

I/153522/2021

Government of West Bengal

Housing Department

Law & Statutory Cell

New Secretariat Buildings

1,Kiran Shankar Roy road

Kolkata 700001

HO-23099/2/2021-APARTT CEL

30/09/2021

ORDER

This Authority received a complaint dated **29.03.2021(complaint)** from **Mr. Achintya Kumar Banerjee** of apartment No. A-7B (**the complainants**) who stated that he is a member of **Sarosi Flat Owners Association (the Association)** having Registration No 000652019 of 2019 dated 19/09/2019 under the West Bengal Apartment Ownership Act, 1972 (**the said Act**).

The complaint is that the Association has convened a special general meeting of the members on **03.10.2021**. The complainant states that the calling of the special general meeting and its agenda suffer from illegalities which he narrated in his complaint. They are recorded herein below:-

“1. Firstly a whatsapp message was posted in our resident wall on 26th September, 2021 by the President informing about a SGM on 29th September, 2021, without any agenda whatsoever.

2. On 27th September,2021 the same message was served as notice (hardcopy) to all residents, a copy of which was sent to you as attachment in the above mail.

3. On 28th September, 2021 the Secretary informed all residents through whatsapp that the date has been postponed to 3rd October, 2021 citing 29th as weekday. Again agenda wasn't declared

4. Today a notice issued by the Secretary came up in notice

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board of our two towers mentioning the agendas of the upcoming SGM on 3rd October,2021.

As far as The West Bengal Apartment Ownership Act, 1972 is concerned we believe that -

A) A SGM can not be convened on 03/10/2021 by issuing the notice on 27/09/2021. Clear seven days notice is not maintained.

B) There is no scope to introduce a Bye-Laws for the Association any more when the State Government has already defined the same.

(C) Association can not empower the BoM to re constitute the BoM itself by removing any manager.

The law related to convening a a general meeting including an annual general meeting has been provided in clause (6) of the west Bengal Apartment Ownership Bye-laws, 1974 **(the Bye-laws)**. It reads: -

*“(6) A notice of a general meeting including an annual general meeting stating the place, date and hour of the meeting together with a list of business to be transacted thereat, **shall be sent to every member at least seven clear days** before the date of the meeting and **no business other than those mentioned** in the said list shall be transacted at such meeting.” (Emphasis supplied)*

In view of the legal provisions stated herein above a general meeting **stating the place, date and hour of the meeting** together with a **list of business to be transacted thereat**, shall be sent to every member **at least seven clear days** before the date of the meeting. Any notice of general meeting without stating the **list of business to be transacted thereat** is not a lawful notice under the said Bye-laws. There must be **at least seven clear days** between the date of lawful notice and the date of general meeting.

Regarding the business to be transacted regarding of introduction of bye-laws in the general meeting it is stated that no association has power under the said Act to frame its own Bye-laws. Section 13 of the said Act has conferred the power of

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framing of Bye-laws to the Competent Authority under the said Act. Sub-section (1) of section 13 of the said Act reads:-

*“(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)*

In view of the legal position stated herein above the undersigned in exercise of powers conferred to him under **sub-section (1) of section 16B** of the said Act directs the President of the said Association to cancel the purported notice of holding special general meeting on **03.10.2021** and issue fresh notice of general meeting in accordance with law. No business of framing its own Bye-laws be transacted in that general meeting as the Association has no legal authority to do that.

Sd/- Debasis Ghosh

Competent Authority
under the West Bengal Apartment Ownership Act, 1972

Copy forwarded for necessary information and actions: -

President: **Mr. Sanjay Choudhury**

Email: sanjaychowdhury.berger@gmail.com

Secretary: **Ujjwal Chakravarty**

Email: ujjwalchakravarty@gmail.com

(Debasis Ghosh)

Competent Authority
under the West Bengal Apartment Ownership Act, 1972

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Copy forwarded for necessary information

Mr. Achintya Kumar Banerjee,

Email achintyakumar50@gmail.com



(Debasis Ghosh)

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