prescribed manner.

(2) For the purposes of the Federal Land Bank, the Federal Government, Provincial Governments, Local Governments and all other public departments, authorities, agencies and all corporations and entities falling thereunder shall cooperate with the Authority to collect information of the immovable property owned or possessed by them and to furnish the same in the manner as prescribed.

(3) The information collected under sub-section (2) of this section shall be compiled and recorded by the Authority in hardcopies and software containing requisite details, maps and geographical location of the immovable properties.

17. Vesting of Property.— Upon arrangement or procurement of immovable properties in terms of section 16, the relevant immovable property shall, unless already so vested, vest in and belong to, the Federal Government. The Authority shall, for and on behalf of the Federal Government, possess, control, manage and deal with all such immovable property for the purposes, and in accordance with the provisions, of this Ordinance.

18. Regulation of Transfers etc.— Dealings with immovable property in a scheme including transfer, lease, license or encumbrance of such immovable property may be restricted and controlled in such manner and on such terms and conditions as may be prescribed under this Ordinance.

CHAPTER V

DEVELOPMENT OF SCHEMES AND PROCUREMENTS ETC.

19. Development of schemes.— The Authority shall prepare or cause to be prepared feasibility studies for the development of a scheme or schemes and determine the mode of development accordingly.

20. Procurement, Outsourcing and public private partnership etc.— (1) The Authority may outsource any of its activities, including development works, through any mode including public private partnership.

(2) Notwithstanding anything in the Public Private Partnership Authority Act, 2017 (Act No. VIII of 2017), any rules and regulations made thereunder or any similar laws,

the Authority may, by regulations, prescribe the manner, methods and procedures for undertaking public private partnerships under this Ordinance and such prescribed conditions shall exclusively govern public private partnerships by the Authority.

(3) Notwithstanding anything in the Public Procurement Regulatory Authority Ordinance 2002 (Ordinance No. XXII of 2002), any rules and regulations made thereunder or any similar laws, the Authority may, by regulations, prescribe the manner, methods and procedures for undertaking procurements under this Ordinance and such prescribed conditions shall exclusively govern procurements by the Authority.

21. Redevelopment schemes— (1) The Authority may undertake redevelopment (including renewal, reconstruction, or upgradation) of whole or a part of a scheme.

(2) The provisions of this Ordinance for development of a scheme shall, with necessary changes, apply to redevelopment under sub-section (1).

CHAPTER VI

REGISTER OF TITLES

22. Registrar.— (1) The Authority may appoint one or more Registrars of titles for a specified area or part thereof on the terms and conditions as may be prescribed in the regulations.

(2) In the course of performance of his duties under this Ordinance, the Registrar may exercise the powers of a civil court under the Code of Civil Procedure, 1908 (as enforced in the Province or territory of the relevant Registrar) for summoning any person, document, enforcing attendance of any person or compulsory production of any document or taking statement on oath.

23. Record of titles.— (1) The Authority may, in the prescribed manner, maintain the records of titles itself or outsource the same in the specified area or part thereof, to a central depository company or any other similar entity.

(2) The Authority may link the record of titles in the specified area with the record of the National Database and Registration Authority on mutually agreed terms and conditions.

(3) The Authority shall maintain computerized record of titles which may be exhibited on the website of the Authority, in the prescribed manner.

24. Registration of Properties— (1) Notwithstanding anything contained in any other law, the Authority, as prescribed, may enter into arrangements to effect registration and transfer of properties and maintain records in relation to any property or part thereof falling in a scheme, with Provincial Governments, and where applicable, Local Governments or other bodies.

(2) The certificate of title issued by the Registrar shall be deemed to constitute a title document of the relevant immovable property.

(3) The Registrar shall maintain accurately and completely the current facts about each immovable property including certificate of title, leasehold rights, mortgage, an easement, a right of occupation or any other right or interest which shall be available online on the website of the Authority with geo-tagged system, in such manner as may be prescribed.

(4) The Registrar shall issue computerized certified copy of certificate of title of each immovable property containing validity period of the copy and all the necessary details about the property which shall be proof of facts contained in the copy and no other document or statement shall be required to prove the contents of a certified copy of the certificate of title.

CHAPTER VII

HOUSE FINANCE AND MORTGAGES

25. House finance for a scheme.— (1) Where house finance has been provided by a financial institution for immovable property in a scheme pursuant to an arrangement between the Authority and the financial institution, all disputes between the financial institution and the relevant borrowers in the scheme shall, notwithstanding anything contained in any other law, be adjudicated upon by the Adjudicator. The process and requirements for lodging and adjudication of a claim before the Adjudicator shall be prescribed through regulations.

(2) Any party aggrieved of the final judgment of the Adjudicator under sub-section (1) may, within thirty days of the final judgment, file an appeal before the Appellate

Tribunal. The process and requirements for lodging and adjudication of an appeal before the Appellate Tribunal shall be prescribed through regulations.

(3) An appeal to the Supreme Court from a final judgment or order of the Appellate Tribunal shall lie only if the Supreme Court grants leave to appeal.

26. Process for Mortgage and Auction.— Where house finance for immovable property in a scheme is or is proposed to be secured through mortgage of such immovable property, the manner, method and procedure for creation and registration of such mortgage, determination of liability, valuation of mortgaged property, fixation of reserve price, auction, bidding and sale of mortgaged immovable property shall be as prescribed.

CHAPTER VIII

COMMON PROPERTY

27. Common property.— (1) The common property in a scheme shall remain vested in the Federal Government. The Authority shall control, manage and deal with all such common property for and on behalf of the Federal Government, for the purposes of this Ordinance.

(2) The Authority may delegate and regulate the management of the common property in a scheme in the prescribed manner. Without prejudice to the generality of the foregoing, such prescription may provide for the establishment (including incorporation), composition, regulation, operations, powers and functions and dissolution of management associations by whatever name called.

CHAPTER IX

TAXES, FEES AND CHARGES

28. Authority to be exempt from taxation. (1) Notwithstanding anything contained in any other law, for a period of five years starting from the date of notification under sub-section (1) of section 4, the Authority shall be exempt from income tax.

(2) The Federal Government through a notification in the official gazette may extend the exemption mentioned in sub-section (1) of this section to such extent and on such terms and conditions, as it may deem fit.

29. Authority to collect property tax.— The Authority or, if authorized by the Authority, management association shall collect property tax, if any, and the Authority shall enter into an arrangement with the concerned Government for sharing of proceeds of the property tax collected from a scheme.

30. Authority to levy fee and charges.— The Authority shall fix fee or charges for rendering of any service in a scheme including registration fee, water rate, sanitation fee, solid waste management fee, development or redevelopment charge and maintenance fee or any other fees, dues and charges.

31. Additional charge or surcharge.— If a person fails to pay a tax, fee or charge to the Authority, the Authority may in the prescribed manner levy and collect additional charge and surcharge for non-payment of dues within the specified time.

CHAPTER X

OFFENCES, ENFORCEMENT AND ADJUDICATION

32. Penalty.— (1) If a person contravenes any provision of this Ordinance, or any rules or regulations made under this Ordinance, he shall, if no other penalty is provided for such contravention, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two hundred thousand rupees or with both.

(2) The magistrate competent to try an offence under sub-section (1) may try the offence in a summary manner in accordance with the provisions of sections 260 to 265 of the Code of Criminal Procedure, 1898 (V of 1898).

33. Offences and cognizance.— (1) If a person commits an offence specified in—

- (a) Part-A of the Schedule, such person shall be liable to imprisonment for a term which may extend to seven years or fine which may extend to five hundred thousand rupees or with both and where an accused was directed by the Authority for immediate discontinuance of the offence, the court may impose a further fine which may extend to fifty thousand rupees for every

day for the period the accused has persisted in the offence from the date of its commission; and

- (b) Part-B of Second Schedule, he shall be liable to imprisonment for a term which may extend to three years or fine which may extend to one hundred thousand rupees or with both and where an accused was directed by the Authority for immediate discontinuance of the offence, the court may impose a further fine which may extend to ten thousand rupees for every day for the period the accused has persisted in the offence from the date of its commission.

(2) An offence punishable under sub-section (1) shall be cognizable on a complaint in writing of an officer authorized by the Authority to the officer incharge of the police station.

34. Offences to be cognizable and bailable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), offences under this Ordinance shall be bailable and cognizable by the magistrate first class on the complaint of an employee authorized by the Authority.

35. Offences by companies.— (1) Where an offence under this Ordinance has been committed by a company, every person who at the time of commission of offence was in charge of and was responsible for the conduct of its activities shall be deemed to be guilty of the offence and shall be liable to be proceeded against under this Ordinance.

(2) Nothing contained in this section shall render any such person liable if it is proved that the offence was committed without the person's knowledge or that such person exercised due care to prevent the commission of the offence.

36. Administrative penalties.— (1) An Adjudicator may, in the prescribed manner, issue directions to any person for compliance with any provision of this Ordinance, the rules or regulations within the time and in the manner specified in such directions.

(2) If a person fails to comply with any direction of the Adjudicator within such time as may be specified in such direction or where violation is declared as grave under the regulations, the Adjudicator may pass one or more of the following orders, namely:-

- (a) direct the delinquent person to pay a fine as administrative penalty which may extend to one hundred thousand Rupees and in case the failure continues, with an additional fine which may extend to five thousand Rupees for every day during which such failure continues after the direction to pay fine for the first such failure is passed;
- (b) direct initiation of prosecution against the delinquent person for the offence under section 33;
- (c) seal (for a specified or unspecified period) the immovable property where violation of this Ordinance, rules or regulations has taken place;
- (d) direct the relevant employee of the Authority, a civic or utility agency to stop or discontinue the provision of municipal or utility services to the immovable property in occupation of the delinquent person till such time as the violation continues;
- (e) direct removal or construction of any structure by the Authority;
- (f) direct the enforcement inspector to dispossess an unauthorized occupant from an immovable property and hand over peaceful possession of the property to the person entitled to the possession of the property; and
- (g) direct cancellation of lease or allotment of the delinquent person and resumption of possession of the immovable property by the Authority.

(3) The Adjudicator shall take cognizance of a case on the report of an enforcement inspector or an employee authorized by the Authority which shall contain documentary evidence of the violation and identification of the delinquent person.

(4) The Adjudicator shall not pass any final direction or order without issuing a show-cause notice in writing and affording an opportunity of hearing to the delinquent person, in the prescribed manner.

37. Administrative penalty and offence.— (1) A person, on whom an administrative penalty is imposed under section 36, shall not be prosecuted for an offence in respect of the same incident that gave rise to imposition of the administrative penalty unless the Adjudicator directs prosecution of the person.

(2) A person charged with an offence may also be subject to an administrative penalty in respect of the same incident that gave rise to the charge of the offence.

38. Enforcement Inspectors.— (1) The Authority shall devise and implement enforcement plans regarding the observance of this Ordinance, rules and regulations.

(2) The Authority shall designate enforcement inspectors for the implementation of the enforcement plans in such manner as may be prescribed under the regulations.

(3) The enforcement inspectors shall exercise such powers, in such manner and to such extent as is provided in this Ordinance or as may be prescribed in the rules or regulations.

39. Power to enter.— (1) Subject to any rules or regulations, an enforcement inspector may, whenever it is necessary for purposes of this Ordinance and at all reasonable times, enter upon any immovable property and-

- (a) make inspection, survey, measurement, valuation or enquiry;
- (b) take levels;
- (c) dig or bore into sub-soil;
- (d) set out boundaries and intended lines of work;
- (e) mark such levels, boundaries and lines by placing marks and cutting trenches;
- (f) take electronic or other evidence; and
- (g) do such other acts or things as may be prescribed.

(2) An enforcement inspector shall not enter any immovable property except;

- (a) with the consent of the occupant and with prior written notice specifying date and time of inspection; or
- (b) when directed by the court or Adjudicator; or
- (c) without notice to prevent any disaster in an emergency.

40. Ejectment of unauthorized occupants.— (1) Subject to an opportunity of hearing, the Chairman, enforcement inspector or any other authorized officer of the

Authority may summarily eject any person in unauthorized occupation of any immovable property under the management or control of the Authority and may for such ejection use such force as may be necessary.

(2) Subject to an opportunity of hearing, the Chairman, enforcement inspector or any other authorized officer of the Authority, on his own motion or on the application of the owner, summarily eject any person in unauthorized occupation of any immovable property in a scheme and may, for such ejection, use such force as may be necessary.

(3) Nothing contained in subsections (1) and (2) shall prohibit the Chairman, enforcement inspector or any other authorized officer of the Authority to proceed against such person on commission of an offence, as provided in the Ordinance.

41. Adjudicator.— (1) The Authority shall appoint one or more Adjudicators for a specified area and if the Authority appoints more than one Adjudicators for a specified area, it shall specify jurisdiction of each Adjudicator. The qualifications and terms and conditions of appointment as Adjudicator shall be prescribed through regulations.

(2) The Adjudicator shall hear and decide a case referred to him by the Chairman, Registrar or an enforcement inspector under this Ordinance, rules or regulations.

42. Inquiry and decision.— (1) The Adjudicator may-

- (a) conduct an inquiry in any. case;
- (b) while inquiring into a case, exercise powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters:
 - (i) summon and enforce attendance of a person, compel a person to give oral or written evidence on oath and to produce a document or any other material;
 - (ii) receive evidence on affidavit;
 - (iii) requisition information from any office; and
 - (iv) issue summons for witnesses or documents.

(2) The Adjudicator shall execute his decisions as if he is a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) or may direct an enforcement inspector to execute the decision in the manner mentioned in the direction.

(3) During the course of any proceedings before him, and before passing a final order, the Adjudicator may pass such interlocutory orders as he may consider appropriate in the circumstances.

43. Review.- If no appeal is filed under section 45 against any decision of the Adjudicator, the Adjudicator may, at any time, review his decision to correct any error or on proof of any other sufficient cause justifying review of the decision.

44. Recovery of dues.- (1) If a person fails to pay any amount due to the Authority or a mortgagor of an immovable property fails to pay an installment to a financial institution, the Adjudicator shall, on a reference from an authorized employee of the Authority or the financial institution, recover the amount due from the person or mortgagor as arrear of land revenue under the Land Revenue Act, 1967 (XVII of 1967).

(2) In exercise of powers under this section, the Adjudicator shall exercise any power of collector under the Land Revenue Act, 1967 (XVII of 1967).

45. Appeals.- (1) A person aggrieved from any final direction, decision or order of an Adjudicator may, within thirty days from the date of communication of the same, file an appeal before an Appellate Tribunal of the Authority.

(2) The Appellate Tribunal shall be constituted and shall discharge its functions in the prescribed manner.

(3) An appeal to the Supreme Court from a final judgment or order of the Appellate Tribunal shall lie only if the Supreme Court grants leave to appeal.

46. Bar of jurisdiction.- (1) Notwithstanding anything provided in any other law for the time being in force, but save as expressly provided in this Ordinance—

- (a) no court or other authority whatsoever shall have jurisdiction to entertain, or to adjudicate upon, any matter which the Authority, the Chairman, the Registrar or a Adjudicator, enforcement inspector or any other person is empowered by or under this Ordinance, or the rules or regulations framed thereunder, to dispose of or to determine;
- (b) the validity of anything done or an order passed by the Authority, the Chairman, the Registrar or a Adjudicator, enforcement inspector or any other person empowered by or under this Ordinance, or the

rules or regulations framed thereunder, shall not be called in question in any manner whatever before or by any court or other authority whatsoever; and

- (c) no court or other authority whatsoever shall be competent to grant any injunction or pass any other order in relation to any proceedings under this Ordinance or any rules or regulations framed thereunder before the Authority, the Chairman, the Registrar or a Adjudicator, enforcement inspector or any other person empowered by or under this Ordinance, or the rules or regulations framed thereunder.

CHAPTER XI

FINANCIAL PROVISIONS

47. Fund.— (1) The Authority shall establish a fund to be known as Naya Pakistan Housing and Development Authority Fund to be administered and controlled by the Authority.

(2) The Fund shall consist of-

- (a) funds, loans or grants provided by the Federal Government or a Provincial Government;
- (b) grants and loans negotiated and raised or otherwise obtained by the Authority;
- (c) fee, charges, rentals, tolls, fines and other moneys received or collected by the Authority;
- (d) income from the lease or sale of the property;
- (e) funds from, bonds, sukuk and other forms of finances obtained on the basis of participation term certificate (PTC), musharika certificates, term finance certificates (TFC) or any other financial or debt instruments or securities issued by the authority; and
- (f) all other sums received by the authority.

(3) The fine imposed or the fee charged under this Ordinance, the rules or regulations shall, on receipt or recovery, be deposited in and shall form part of Naya Pakistan Housing and Development Authority Fund.

(4) The Authority shall meet all its expenses from the Fund and shall exercise prudence in its expenditures from the Fund.

48. Bank accounts.— The Authority may open and maintain its bank accounts at such scheduled banks as may be prescribed and until so prescribed, as the Chairman may determine.

49. Budget and accounts.- (1) Any employee of the Authority as may be directed by the Chairman shall prepare the budget of the Authority for each financial year commencing on first day of July of a year and ending on thirtieth day of June of the succeeding year.

(2) The Chairman shall approve the budget at least forty five days prior to the commencement of a financial year.

(3) The accounts of the Authority shall be maintained in such manner as may be prescribed.

50. Audit.— (1) The Chairman shall appoint a firm of chartered accountants, which is placed in category 'A' by State Bank of Pakistan, for the annual audit of the accounts of the Authority.

(2) The auditors appointed under sub-section (2) shall submit the audit report to the Chairman and the Chairman shall cause the same to be placed before the Policy Board for approval.

CHAPTER XII

MISCELLANEOUS

51. Duty to assist the Authority.— (1) The Authority may in the performance of its functions seek assistance of any office, authority or agency working under the Federal Government, a Provincial Government or a local government.

(2) The office, authority or agency shall comply with the direction of the Authority under sub-section (1) unless, for reasons to be recorded in writing and within thirty days of the direction, an officer not below the rank of head of the office, authority or agency requests the Authority to place the matter before the Chairman whose decision, on such matter, shall be final.

52. Authentication of instruments of Authority.— All orders, decisions and other instruments of the Authority shall be authenticated by the signature of the Chairman or any other employee of the Authority authorized by the Chairman.

53. Annual report.— (1) The Authority shall, within three months of the end of a financial year, submit to the Patron an annual report.

(2) The Annual report under sub-section (1) shall consist of-

- (a) the statement of accounts and audit reports of the Authority;
- (b) a comprehensive statement of the work and activities of the Authority during the preceding financial year and its proposed projects; and
- (c) such other matters as may be prescribed or as the Authority may consider appropriate.

54. Public servants.— The Chairman, a member, Adjudicator, enforcement inspector, Registrar and an employee, expert or consultant of the Authority shall when acting or purporting to act in pursuance of any of the provisions of this Ordinance, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

55. Immunity.— No suit, prosecution or any other legal proceedings shall lie against the Chairman, a member, Adjudicator, enforcement inspector, Registrar or an employee, expert or consultant of the Authority, in respect of anything done or intended to be done in good faith under this Ordinance.

56. Ordinance to prevail over other laws.— (1) In the event of any conflict or inconsistency between the provisions of this Ordinance and the provisions of any other law, the provisions of this Ordinance shall, prevail to the extent of such conflict or inconsistency,

(2) If an instrument is required to be registered under this Ordinance as also under any other law, the instrument shall only be registered under this Ordinance.

57. Rules.— The Patron may, on the recommendation of the Authority and by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

58. Regulations.—Subject to this Ordinance and any rules prescribed hereunder, the Authority may, by notification in the official Gazette and publication on its website, make regulations, to give effect to the provisions of this Ordinance.

59. Removal of Difficulties.—If any difficulty arises in giving effect to any provision of this Act, the Authority may, at any time, make such order, not inconsistent with provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

SCHEDULE

[see section 33]

LIST OF OFFENCES

Part-A

1. Discharging any dangerous chemical, inflammable, hazardous or offensive article in any drain, or sewer, public watercourse or land in a scheme in such manner as causes or is likely to cause danger to persons passing by or living or working in the neighborhood, or risk or injury to property or causing harm to the environment.

2. Failure of industrial or commercial concerns or such property holders to provide adequate and safe disposal of affluent or prevention of their mixing up with the water supply or sewerage system.

Part-B

3. Willfully obstructing any officer or servant of the Authority or any person authorized to exercise powers conferred under this Ordinance.

4. Failure to deliver back possession of property to the Authority on expiration or cancellation of lease or allotment or exemption of immovable property.

5. Doing an act without license, approval or permission when the doing of such act requires a license or permission under any of the provisions of the Ordinance, the rules or regulations hereunder.

6. Violation of the master plan, building plan or sanctioned site development scheme including the plans and schemes sanctioned under the

repealed enactments, allotting, selling or using the land for the purpose other than the approved layout plan.

7. Erection or re-erection of any structure which is not approved or authorized by the Authority under.

8. Changing or converting into any other use any portion of a commercial or residential building or area specified or earmarked for public parking or amenities.

9. Establishing any parking stand on any property or on any open space and public park or land managed, maintained or controlled by the Authority.

10. Establishing temporary shops or running any restaurant or vending stalls for eatables, wooden *khokas* or any sort of commercial activity on any road, street, footpath, public place, over a drain, or any other property managed, maintained or controlled by the Authority.

11. Obstructing or tampering with any road, street, drain or sewer pipe or pavement or tampering with any main pipe, meter or any apparatus or appliance for the supply of water or sewerage system or laying out a drain or altering any drain in a street or road.

12. Connecting any house drain with a drain in a public street without approval of the Authority;

13. Drawing off, diverting or taking any water except with the permission required under this Ordinance, rules or regulations.

14. Willfully causing damage, or allowing damage to be caused to any property managed, maintained or controlled by the Authority, or which is intended to be managed, maintained or controlled by the Authority, or unlawfully converting it to his own or any other person's use.

15. Refusal or willfully neglecting to provide any officer or servant of the Authority with the means necessary for entering into any premises for the purpose of collecting any information or making an examination or enquiry in relation to any matter under the Ordinance.

16. Failure or neglect of the sponsor to abide by or fulfill the commitment made to a person regarding allotment of a plot, housing unit or price of the same in any scheme.

17. Without lawful excuse, failing or refusing to comply with any direction or order issued by the Authority under this Ordinance.

18. Unauthorized occupation without permission of the owner of immovable property in a scheme.

19. Attempting to commit or abetting the commission of an offence punishable under this Ordinance.