

I/194428/2022

Government of West Bengal

Housing Department

Law & Statutory Cell

New Secretariat Buildings

1,Kiran Shankar Roy Road

Kolkata 700001

HO-23012(11)/10/2021-APARTT CELL-Dept. of HO 21/05/2022

Order

This authority received complaints from **Smt Chandrima Karmakar** and 13 other members of **Upohar Luxury Apartment Owners' Association** (the said Association) regarding the functions of the Board of Managers the said Association. Thereafter this Authority by an Order No. HO-23012(11)/10/2021-APARTT CELL-Dept. of HO dated 11.05.2022 directed the President of the said Association to submit a written reply on the complaints by **20.05.2022** to him through email and a copy of the written reply shall also be shared with the complainants.

This authority received a written reply dated 15.05.2022 from one **Nilanjan Das** claiming to be the General Secretary of the said Association on behalf of the President of the Association **Mr. Alope Mitra.**

At the onset it may be stated that the bye-law 11 of the **West Bengal Apartment Ownership Bye-laws, 1974** (Bye-laws 1974) provided the designation of the office-bearers of the Association

I/194428/2022

formed under the West Bengal Apartment Ownership Act, 1972 (said Act). The designations of the office-bearers were the President, Secretary and the Treasurer in the Bye-laws, 1974 as well as in the **West Bengal Apartment Ownership Bye-laws, 2022 (Bye-laws, 2022)**. Bye-law 13 of the Bye-laws, 2022 provides the list of office-bearers of an Association formed under the West Bengal Apartment Ownership Act, 1972. There is no such position as General Secretary. The President of the Association is the Chief Executive Officer of the Association. Clause (4) of bye-law 8 of the Bye-laws, 2022 reads:-

*"(4) 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 be the Chief Executive Officer of the Association**. The other office-bearers of the Association shall also be elected in that meeting. The President shall forthwith forward the names of the President and that of the other office-bearers and Managers of the Board in Form-3 to the Competent Authority for his record."*

However, the written reply dated 15.05.2022 has been considered as the reply of the President of the said Association. On examination of the said written reply it is found that the Annual General Meeting (AGM) dated **24.04.2022** for the year 2020-21 and 2021-22 was held in hybrid mode, that is both in physical as well as in electronic mode. The legal provision regarding AGM is provided in bye-law 5 of the Bye-laws, 2022 which came into force from 06.04.2022. The proviso to clause (2)

I/194428/2022

of bye-law 5 states that:-

*“Provided that if the annual general meeting of the Association cannot be held **physically due to natural calamities or act of God or force majeure or any other disaster** the meeting may be conducted through **online mode.**”*

[Emphasis supplied]

In the instant case there was no such natural calamities or act of God or *force majeure* or any other disaster which necessitated the Association to have its AGM through online mode. Hence the AGM dated 24.04.2022 was held in violation of the statutory provisions. Accordingly, any decision taken on that general meeting has no legal effect.

It is found in the written reply that there is a purported Bye-laws, namely, **ULAOA Bye-laws** passed by the members in a meeting dated 08.12.2016 which governs the functioning of the said Association. The said Act has conferred power only to the Competent Authority appointed under the said Act to frame bye-laws which will be applicable to all Associations formed under the said Act for administering the Association. Section 13 of the said 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.”**

I/194428/2022

[Emphasis supplied]

Hence the purported Bye-laws namely **ULAOA Bye-laws** is a *non est* document in the eye of law and it has no legal sanction or authority or force for any purpose whatsoever.

During the pendency of the examination of the written reply dated 15.05.2022 this authority was moved by some members of the Association, namely, **Smt Chandrima Karmakar, Smt Arunima De, Sri Subir Basak, Smt Nandita Ghosh, Sri Joydev Sengupta** through email stating that they were in receipt of an email from the official email id of the Association on **20 May 2022** in which there were two attachments regarding **(1) Board of Managers (BoM) election guideline, and (2) BoM election ballot**. They shared those two attachments to this authority and requested this authority to take immediate actions to stop the election which is going to be held in contravention to clause (2) of bye-law 8 of the Bye-laws, 2022 which mandates that the election of the managers shall be held by secret ballot.

This authority perused the copy of BoM Election Voting Guideline and the copy of BoM election ballot as mentioned herein above.

The heading of the ballot is reproduced below:-

*"Upohar Luxury Apartment Owners' Association (ULAOA)
ballot for Election of the Board of Members
Tower- __ __ Apartment- __ __ __ __ Name & Signature-*

Option 1 – If you opt for this then pick and choose any 48

I/194428/2022

candidates out of 96. You can't use any other option”

On bare perusal of the ballot, it is evident that one has to write her/his Tower No. Apartment No. and put her/his name and signature on the ballot paper itself while exercising her/his franchise in the election of managers. This very exercise is more than sufficient to disclose who voted whom. Thus the ballot becomes open ballot instead of secret ballot. The basic tenet of election of managers of an Association is secrecy of voting. This is done for the interest of the Association and the members as well. The Bye-law 8 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.”*

Therefore, the proposed procedure of election of managers of the **Upohar Luxury Apartment Owners' Association** for the period 2022-2025 is in violation of the West Bengal Apartment

I/194428/2022

Ownership Bye-laws, 2022.

In view of the facts narrated and legal provisions discussed hereinabove this authority is of the opinion that the Board or Managers of Upohar Luxury Apartment Owners' Association has failed to perform its functions lawfully under the West Bengal Apartment Ownership Act, 1972 and the West Bengal Apartment Ownership Bye-laws, 2022 .

Now therefore, this authority in exercise of the powers conferred to it under sub-section (1) of section 16B of the said Act directs the **President** of the Upohar Luxury Apartment Owners' Association to immediately convene a general meeting in accordance with law so that the members of the Association can decide the detail manner in which and the date on which the election of the managers of the board be held in accordance with bye-law 8 of the Bye-laws, 2022. He is further directed to withdraw immediately the notice/notices issued by the Association regarding holding the election of the managers for the period 2022-2025.

The election of managers of the Association in accordance with law for the period 2022-2025 shall be completed within a month from the date of this direction. The newly elected Board of Managers shall take charge **latest by 1st July, 2022.**

Sd/- Debasis Ghosh

Competent Authority

under the West Bengal Apartment Ownership Act, 1972

I/194428/2022

Copy forwarded for information and necessary actions to: -

1. The President

Upohar Luxury Apartment Owners' Association

upoharluxuryownersassociation@gmail.com

alokkumarmitra@gmail.com

2. Smt Chandrima Karmakar

Member, Upohar Luxury Apartment Owners' Association

biswas.chandrima@gmail.com



(Debasis Ghosh)

Competent Authority

under the West Bengal Apartment Ownership Act, 1972