

File No.HO-23012/1/2021-APARTT CELL-Dept. of HO

Government of West Bengal
Housing Department
Law & Apartment Cell
New Secretariat Buildings
1, Kiran Shankar Roy Roa
Kolkata 700001

HO-23012/1/2021-APARTT CELL-Dept. of HO 02/06/2021

ORDER

This Authority has received a communication through email from **Sri Nachiketa Chakraborty**, the President of **Salboni Apartment Owners Association** registered under the West Bengal Apartment Ownership Act, 1972 having Registration No. **19A** of **2016**, in which he stated that the Board of Managers has passed a resolution in its meeting dated 23.05.2021 which reads as follows:

"In order to keep Salboni out of danger because of current pandemic situation, Board Managers present in the meeting agreed to restrict the movement of

- a) Online/e-vendors at the entry gate of Salboni*
- b) Maid servant, paper vendor and home tutor will be allowed*
- c) These restrictions will be valid until official lock-down period declared by the Govt. Of West Bengal"*

The President, Shri Chakraborty further stated that after taking the resolution and successive implementation, it was brought to his notice that many Apartment Owners of Salboni Housing Complex did not find it convenient and challenged the authority to implement such resolution.

In the facts and circumstances stated hereinbefore he requested this Authority whether the Board of Managers has lawful authority to pass the said resolution in its meeting dated 23.05.2021

The Associations registered under the West Bengal Apartment Ownership Act, 1972 are guided and administered by the West Bengal Apartment Ownership Act, 1972, the West Bengal Apartment Ownership Rules, 1974 and the West Bengal Apartment Ownership Bye-laws, 1974.

Section 13 of the West Bengal Apartment Ownership Act, 1972 provides that:-

"13. Bye Laws: (1) Every property **shall be administered** in accordance with **such bye-laws as may be framed by the Competent Authority** with the prior approval of the State Government."
(emphasis supplied)

The Competent Authority in exercise of the powers conferred on him

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by section 13 of the West Bengal Apartment Ownership Act, 1972 has already framed bye-laws called the West Bengal Apartment Ownership Bye-laws, 1974.

The West Bengal Apartment Ownership Bye-laws, 1974 provide the powers, functions and duties of the Association and the Board of managers in bye-laws 4, 5 and 10 respectively. For better appreciation of the legal positions in this respect the relevant texts of bye-law 4, 5 and 10 are reproduced below.

"4. Powers and functions of an Association.—(1) *The final authority of an Association shall vest in the general meeting of the members, which shall administer the property concerned in accordance with the Act and these bye-laws and exercise general supervision over the affairs and business of the Association and, in particular, over the activities of the Board.*

(2) *The functions of an Association shall be--*

- (i) *to raise funds for the Association as provided for in the Act and these bye-laws;*
- (ii) *to provide for maintenance, repair and replacement of the common areas and facilities of the property and payments thereof;*
- (iii) *to provide for proper maintenance of accounts;*
- (iv) *to provide for and do any other thing for the administration of the property.*

5. Constitution of a Board and its functions.—(1) *There shall be a Board of Managers in respect of each Association to carry on and manage the affairs and business of the Association and to exercise all such powers of the Association as are not required to be exercised by the Association in a general meeting.*

10. Powers and duties of the Boards.—(1) *Subject to the final authority of the Association in general meeting it shall be the duty of a Board to do all such acts and things and take all such steps as may be necessary and expedient for carrying out the purpose of the Act and the bye-laws, and, in particular, it shall be directly responsible for-*

- (i) *the care, up-keep, maintenance, repairs and replacement of the common areas and facilities including the limited common areas and facilities of the property concerned, as referred to in sub-section (2) of section 13;*
- (ii) *the collection of money, including arrears, due from each apartment owner on account of monthly assessment made by the Association concerned for payment towards common expenses;*
- (iii) *the collection of monthly rents out of the common areas and facilities let out for shopping, commercial or other purposes, as specified in the Declaration submitted under section 2 read with section 10;*
- (iv) *the proper maintenance of the funds and accounts of the Association*

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concerned, and, if necessary, for the building up of a reserve fund out of the common profits left over after meeting the common expenses;

(v) securing and furthering the interests of the Association concerned in every possible way;

(vi) hearing and dealing with all complaints.”

Thus it is evident from bye-law 10 that the Board of Managers shall be directly responsible for the care, up-keep, maintenance, repairs and replacement of the common areas and facilities including the limited common areas and facilities of the property concerned; the collection of money, including arrears, due from each apartment owner on account of monthly assessment made by the Association concerned for payment towards common expenses; the collection of monthly rents out of the common areas and facilities let out for shopping, commercial or other purposes; the proper maintenance of the funds and accounts of the Association concerned, and, if necessary, for the building up of a reserve fund out of the common profits left over after meeting the common expenses; securing and furthering the interests of the Association concerned in every possible way; hearing and dealing with all complaints.

The resolution passed by the Board of Managers in its meeting dated 23.05.2021 regarding restriction of movement for various categories of persons do not fall under any of the categories of the responsibility of the Board of Managers. Therefore the resolution passed by the Board of Managers on 23.05.2021 is beyond its authority and hence it is not a lawful resolution.

Sd/- Debasis Ghosh

Competent Authority

under the West Bengal Apartment Ownership Act, 1972

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Copy forwarded for information and necessary action to:-

The President
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 Kolkata -700014
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Competent Authority

under the West Bengal Apartment Ownership Act, 1972