

**Subject** Formation of Apartment Owners Association for Urbana Phase 1  
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**Date** Tue, Aug 17, 2021 at 10:29 AM

Mr. Pradeep Surekha ji,  
Director,  
BNRI Complex Ltd.

Kolkata

Date: 16 August, 2021

Dear Sir,

Sub: Formation of Apartment Owners Association for Urbana Phase 1.

As you are aware, the apartment owners of Urbana Phase 1 recently elected a new body of office bearers to Urban Welfare Association (UWA). UWA carries the mandate of majority of the apartment owners to expedite the formation of the Apartment Owners Association (AOA) under the WB Apartment Ownership Act, 1972, hereinafter referred to as 'Act', at the earliest.

Rule 2A of the WB Apartment Ownership Rules, 1974, hereinafter referred to as 'Rules', read with Section 2 of the Act, requires that "every owner shall submit their property (by way of submission of Form A) within three years from the date of Completion Certificate". This period of three years is exhausted and the owners continue to default on compliance to the provisions.

As responsible and reputed promoters of the state of West Bengal, we are confident that you will more than meet all your obligations under the law. We draw your attention to section 10 of the WB Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, hereinafter referred to as 'Promotion Act', that reads as "after obtaining occupancy certificate of the building and within two months after a minimum number of persons required to form an association have taken flats, the promoter shall take steps for formation of association of apartment owners".

The elected body of UWA has formed a task force with the specific purpose of co-ordinating with the promoters and assist them in complying with the above regulations of the Act and the Promotion Act. Towards this, we have taken professional opinion from a renowned legal counsel and met in person, the Competent Authority under the Act. We now request a meeting with you in person at a date and time mutually convenient within this week. The following points are on the agenda:

1. **Registration of apartments:** In your earlier letter dated 13 July, 2019, you had stated that the

association will be formed only by 51% of the registered owners. Our attention has been drawn to the explicit and unambiguous definition of "Owner" under the Act to section 3 clause (ia) to include deemed owners of apartments "even though the document for purchase or lease of such property or part thereof or apartment has been registered or not". This renders the contention of registration as a necessary condition, void ab initio.

2. **Phase association:** In the earlier letter you had contended that the Act does not provide clarity on the maintenance and management of the common area, common to all phases of the association. The legal advice to us is that by the amendment of 2015 to the Act of the definition of "property", provision of formation of phase association has been granted under section 3, clause (k), Explanation II. Further amendment of 2019 to the Act has defined "Federation" of associations under section 3 clause (hh) and common areas of the federation under section 5A. The definition of "built up area" under section 10, sub section (1), clause (g) has been amended in 2015 and again in 2019 by insertion of an explanation to clarify the scope and manner of management. Thus, the law is adequate for forming and managing phase associations.

3. **Joint sector Company:** In the same letter, you had stated that the promoters are a joint sector Company with nominees from the State government. We have sought legal opinion on whether a joint sector Company with nominees from the State government, is granted a special status or exemption, in full or part, to the provisions of the Act and the Promotion Act. We are advised that under section 1 clause (2) of the Act as well as the Promotion Act, it is clarified that the jurisdiction "extends to the whole of West Bengal" and without any exception to the character and legal status of the promoter body. We seek your confirmation on whether you have a different understanding.

4. **Power of Attorney:** We have been informed by our legal counsel that there is a specific format of Power of Attorney, hereinafter referred to as 'POA', required for the submission of Form A under sub rule (1) of Rule 3 and sub rule (1) of Rule 5 of the Rules, as a part of the Declaration under section 2 read with section 10 of the Act. The Competent Authority, vide a Circular dated 30 April, 2021, has issued a detailed Guideline detailing a procedure for filling up Form A and Form 1. Under the section titled "Documents Required" on page 2 of the Circular, point 5 mentions of POA, as per format. The format shared by our legal counsel differs from the format of the POA that your office has collected till now from the apartment owners. Collection of the POA from the majority of the owners is a laborious and time consuming process and may hinder the formation of the association. We will like to work with you and assist you in all possible manner in reaching out to the owners and arranging to collect the POA from them and intend to discuss with you on how we propose to go ahead with this arduous task.

5. **Content of Form A and Form 1:** The required contents of Form A and Form 1 as detailed in the Act and the Rules and further elaborated in the Guidelines of 30 April, 2021 are already available with you. We will like to go through them and for that purpose, at a later date, will seek copies of the documents from you. In the meeting we will like to understand how you intend to apportion the area common with the future phases and the Federation.

6. **Any other related point:** Any other point related to association formation that you think is relevant or remain your concern, will also be discussed.

As mentioned earlier, we are keen to form the phase AOA for Urbana Phase 1 at the earliest. We have set for ourselves a deadline of March 2022 and will work jointly with you towards achieving that target. We will jointly list out the tasks and publish timelines that we will adhere to. Our mutual co-operation will make the entire exercise a success.

We are confident that a reputed and very professional promoter group that you are, this process of association formation will become a model for future promoters and associations to follow in the State of West Bengal. On our part of apartment owners, responsible and exclusive that we like to be, our approach will be collaborative.

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We desire to remain, as always, your trusted and most vocal brand ambassadors for all your future projects.

Pradeep Bhatia

President UWA