

I/158898/2021

Government of West Bengal

Housing Department

Law & Statutory Cell

New Secretariat Buildings

1,Kiran Shankar Roy road

Kolkata 700001

HO-23012(11)/19/2020-APARTT CEL

12/11/2021

ORDER

In exercise of the powers conferred by **Section 16B** of the **West Bengal Apartment Ownership Act, 1972** (the said Act), the undersigned (this Authority) vide Order dated **17.07.2021** vide No. **HO-23012(11)/19/2020-APARTT CELL 17.07.2021** (the said order) had directed the President of **Kendriya Vihar II** (the Association), an Association of Apartment Owners registered under the said Act having Registration number 000712019 of 2019, *inter alia* , the following:

To explain within **01.08.2021** in writing to this Authority -

1. Why is the association using a name (KendriyaVihar II Apartment Owners' Association) other than the registered name of the Association being "Kendriya Vihar II"?
2. Why the accounts of the another entity, being Kendriya Vihar II Apartment Owners' Association is merged with the accounts of the registered association being "Kendriya Vihar II" which was formed and registered in the month of October 2019?
3. Why has the association not opened a bank account after its

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formation and registration in October 2019?

4. Why is the association unlawfully using the bank account of another entity?
5. Why is the association demanding money for a period prior to its formation from the members of Kendriya Vihar II when it is not a successor of any registered or unregistered association and no rights and obligations of any entity have been transferred to it by way of succession?
6. Why has the association framed its own purported byelaws when no such power of framing bye-laws has been conferred to it by the West Bengal Apartment Ownership Act?

Further this Authority directed in the said order to share to all 582 members of the Association a soft copy of the Form A duly accepted by this Authority, and a soft copy of Form 1 submitted to this Authority by 24.07.2021 through email and to take necessary steps to resume immediately all services including security and reception service for the alleged defaulter-members of monthly maintenance charge which are withdrawn and such services shall be provided to the said members until further order to be passed by this Authority in this regard while finally disposing all the complaints stated hereinabove.

Till date this Authority has not received from the President of the Association any explanation as sought for with respect to matter stated herein above nor received any communication of compliance of the said order from the President of the Association.

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However on **16.10.2021** this Authority received an email from **Advocate Bharat Bhushan** sent from bhushan.bhw@gmail.com [mail id on](#) Oct 16, 2021 at 3:41 PM. The text of the mail is reproduced below:-

"From,

Bharat Bhushan

Advocate

High Court, Calcutta

Room No 1XB, 1st Floor

4 Government Place North

Kolkata 700001

To,

Shri Debasish Ghosh

Competent Authority under WBAOA, 1972

Govt of WB, Law & Apartment Cell

New Secretariat Building

1, Kiran Shankar Roy Road, Kolkata 700001

Re: M.A.T No 909 of 2021

CAN No. 1 of 2021

Sir,

Enclosed please find a copy of solemn order dated 07.10.2021 passed by the Hon'ble Division Bench consisted of Hon'ble Justices Subrata Talukdar and Kesang Doma Bhutia and the content of the order speaks for itself.

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However, my client has illustrated the clarification pertaining to your explanation vide your letter dated 17.07.2021 in para 38 of the Writ petition itself and the copy of petition has already been served upon you which you may treat as answers to your explanations.

*Since my client challenged your good self-order in the Hon'ble High Court therefore, they were advised not to make any separate reply to you during the pendency of the matter **in order to avoid the parallel proceedings.***

As the order of the Hon'ble Division Bench has directed you to file the report either interim or final positively on next date i.e 15.11.2021 therefore, my client is also ready to assist your good self for adherence of Hon'ble High Court's direction in letter and spirit if your good self office requires so.

Thanking you.

Yours sincerely

Bharat Bhushan

Advocate

High Court Calcutta"

(Emphasis supplied)

The genesis of this email of **Advocate Bharat Bhushan** to the undersigned may be summed up by stating the following fact.

The President was directed by this Authority to clarify by

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01.08.2021 on 6 queries mentioned in the said order. The President of the Association did not submit any clarification as sought for to the undersigned within the specified date, but filed a writ petition on **30.07.2021** before the Hon'ble Calcutta High Court being **W.P.A. No. 12406 of 2021** wherein it was prayed for, *inter alia*, setting aside the said order. It may be mentioned the Writ Petition **was not filed** by the Association registered as "**Kendriya Vihar II**" but it was filed by one "**Kendriya Vihar II Apartment Owners Association**". After hearing the parties by an order dated **12.08.2021** the Hon'ble High Court passed the following order: -

"The petitioner is aggrieved by an interim order dated 17th July, 2021 passed by the competent authority under the West Bengal Apartment Ownership Act, 1972.

By the impugned order, an interim arrangement of running of the Society and providing basic amenities to its members was ordered.

Since proceedings have not yet been disposed of, the interim order is subject to any final order that may be passed by the competent authority. This Court sees no reason to interfere with the said interim order. Counsel for the respondents also questioned the locus of the writ petitioner to maintain the writ application.

This Court does not wish to enter into the same since the writ petition itself is not entertained.

In view of the above, the instant writ petition must fail and is hereby dismissed.

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There will be no order as to costs.....”

[Emphasis supplied]

Even thereafter the President of the Association did not submit the clarification sought for to the undersigned and did not comply the direction given through the said order, but Kendriya Vihar II Apartment Owners Association preferred an appeal against the impugned order dated 12.08.2021 of the Hon’ble High Court in WPA No 12406 of 2021 by way of filing **M.A.T. No 909 of 2021**. The appeal was heard on **07.10.2021** and the Hon’ble Division bench of Calcutta High court passed, inter alia, the following order: -

“This Court is taken to the order impugned of the Hon’ble Single Bench whereby the Hon’ble Single Bench has directed that the competent authority shall be free to ultimately file his final Report. Therefore, the Writ Court is not required to intervene at this stage.

Having heard the parties and considering the materials placed, this Court directs that the Report of the competent authority, be it interim or final, be positively placed on the next date.”

Thereafter on **16.10.2021** Advocate Bharat Bhusan sent the said email to the this authority stating that his client has illustrated the clarification pertaining to the explanation sought for vide this authority’s order dated 17.07.2021 in paragraph 38 of the Writ petition No **WPA 12406 of 2021** itself which may treated as answers to explanations sought for.

In view of the facts and circumstances stated hereinbefore

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the explanations offered in paragraph **38** of the Writ petition No **12406 of 2021** against the explanations sought for by this Authority from the President of the Association are examined in the light of West Bengal Apartment Ownership Act, 1972 and the rules and Bye-laws made thereunder.

Before dealing with the explanations of the President of the Association, the power of the undersigned under the said Act needs to be stated. This Authority is vested with the statutory power of control and supersession over all the Associations formed and registered under the said Act under section 16B of the Act. Section 16B reads: -

“16B. Control and supersession:

*(1) If the Association or Apartment Owners having right to be exercised by the Manager or the Board or Managers **fails to perform its functions** under this Act or the bye-laws made there under, the Competent Authority **may give to it such directions as that Authority considers fit.***

(2) If the Competent Authority is of the opinion that the function of the Manager or the Board of Managers is detrimental to the interest of the Association of Apartment Owners or of the apartment owners or is against the public interest, the Competent Authority may give a notice to the Manager or the Board of Managers to show cause why he should not be removed or, as the case may be, it should not be superseded. If the reply of the Manager or the Board of Managers is not considered satisfactory, the Competent Authority may by order remove the Manager or supersede the

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Board of Managers, as the case may be, and appoint any member from amongst the members of the concerned Association of Apartment Owners or any employee of the State Government or any other person as administrator to perform the functions or the Manager or the Board of Managers, as the case may be, for a period not exceeding six months:

Provided that the Competent Authority may, if it considers necessary so to do by order extend the period of removal of the Manager or supersession of the Board of Managers, as the case may be, for a further period, not exceeding six months at a time; so, however, that the aggregate period of removal or supersession, as the case may be, shall not exceed three years.”

[Emphasis supplied]

Regarding Associations **formed and registered under the said Act** it may be stated that it is unique and fundamentally different from Associations formed and registered otherwise. The major differences are discussed herein after. Associations **formed and registered under the said Act** has fundamental difference with Associations **registered** under the **West Bengal Societies Registration Act, 1961** (the 1961 Act). Under the said Act the Association is **formed and registered** under the Aegis of the Competent Authority appointed by the State Government under the said Act. Whereas Associations registered under the 1961 Act is not formed under the aegis of any statutory Authority. It is formed by the willing persons and thereafter the association is registered by the Registrar appointed under the 1961 Act.

There is *ifso facto* membership of the Association formed

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and registered under the said Act. One is a member of the Association if he owns an apartment in the Housing complex for which the Association is formed. The membership is not subject to expulsion by any person, nor it is subject to the willingness of the member to withdraw his membership from the Association. The membership ceases only when one sells his apartment. So long one owns an apartment he is a member of the Association. But in case of Associations registered under the 1963 Act the membership is voluntary in nature. One signifies his willingness to become a member of the Association and the Secretary of the Association has power either to accept or reject such prayer. Here membership is not *ipso facto*. Similarly withdrawal of his membership is not *ipso facto*.

Contravention of any provision of the Bye-laws is an offense under the said Act. Non-payment of the sums assessed on account of common expenses is a **ground for prosecution under bye-law 24** of the said Bye-laws. Non-payment of membership fees is not an offence under the 1961 Act and a member cannot be prosecuted for such non-payment of membership fees. For non-payment of fees, one's membership is only liable to be cancelled. The Associations **formed and registered under the said Act** cannot frame its own Bye-laws. The Bye-laws framed by the Competent Authority is applicable to all Associations **formed and registered** under the said Act and all such Associations are administered in accordance with such Bye-laws. On the other hand, Associations **registered under the 1961 Act** can lawfully frame their own **memorandum and regulation**.

Now, the explanation offered against each query is

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reproduced in verbatim in the following paragraph: -

1. Why is the association using a name (Kendriya Vihar II Apartment Owners' Association) other than the registered name of the Association being "Kendriya Vihar II"?

"After the acceptance of Form-A by the Competent Authority, a general meeting was held on 20th October 2019 with the agenda "**Formation of Association under some specific name and style as per West Bengal Apartment Ownership Act, 1972**" as per the Clause 3(2) of West Bengal Apartment Ownership Byelaws, 1974. The majority of the owners present in the meeting took resolution that the name of the association should be "**Kendriya Vihar II Apartment Owners Association**" and it was duly video graphed for the purpose of any future reference. Accordingly, the owner presiding over the meeting had submitted the Form-1 to the competent authority. The name "Kendriya Vihar II" in the certificate of Registration received vide CA's letter dated 25/10/2019 is thus something different from what had been there in the resolution adopted in the said general meeting and the Form1 submitted in that regard. In these circumstances, the Certificate of Registration can be revised in conformity with the original Resolution submitted in Form-1."

2. Why the accounts of another entity, being Kendriya Vihar II Apartment Owners' Association is merged with the accounts of the registered association being

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“Kendriya Vihar II” which was formed and registered in the month of October 2019?

“CGEWHO is an autonomous body of Govt. of India operating under Ministry of Housing and Urban Affairs, GOI is the promoter/ developer of Kendriya Vihar Phase - II, Kolkata. While giving possession of the project, CGEWHO constituted the 1st Adhoc AOA EC on 24/05/2015 through the process of election as per CGEWHO Rule-31. CGEWHO handed over the project to 1st Adhoc AOA EC on 29/06/2016 after a period of about 13 months since the 1st Adhoc AOA failed to register the proposed association within the stipulated time (6 + 4 months) as per CGEWHO Rule-31. The 2nd Adhoc AOA EC which was subsequently constituted on 14/08/2016, due to some internal conflict amongst the members of the 1st Adhoc AOA EC and after obtaining direction of the Honorable Kolkata High Court, took handover of the project from 1st Adhoc AOA EC on 27/08/2016. The proposed association “Kendriya Vihar II Apartment Owners Association” was registered by the good office of CA under West Bengal Apartment Ownership Act, 1972 during the tenure of 2nd Adhoc AOA EC on 25/10/2019, till then the project was maintained by the 2nd Adhoc AOA EC. The 1st Board of Managers was elected on 18/02/2020 and the board subsequently took handover of the project from the 2nd Adhoc AOA EC including all assets, liabilities, website, bank account, cash, fixed

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deposits etc. between 01/03/2020 to 06/03/2020. It may further be noted that, the pre-registered and the registered form of Association had the common purpose with the common owners and both work for the common property & premises. Since, expenses have been borne by the common owners for the common property and all payments whether received from these owners in the proposed or registered state of the Association are ultimately for the common purpose of maintenance of property, nothing can be said to have gone fundamentally wrong if seen from the true spirit of the relevant bye-law. There has been no irregularity either. To add further, the formation of the first Adhoc AOA was in accordance with the rules and procedures of CGEWHO. It was guided by the bye-laws approved by the CGEWHO, an autonomous body under the ministry of Housing and Urban Affairs. The transition from the first Ad-hoc Association to the present registered association has been lawful and valid. The owners are mostly central government employees, and the housing project is designed by the ministry to provide their requirements. Hence the constitution of the Association was never outside the purview of government organizations. The owners and representatives remained the same. Question of succession doesn't arise because apart from the transition of registration, rest of the constituents, stakeholders, common interest, assets, and liabilities remained same and identical. Hence the clarification on this issue should be considered as just

and reasonable. “

3. Why has the association not opened a bank account after its formation and registration in October 2019?

“In continuation to above para, it may be stated that, the existing bank account was already with a Nationalized Bank as required under bye-law 17 which has been taken over by the 1st Board of managers (BOM). The bank had been duly intimated about the registration of the association by the 2nd Adhoc AOA post registration and subsequently the signatories *were* changed after the formation of the board and handing over taking over process. However, a new bank Account with the Bank of Baroda (BOB) has already been opened on 25/11/2020 and the major portion of the AOA Fund received from the CGEWHO post registration of the Association, has since been transferred to that Account. Gradually, funds from the UCO bank can be transferred further, once online payment portal for the online payment of Monthly Maintenance Charges (MMC) by the members can *be* started for which efforts are being made in coordination with the BOB.”

4. Why is the association unlawfully using the bank account of another entity?

Firstly, as stated above, the bank account was duly taken over from the proposed / pre-registered association and regularized with the concerned bank. Secondly, the proposed /pre-registered Association

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cannot be looked upon as an alien entity altogether. In respect of monetary transactions, payment liabilities of any kind by the members or the Association, funds deposited by way of payment of MMC by the members, Contract & Agreement obligations, carry-forward of balance funds accumulated during the course of its duration prior to registration, the proposed/pre-registered Association does always have its continuity notwithstanding any subsequent event including registration of the Association. It can, in no way, be a pragmatic conclusion / decision that, the proposed entity is only a dead past for every purpose irrespective of anything. Further, as already elaborated, the existing bank Account was already maintained at a Nationalized bank and since the funds so maintained was Association's money only; no unlawful act has been committed in using the existing account. Given the conditions in the present case, the overall position needs to be taken into account with a holistic approach. It is also to be noted that, CGEWHO had no objection transferring the AOA Fund to the existing account considering the transparent and fair transactions of the Association during the proposed state. The wisdom and authority of CGEWHO should not be undermined while considering the development of the housing complex and its association. They follow the same rules throughout the country and have transferred such fund to the registered association of

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different Kendriya Vihar complexes (more than 30) throughout the length and breadth of the country.

5. Why is the association demanding money for a period prior to its formation from the members of Kendriya Vihar II when it is not a successor of any registered or unregistered association and no rights and obligations of any entity have been transferred to it by way of succession?

"Association is demanding money from the non-payers who have not paid the Monthly Maintenance Charges (MMC) as per the Resolution passed in the General Body Meeting held on 26/02/2017 which mandated payment of MMC by all members from 01/04/2017 under circumstances already explained in our earlier E-mail dated 25/06/2021 to CA. In that communication, the intervention of CA was requested to facilitate receipt of the huge unpaid money of the Association from the few non-paying members. Despite the majority members paying maintenance charge for the sustenance of the Association throughout, these members did not pay a single paisa and enjoyed all services & facilities at the cost of bonafide payer-members. It is for your record that all beneficiaries of Kendriya Vihar Phase - II are under oath to pay the maintenance to the association as per Annexure III submitted to CGEWHO with full and final payment as well as in the conveyance deed. They have huge outstanding share of MMC dues accumulated over

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the years that is yet to be reimbursed to the Association. Now the payable money against the services & facilities availed by them over the years, is being claimed by the Board of Managers (BOM) in compliance with the fresh mandate given by the General Body (GB) in the Special General Meeting (SGM) held on 21/03/2021. Further, there is no question of succession in the procedure; rather there is the usual convention of handing over and taking over which is a must. The First Adhoc AOA formed by the CGEWHO in 2015 handed over the assets, liabilities, and various property-documents etc. to the Second Adhoc AOA constituted through election in the year 2016 and in the very same way the present BOM has duly taken over all assets, liabilities, funds, property documents including plans, maps, drawings etc. in respect of the selfsame property & premises from the Second Adhoc AOA. Rights & obligations stand transferred that way only. For this purpose, the previous body whether registered or proposed, cannot be treated as any alien entity. On the contrary, as already elaborated above, in respect of monetary transactions, payment liabilities of any kind by the members or the

Association, funds deposited by way of payment of maintenance charge by the members, Contract & Agreement obligations, carry-forward of balance funds accumulated during the course of the earlier body prior to registration, the relation is not severed once the

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handing over has taken place. For example, payment of Electricity charges cannot be refused or payment to the contractor cannot be denied on the ground that, these payments pertained to the period prior to registration. Similarly, if in the bank there is a credit balance as a result of accumulation of funds through payments received by the earlier body, it cannot be said that registered association are not to take the funds since it belonged to the so-called other entity. Further, if a loan is taken by a customer from his bank and that bank subsequently gets merged with another bank, the debtor having taken the loan cannot claim that, he is not to pay back the money since the entity has changed. It is clear that, the non-payers are desperately trying to evade the payments by any means. Neither payable amounts are automatically written off on the ground of changed entity nor the commencement of application of WBAO Act & Bye-laws from a subsequent date can be used to avoid the payment of maintenance charge dues which is the money to be reimbursed to the Association for the actual expenses incurred by the Association for the maintenance of the property, thereby creating a charge to the property concerned. Even the WBAO Act & bye laws do not contain any provision that prohibits recovery of any past dues from the defaulting members and in this respect BOM is the only Representative Body to ensure recovery of said MMC dues thus securing and furthering the interests of the Association as per the provision laid down under

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Clause 10 sub clause (1) (v) and (2) (ix) of the WBAO Bye-laws 1974. Hence, BOM is rightfully claiming payment against the expenses made by the majority of the members in compliance with the mandate given afresh by the GB in the SGM concluded on 21/03/2021, from the members who have not paid their share of expenses from 01/04/2017. It is further stated that, during the past four years number of lawful MC payers have increased manifold and the association therefore could carry out the maintenance of the property till date to the satisfaction of the owners. Without the formation of Ad-hoc Association neither registration could have been possible, nor this big number of owners could have come together to suffice the requirement of the complex process of registration. The confidence of the owners has increased manifold due the dedicated services of the office bearers. But owing to huge amount of arrears to the tune of around Rs. 55,00,000 (Fifty Five Lakhs only) on account of unpaid MMC, the association is unable to attend to the important maintenance works etc. throughout the complex. The WBAO Bye-laws uphold the interest of bonafide payers, and the association whether registered or proposed tried to secure the same in accordance with law. The non-payers availed all the facilities during these four years and more than 45 owners including two complainants have cleared their MMC dues from 01/04/2017 or thereafter. Being same and similarly placed with the other members, the non-payers cannot claim special rights and

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privileges under any act or law. This approach is against the principles of equality and natural justice.”

6. Why has the association framed its own purported byelaws when no such power of framing bye-laws has been conferred to it by the West Bengal Apartment Ownership Act?

“In so far as framing of the Bye-laws is concerned, it is stated in continuation of the earlier email dated 25/06/2021 sent to CA that Association has not introduced any new byelaws on its own. Some extensions of the WBAO Byelaws 1974 have only been prepared just to remove/rule out ambiguities in the powers, duties, responsibilities, and actions of the Board as given/broadly outlined in the model byelaws and to collate the various provisions laid down therein into a set of tangible operating procedures which is very essential for smooth functioning and transaction of day-to-day business by the Association. Apart from that, the extension reflects a set of guidelines to the members in accordance with the various provisions of the WBAO Bye-Laws to ensure a peaceful environment on the one hand and a disciplined administration of the property on the other. In the proposed extensions, the provisions contained in the WBAO Bye-Laws have not been interfered with or violated in any manner whatever. WBAO Bye-Laws serve as the Supreme Guide but there may always be a need for customization within the

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structure & scope of the bye-laws depending upon the specific requirements of an Association. A perusal of the proposed extensions of the bye-laws in question will reveal that, there has been no violation of the WBAO Bye-Laws anywhere. Moreover, this is a very common practice everywhere and almost in the majority cases, the Associations do frame the extensions of model bye laws without violating the basic provisions and structure of the same to suit their functional and administrative requirement. Additionally, it may be noted that, as per the recommendations of the GB in the SGM, 2021 a Bye laws review sub-committee had been duly constituted which concluded the amendment in few areas of the Bye laws to make it more user friendly and more inclusive. Now, unless a conflict arises between the existing provisions of WBAO Bye-laws, no bye-laws can be rejected by any Authority if it is approved by the majority members of the society and subserve the common interests.”

The record related to formation of this Association was checked and found that the apartment owners submitted **Form A** wherein they have on oath furnished the particulars of the property with respect to the land, the buildings and the common areas and facilities related to Kendriya Vihar II housing estate. The Competent Authority **accepted Form A** on **09.09.2019** and the meeting of the apartment owners under clause (2) of bye-law 3 was held on **20.10.2019** to **form an Association** under the said Act and accordingly

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they formed an Association. The apartment owner who presided over the meeting, namely, **Shri Tapash Karmakar** submitted Form 1 under the said Bye-laws to the office of the undersigned on **23.10.2019**. In Form I the name of the Association was stated "**Kendriya Vihar II Apartment Owners Association**" but Shri Tapash Karmakar while filling up the online form for registration of the Association stated its name as **Kendriya Vihar II** and the system fetched the said name from the online application and issued a registration Certificate in the name of "**Rail Vihar II**". The President or any other managers of the Association never took any initiative to correct the registered name of the Association till it is pointed out by the said order. Instead, they keep on using the name "**Kendriya Vihar II Apartment Owners Association**" and also using the identity of that Association. Had Mr Tapash Karmakar written name of the Association in the online system as "**Kendriya Vihar II Apartment Owners Association**" the registration certificate would have been issued in the name of "**Kendriya Vihar II Apartment Owners Association**". But same name does not mean same identity. This "Kendriya Vihar II Apartment Owners Association" would have been an altogether new Association formed and registered under the said Act.

To understand this let us now read the legal provisions regarding the formation and registration of Associations under the said Act.

Bye-law 3 of the West Bengal apartment ownership Bye-

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laws, 1974 contains the legal provision regarding formation of Association under the West Bengal Apartment Ownership Act. Clause (2) of bye-law 3 reads: -

*"Within **forty-five days** from the appointed day or **from the date of acceptance of Form A** whichever is later, or within such further period as the Competent Authority may, on application made to it or of its own motion, allow, **the apartment owners of each property**, owned by four or more apartment owners, shall in **a general meeting** to be held on such date and at such time and place as may be convenient to all such owners and to be presided over by an apartment owner chosen by the apartment owners present in such meeting, **form an Association** under some specific name and style, and the apartment owner presiding over such meeting shall immediately communicate the formation of such an Association along with the names of the members thereof, **in Form No. 1** to the Competent Authority **which shall register the Association under a serial number**, and cause the names of the members thereof to be entered in the book kept in its office for the purpose."*

[Emphasis supplied]

Let us now apply this provision to the instant case. Form A was accepted by the Competent Authority on **09.09.2019**. Special General Meeting of the apartment owners were held on **20.10.2019**, that is within 45 days from the date of acceptance of Form A. In that meeting the apartment owners form an Association under some specific name and style.

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Shri Tapas Karmakar presided over the meeting of apartment owners. He submitted Form I to the office of Competent Authority on **23.10.2019**. The undersigned registered the Association on **25.10.2019**. Thus, the **Association was formed on 20.10.2019** in a meeting of **apartment owners**. The phrase "**apartment owners**" is very important here. The special general meeting of 20.10.2021 was not a meeting of members of any existing association. It was a special general meeting of apartment owners to form an association. It may be said that the apartment owners of Kendriya Vihar II entered into the meeting room on 20.10.2019 **as apartment owners** and came out of the meeting room **as members** of a newly formed Association under the said Act. By virtue of clause (1) of bye-law 3 of the said Bye-laws all the **582 apartment owners** of Kendriya Vihar II became members of the Association by operation of law. Clause (1) of bye-law 3 reads:-

"(1)(a) There shall be, in respect of each property, an Association, and each apartment owner of such property shall be a member of such Association;

(b) where an apartment owner transfers his apartment by sale or leases out the same he shall cease to be a member of the Association concerned from the date of the sale or lease, as the case may be, and the purchaser, or lessee, becomes immediately a member of the said Association in place of the transferor;

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(c) where more persons than one jointly own an apartment, such persons shall nominate one of themselves to be a member of the Association concerned, and immediately send intimation in respect thereof to the Board concerned."

After the Association is formed there is legal provisions for forming Board of Managers to run the Association. Clause (3) of bye-law 5 provides the law of formation of Board of Managers. It reads: -

*"(3) 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 fifteen 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 election of the Managers of the Board of such Association by **secret ballot** in such manner as may be decided at the said meeting.*

*(4) The service of the notice referred to in clause (3) shall be effected by **personal service** or through letter sent by **registered post**.*

*(5) After the Managers of the Board are elected as aforesaid, the Board shall, **within ten days** of the date of election of its Managers, hold its first meeting and elect its President who shall forthwith forward the names of the President and of the Managers of the Board in **Form No. 3** to the Competent Authority, which shall cause those names to be entered in the **relevant register** to*

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be maintained in its office for the purpose.”

After the formation of the Board of Managers the Board is required to convene a special general meeting of the members for approval of budget a budget estimate for the year or part of the year, showing in details the anticipated income and expenditure of the Association under different heads **including the assessment that may be levied by the Association on its members for payment towards common expenses**. Bye-law 16 is the relevant law with regard to such duty of the Board. Bye-law 16 reads:-

"16. Budget and supplementary estimate.— *The Board shall, before the 1st day of May each year, cause to be prepared and submitted before the annual general meeting of the Association a budget estimate showing in details anticipated income and expenditure of the Association under different heads for the next financial year, and the annual general meeting of the Association shall consider and approve the budget with such additions, alterations or modifications, if any, as it may deem fit:*

*Provided that in the **financial year in which an Association is formed and its Board is constituted**, a budget estimate for the year or part of the year, showing in details the anticipated income and expenditure of the Association under different heads **including the assessment that may be levied by the Association on its members for payment towards common expenses and other receipts**, if any, shall be prepared and submitted*

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by the Board, within thirty days from the date of election of the President, Secretary and Treasurer, before a special meeting of the Association, and the said meeting shall expeditiously consider and approve the budget with such addition, alteration and modification, if any, as it may deem fit:

Provided further that the Board may at any time during the year and part of the year for which any budget estimate has been approved, cause a supplementary budget estimate, if necessary, to be prepared and submitted to a general meeting of the Association specially convened for the purpose for approval in the same manner as in the case of an original budget estimate.”

Assessment of common expenses by Association and realisation thereof is provided in bye-law 20. It reads:-

"20. Assessment of the share of common expenses.—*(1) Every apartment owner of the property shall be assessed with such sum, being his share of the common expenses for the year as may be determined by the Association concerned to defray the common expenses which may include an insurance premium and any repair and reconstruction work in case of hurricane, fire, earthquake or any other kind of hazard or calamity.*

*(2) The assessment in clause (1) shall be made **pro rata** according to the built-up area of the apartment unit as specified in the Declaration in pursuance of the provision of clause (g) of sub-*

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section (1) of section 10.”

In view of the legal provisions discussed herein above it may be stated that the President of the Association and all other managers have been running the Association under a wrong belief that the an unregistered association in the name of “Kendriya Vihar II Apartment Ownership Association” was **registered** under the said Act was only and the Association formed and registered under the said Act is the continuation of an Association having same name. They have a wrong belief that their association had existence **even before 20.10.2019**. On this wrong belief they have continued to operate the Bank Account of another Association not formed under the said Act. On such wrong belief and assuming themselves as the registered avatar of such pre-existing Association they levied and demanded arrear maintenance charge from members during the period prior to the existence of the association formed under the said Act. This action of the association is not legally tenable.

It may further be stated that all the Associations **formed and registered** under the said Act is administered in accordance with the provisions of the West Bengal Apartment Ownership By-laws, 1974 framed by the Competent Authority with the prior approval of the State Government. **Section 13** of the said Act has delegated power to the Competent authority to frame Bye-laws with the prior approval of the State Government. Section 13 reads:-

"13. Bye Laws:

(1) Every property shall be administered in accordance with such

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bye-laws as may be framed by the Competent Authority with the prior approval of the State Government.”

No Association has been given power by the statute to frame its own Bye-laws or amend/customize the Bye-laws framed by the Competent authority according to their need.

In view of the legal provisions explained herein above and in exercise of the powers conferred by sub-section (1) of section 16B of the said Act the undersigned directs the President of the Association to administer the Association in accordance with law. Without prejudice to the generality of the foregoing direction he is directed to prepare budget and accounts of the Association from **20.10.2019** and realize maintenance charge from the members as levied by the Association to its members in special general meeting with effect from 20.10.2019. The President is further directed to take necessary steps to resume **immediately** all services including security and reception service to those members whose such services were withdrawn and such services shall be provided to the said members until accounts is prepared from 20.10.2019 and thereafter if any member is found defaulter, he may take any step in accordance with law to realize such default amount from the members.

Sd/- Debasis Ghosh

Competent Authority

under the West Bengal Apartment Ownership Act, 1972

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(Debasis Ghosh)

Competent Authority
under the West Bengal Apartment Ownership Act, 1972

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Government of West Bengal

Housing Department

Law & Statutory Cell

New Secretariat Buildings

1,Kiran Shankar Roy Road

Kolkata 700001

HO-23012(11)/19/2020-APARTT CELL

13/11/2021

CORRIGENDUM

In the Order No. HO-23012(11)/19/2020-APARTT CELL dated 12/11/2021 of the undersigned there are some typographical errors. The errors have been rectified and shown in the table below. The order should be read accordingly.

Sl. No.	Page No.	Corrected Entry	Existing Entry
1.	495 Last para 5 th & 6 th line	"...WPA 12406 of 2021 itself which may be treated as answers..."	"...WPA 12406 of 2021 itself which may treated as answers...."
2.	496 3 rd para 1 st line	"(1) If the Association of Apartment owners..."	"(1) If the Association or Apartment owners..."
3.	497 3 rd line	"Apartment Owners or any employee of the State Government"	Apartment Owners or any employee of the Stale Government"
4.	497 4 th line	"...perform the functions of the manager..."	"...perform the functions or the manager..."
5.	498 8 th line	"But in case of Associations registered under the 1961 Act"	"But in case of Associations registered under the 1963 Act"
6.	510 10 th line	"issued a registration Certificate in the name of "Kendriya Vihar II"	"issued a registration Certificate in the name of "Rail Vihar II"
7.	516 6 th line	"....registered under the said Act only and..."	"...registered under the said Act was only and..."

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8.	516 4 th line	"...wrong belief that an unregistered..."	"...wrong belief that the an unregistered..."
9.	516 5 th line	"...Apartment Owners Association" was..."	"...Apartment Ownership Association" was..."

Sd/- Debasis Ghosh

Competent Authority

under the West Bengal Apartment Ownership Act, 1972

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Competent Authority

under the West Bengal Apartment Ownership Act, 1972