

**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 02.12.2022

**ORDER**

This Authority received complaints regarding the functions and activities of South City Apartment Owners Association from various members of that Association through emails dated 02.11.2022 and 07.02.2022. Thereafter this Authority directed the President of the South City Apartment Owners Association to submit written reply against the complaints received by this Authority from some members of the Association

The President by a letter being ref No Ref. No. SCAOA/2022-23/076 dated 30.11.2022 submitted this Authority his written reply against those complaints. One of the complaints was that there was no Special General Meeting to decide the manner of election of managers of the Association as mandated under the **West Bengal Apartment Ownership Bye-laws, 1974**. In **paragraph f** of his reply the President submitted that in case of the South City Apartment Owners Association a ‘detailed methodology’ for holding election for managers has been approved by way of Special General Meeting way back on **5<sup>th</sup> January, 2014**. A copy of the minutes Special General Meeting dated 5<sup>th</sup> January, 2014 was enclosed with his reply.

South City Apartment Owners Association was formed and registered under the **West Bengal Apartment Ownership Act, 1972** on **10<sup>th</sup> July 2012** having registration no **25A of 2012**. The legal provisions regarding election of managers of an Association formed and registered under the West Bengal Apartment Ownership Act, 1972 were provided in clause (3) of bye-law 5 of the **West Bengal Apartment Ownership Bye-laws, 1974** (since superseded by the **West Bengal Apartment Ownership Bye-laws, 2022** on 6<sup>th</sup> April 2022) during the material point of time. Bye-law 5 of the West Bengal Apartment Ownership Bye-laws, 1974 reads: -

**“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.

(2) The number of Managers of a Board shall be **equal to one-third of the number of the apartment owners** of the property concerned but in no case, it shall be less than **three** or more than **twenty-four**.

*Explanation*

(a) Where, in a property, a person owns more apartments than one, he shall, for the purpose of this clause, be deemed to be one apartment owner.

(b) While computing, for the purpose of this clause, one-third of the number of apartment owners of a property, a fraction exceeding one-half shall be deemed to be one whole.

(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.”

Now let us read what is provided in clause (2) of bye-law 3. It reads: -

**“3. Formation of the Association.** — (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;**

(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.

(2) *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.*

*Explanation. — For the purpose of this clause, a person owning more than one apartment, shall be deemed to be one Apartment Owner.”*

*[Emphasis supplied]*

Examined the minutes of General Body Meeting dated 5<sup>th</sup> January, 2014 of the Association. It reads: -

**“Minutes of the General Body Meeting held on 05/01/2014 at 10.30 am held between Tower 1 & Tower 2**

The **President** of the Association **Mr Suryadipta Dutta** took the chair and called the meeting to order. While highlighting the important aspect of the GBM, he mentioned that it was discouraging to see that the attendance was not very encouraging.

.....  
.....

Mr Datta then took up the **adoption** of **The South City Apartment Owners Association Rules** being the next agenda and requested **Mr J P Agarwal** and **Ms Chitra Saha** to take the house through these rules:

Mr. J P Agarwal informed the house that these rules were displayed at the notice boards of all the towers and also sent through e-mail to all the members for their suggestions. It

was also informed to the meeting that a starting line was erroneously omitted in rule 8(2) which read as “Prior to commencement of the election process, the Board shall appoint a Returning” and now incorporated in the said rule.

Few suggestions received from the members were also placed which were as follows: -

1. A non-resident owner can authorize an immediate family member who does not reside in South City Residential Complex to cast vote on his behalf.
2. Pets should be allowed to travel in the service lifts only.
3. Restriction should be placed on use of musical instrument in high pitch which causes disturbance to others as provided in Bye-Laws.
4. Service tax collected on Rs.10000/- should be mentioned in the relevant rule 38.5.1.
5. Timeline for informing to SCAOA about sale of apartment should be mentioned in rule 39.3.1.

After a lot of deliberations, it was decided that: -

A. Suggestion no. 1 was not acceptable as the members thought the family members who reside in South City Residential Complex are only eligible to vote as envisaged in rule 10.1 is the correct proposition.

B. Sub clause (v) to rule 33.1 was inserted stating “No apartment owner / resident shall use any lift other than service lift for carrying the pets”

C. Sub clause (xiv) to rule 33.1 was inserted stating “No apartment owner / resident make any noise or use or play any musical instrument, radio, television or amplifier in such high pitch, or do any work or things, or act or conduct himself in such way, that may reasonably cause irritation, annoyance or disturbance to any other resident or residents”.

.....  
**The members present unanimously passed the SCAOA rules.** It was decided that these rules as passed in the meeting will be circulated to all the members.

.....  
There being no other business the meeting was concluded with a vote of thanks to the chair.

**Aloke Ghosh**  
**Secretary”**

[Emphasis supplied]

On bare reading of the minutes dated 5<sup>th</sup> January, 2014 it is evident that it was not a Special General Meeting under clause (3) of bye-law 5 to decide the manner for election of the Managers of the Board of South City Apartment Owners Association prior to

formation of any Board of that Association. On the other hand, the copy of minutes of the General Body Meeting held on **05/01/2014** reveals that it was signed by **Mr. Aloke Ghosh** being the **Secretary** of the Association and chaired by **Mr Suryadipta Dutta, President** of the Association. Thus, the meeting dated 5<sup>th</sup> January, 2014 was convened by an already existing Board having its President and Secretary. It was not convened by the **apartment owner** presiding over the general meeting referred to in clause (2) of bye-law 3. It further reveals that that this General Meeting was not a Special General Meeting convened within **fifteen days** of formation of South City Apartment Owners Association by the **apartment owner** presiding over the general meeting to form the Association under clause (2) of bye-law 3 of the West Bengal Apartment Ownership Bye-laws, 1974 to decide the manner in which the election of managers of the Association will be done.

The Special General Meeting under clause (3) of bye-law 5 of West Bengal Apartment Ownership Bye-laws, 1974 presupposes that there is no Board of Managers, there is no President, there is no Secretary or other Office-bearers and Managers of the Association. The members of the Association will decide the manner in which the election of managers of the association will be done. After the manner is decided by the members the election of managers will be done 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 community.

Mr Suryadipta Dutta and Mr. Aloke Ghosh were not elected as managers as well as President and Secretary of South City Apartment Owners Association in accordance with law. Now they convened and chaired a Special General Meeting dated 5<sup>th</sup> January 2014 in which there were various agenda. Out of those various agenda one was to adopt South City apartment Owner' Rules in which some manners of election of managers were provided.

On further perusal of minutes, it appeared that the Association has framed **South City apartment Owner' Rules** to administer their Association. No association formed and registered under the West Bengal Apartment Ownership Act, 1972 have power to frame

its own bye-laws or rules or regulations whatsoever. The Act has conferred rule making powers to the State Government under **section 17** of the Act and bye-laws making power only to the Competent Authority under **section 13** of the Act. The bye-laws framed by the competent Authority are applicable to each and every Association formed and registered under the said Act. Section 13 of the Act reads: -

**“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.*

(2) *The bye-laws shall provide for the following amongst other matters, namely:*

*(a) the manner in which the Association of Apartment Owners is to be formed, the election of a Board of Managers from among the apartment owners, the number of persons constituting the Board, the number of members of such Board to retire annually, the powers and duties of the Board, the honorarium, if any, of the members of the Board, the method of removal from office of members of the Board, the powers of the Board to engage the services of a Secretary or Manager, delegation of powers and duties to such Secretary or Manager;*

*(b) method of calling meetings of the apartment owners and the number to constitute a quorum;*

*(c) election of a President who shall preside over the meetings of the Board and of the Association of Apartment Owners;*

*(d) maintenance, repair and replacement of the common areas and facilities and payments therefor;*

*(e) manner of collecting share of the common expenses from the apartment owners;*

*(f) any other matter considered to be necessary for the administration of the property.”*

All the Associations are under legal obligation to administer the Associations in accordance with the Bye-laws framed by the Competent Authority. Competent Authority in exercise of the powers conferred under section 13 of the Act framed Bye-laws. The first one was the West Bengal Apartment Ownership Bye-laws, 1974 which was superseded by the West Bengal Apartment Ownership Bye-laws, 2022 on 6<sup>th</sup> April 2022. As a result the purported Rules namely South City Apartment Owners’ Rules is non-est in the eyes of law and it has no legal sanction or authority or force for any purpose whatsoever.

In view of the facts discussed hereinabove this Authority is of the opinion that South City Apartment Owners Association has failed to perform its functions as mandated under the West Bengal Apartment Ownership Act, 1972 and the Bye-laws made thereunder. This failure on the part of the Association is detrimental to the interest of the Association as well as to its members.

Now, therefore, in exercise of the powers conferred to this Authority under sub-section (1) of **section 16B** of the West Bengal Apartment Ownership Act, 1972 the following **directions** are hereby given 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**.

***Sd/- Debasis Ghosh***

Competent Authority

under the West Bengal 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
- 3. Mr. Sukdeb Chatterjee**, Member, South City Apartment Owners Association
- 4. Mrs. Namita Acharya**, Member, South City Apartment Owners Association
- 5. Mr. Pulak Kumar Mukhopadhyay**, Member, South City Apartment Owners Association



**(Debasis Ghosh, WBS)**

Competent Authority

under the West Bengal Apartment Ownership Act, 1972