

Government of West Bengal

Housing Department
Law & Statutory Cell
New Secretariat Buildings
1, Kiran Shankar Roy Road
Kolkata 700001

HO-23012(11)/11/2019-APARTT CELL-Dept. of HO Date 25. 01.2023

ORDER

This Authority received a complaint from **Mr. Siddhartha Mitra**, (the complainant) a member of South City Apartment Owners Association (Association) through an email dated 11.01.2023 against the decision taken on Special General Meeting of the Association held on 08.01.2023 with respect to the manner of election of the managers of the Association. Thereafter this Authority directed the President of the South City Apartment Owners Association to submit written reply against the complaint of the complainant

The President of the South City Apartment Owners Association submitted written reply dated 21.01.2023 against the complaint.

Thereafter this Authority directed the complainant to file rejoinder, if any, by **24.01.2023** against the written reply submitted by the President. The complainant submitted rejoinder on **24.01.2023**.

The fact matrix of the instant case as it appears from the complaint, written reply, rejoinder and the records kept in this office is that the tenure of three years of the current Board of Managers of the Association was till 31.05.2020. Due to Covid-19 restrictions and pending litigations the election of the managers of the Association could not be held in time. The President of the Association announced on 27th October, 2022 to the members that the election of managers of the Association will be held on 17.12.2022 and 18.12.2022 in hybrid mode, that is, both through physical and online mode.

Thereafter this Authority received many complaints from various members of that Association regarding the manner of election adopted by the President for election of the managers. They alleged that the manner adopted by the President was not in accordance with the Bye-laws framed by the Competent Authority under the West Bengal Apartment Ownership Act, 1972. Thereafter this Authority directed the President of the Association to submit written reply against the said complaints. The President submitted written reply. After going through the complaints, the written reply of the President this Authority in exercise of the powers conferred to this Authority under sub-section (1) of section 16B of the West Bengal Apartment Ownership Act, 1972 passed the following directions to the President of the Association: -

- a) to convene immediately the Special General Meeting of the Association to decide the manner for election of the Managers of the Board;
- b) to withdraw immediately any notice/notices already issued to conduct election of managers;
- c) to conduct the election of the managers in accordance with the manner decided by the members in the said Special General Meeting mentioned in a) above;
- d) to complete the process of election of managers of the new Board by 15.01.2023 so that duly elected new Board may take charge on or before 16.01.2023.

The President of the Association by a letter dated 05.12.2022 requested this Authority for the reasons stated therein to extend the time limits so that they may complete the process of election of managers of the new Board by the 30th of January 2023 and the duly elected new Board can take charge by 31st of January 2023. This Authority considering the reasons stated in the letter dated 05.12.2022 allowed the prayer of extension of time limits.

The Association conducted Special General Meeting on 08.01.2023 in accordance with the direction of this Authority. In the said Special General

Meeting two options were put into vote for deciding the manner of election of the managers of the Association. Option (1) was combination of online and manual voting: and option (2) only for manual voting.

The total number of votes polled was 341. The final tally was as follows: 1) Option for Combination of Online and Manual Voting: 197 votes and 2) Only for Manual Voting: 144 votes. The online voting will be done through CDSL platform

Thereafter the complainant through an email dated 11.01.2023 lodged the instant complaint against the decision taken on Special General Meeting held on 08.01.2023 regarding the election of managers of the Association through online mode also. He alleged that online voting for election of managers is contrary to the legal provisions provided in the West Bengal Apartment Ownership Bye-laws, 2022.

The law with respect to election of managers is provided in bye-law 8 of the West Bengal Apartment Ownership Bye-laws, 2022. Let us read the relevant provision of bye-law 8 here. It reads:-

“8. Election of Managers of the Board.– (1) *Within fifteen days of formation of an Association under clause (2) of bye-law 3, the apartment owner presiding over the general meeting referred to in the said clause shall serve notice upon each member of such Association fixing therein the date (not before seven days from the date of issue of such notice) on which and the time and place at which a Special General Meeting shall be held for deciding the detail manner in which and the date on which the election of the Managers of the Board be held.*

(2) *The election shall be held **by secret ballot** in accordance with the detail manner decided under clause (1) of this bye-law.”*

[Emphasis supplied]

Thus it is evident from the legal provisions cited herein above that the members of the Association will decide the manner in which the election of managers of the association will be conducted. After the manner is decided by the members the election of managers will be conducted accordingly. **The only**

condition the law has put into the election process is the condition of secret ballot. That means the election will be held secretly. Not even a single person will be able to know who voted whom. This condition is laid down for the interest of the members of the Association. The members are also the apartment owners and close neighbours of each other. If this condition of secrecy is violated it can have immense potential to lead to disharmony and rancour within the neighbours of such close urban neighbourhood.

The complainant stated in his rejoinder that as per the law, online voting has to be absolutely secret through secret ballot where 'no one' is allowed to know who has voted for whom. He further stated therein that the term 'no one' applies not only to the scrutinizer, but also to the system administrator, database administrator i.e. manufacturer of the platform; to ensure absolutely secrecy. Secrecy has to be embedded in the system design. CDSL website does not show any evidence in support of secret ballot.

He further stated that as per the Bye-law under the West Bengal Apartment Ownership Act, 1972 only the members of Association can participate in the election process and voting right cannot be delegated by the members to other persons as there is no provision of proxy voting. The CDSL platform is based on email id & password, which can be easily forwarded to anyone; - similar to handing over the voter id card to anyone. There is no checks and balances to ensure prevention of proxy voting. CDSL platform is designed for voting under Company Act where proxy voting is allowed - however Associations formed under the West Bengal Apartment Act, 1972 does not allow any proxy voting. He further submitted that even Government of India does not allow proxy voting in general elections.

After going through the complaint, written reply and rejoinder this Authority is not satisfied as to whether secrecy of election process as envisaged in bye-law 8 of the West Bengal Apartment Ownership Act, 1972 will be maintained through online voting in CDSL platform.

Hence the President of the Association is directed to take steps so that ensuing election of managers of the Association will be conducted through manual voting only. In order to facilitate the members of the Association who stay outside the South City Housing Complex to come and take part in election process the time limits to complete the process of election of managers of the Association to form new Board of Managers are extended till **5th of February 2023**. The duly elected new Board of managers shall take charge by the **6th of February 2023**.

Sd/- Debasis Ghosh, WBS

Joint Secretary to the Govt. of West Bengal

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Competent Authority under the W.B. Apartment Ownership Act, 1972

Copy forwarded for information and necessary actions to: -

1. President, South City Apartment Owners Association.
2. Mr. Siddhartha Mitra, Member, South City Apartment Owners Association.



(Debasis Ghosh, WBS)

Joint Secretary to the Govt. of West Bengal

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Competent Authority under the W.B. Apartment Ownership Act, 1972