Chapter – VI

CONCLUDING REMARKS AND OBSERVATIONS
As the housing problem in the country is severe, there is a tremendous need for realization of social objective of securing adequate and reasonable housing for all. The problem can not be left for its solution to the private Corporate Sector alone and so involvement of the State in financial, technical and legal aspect is necessary. From the foregoing chapters, so far as the legal aspect is concerned, it reveals that there is an urgent need of amendment of existing provisions of Co-operative Laws in the Co-operative Sector of Group Housing. Some provisions of Apartment Ownership Act, its Rules with Bye-Laws along with Building Regulation Act should also be amended in the private sector of Group Housing. In West Bengal, therefore, relevant provisions in the West Bengal Co-operative Societies Act, 1983, its Rules, 1987, the West Bengal Apartment Ownership Act, 1972, its Rules, 1974 with Bye-laws, 1974 and the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 and its Rules, 1995 should be amended by way of addition, alteration and omission.

The main object of the treatise is to suggest new provisions to alter, insert and modify the above Co-operative Law and Apartment Ownership Law. Besides, in the existing laws, some provisions have been kept in the Rules and the Bye-laws, which are exclusively out of the purview of the Act. These Rules or Bye-laws, if challenged in courts of law, may be declared void. In some instances, Courts observed in the same way
declaring some of such Rules or Bye-laws void. So, if those Rules or Bye-laws are to be retained, there should exist enabling clause in the Act. In this Chapter, amendments in the form of addition or alteration or modification shall be proposed item wise on the basis of observations made in previous chapters.

6.1 Proposed Amendment in West Bengal Co-operative Societies Act, 1983 and West Bengal Co-operative Societies Rules, 1987:

I. It has been discussed in Chapter IV supra that in Section 85(4), West Bengal Co-operative Societies Act, 1983, a person joining in formation of a Co-operative Housing Society shall be termed as "Promoter" and the leader of the Group Housing is called the "Chief Promoter". The word "Promoter" has also been used in West Bengal Apartment Ownership Act, 1972 and West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993. The function of "Promoter" in the Co-operative laws is quite different to that in the later two laws. Hence, suitable name should be substituted in place of "Promoter" as has been used in Co-operative law to differentiate meanings in the respective laws. Instead of "Promoter", the word "Founder or Organiser" may be substituted. The definition of Founder or Organiser (any
word of the two) may be a person who with others procures land by purchase or perpetual lease for more than 30 years for the purpose of construction of a Tenant Ownership Project or a Tenant Co-partnership Project or purchases a building or buildings for residence.

II. To the Rule 135 of West Bengal Co-operative Societies Rules, 1987 giving rise to 5 items, some more items as functions of Founder may be added like:

i) determination of common areas and facilities in consonance with the scheme of the project.

ii) procurement of land in the name of all founders (but not in the single name of the Chief Founder).

III. Rule 131 of the said Rules, 1987 should be amended so that any founder before registration can not be unreasonably or illegally driven out according to sweet will or caprices of the Chief Founder, Chairman or Vice-Chairman and the Treasurer. For this purpose, the Chief Founder shall furnish to the Registrar of Co-operative Societies Cash Account of the proposed housing society showing details receipt of money from Founders and expenditure thereof within first week of every month till its registration. Further at the time
of agreement with the vendor of land or building, all founders shall sign the Deed of Agreement. When any Founder has not paid the money as fixed to be contributed in full, he shall not be included in the party to the agreement, his part-payment shall be refunded.

IV. If the Chief Founder, Chairman, Vice-Chairman and the Treasurer are unable to procure any land or building or tenement within a specific period, then there should be some provisions in the Act or the Rules for procedure for closure of the functions or activities done by them. The name of the proposed society as approved by the Registrar should remain valid for six months within which period, the proposed society must be registered. The Registrar may have power to extend the said period of six months on cogent ground. When the Founders dissociate due to failure of getting their proposed housing society registered, the accounts of the proposed society must be squared up by refunding money or by realizing from any Founder the required contribution which was due from him towards preliminary functions. Now in the Co-operative Act, no provision is in existence. So, the above provision should be included as a new insertion either in the Act or in the Rules.
so that report of closure of the activities is finally submitted to the Registrar.

V. Under Rule 131 West Bengal Co-operative Societies Rules, 1987, the Chief Founder shall take steps for submitting an application for registration of the proposed Housing Society to the Registrar. But at present, neither in the Act nor in the Rules, the manner how and with which documents, such an application shall be submitted to the Registrar, is not mentioned. So, a new provision should be added in the Rules as Rule 131B. The application shall be in accordance with Section 11 and 12 of the Act read with Rule 8 and supported by following documents:

i) A photocopy of resolution of Founder proposing to form a Co-operative Housing Society with names, addresses and signatures of all Founders attested by the Chief Founder, Chairman, Vice-Chairman and Treasurer.

ii) Photocopy of approval of name of proposed society;

iii) Copy of Agreement; (In case of land of Govt. or any authority, a letter of assurance of sanctioning land)

iv) Documents to prove title of the Vendor;
v) A tentative plan showing division of plots in case of a proposed tenant ownership project or demarcation of flats in case of a proposed tenant Co-partnership Project with an estimate of cost of construction showing sources of finance.

Every Founder shall submit with the application following documents:

i) An Affidavit as provided in Section 85(3);

ii) Two recent passport size photographs duly attested by a Govt. Officer.

iii) A salary certificate from employer, if he is in service. For unemployed persons, source of incomes shall be shown.

For house-wife, his husband’s income shall be shown.

iv) A statement of his own contribution made till the date of application.

v) A copy of schedule of payment of contribution as decided in the meeting of Founders.

VI. Further when the Registrar registers a Co-operative Housing Society on application as above, the first and foremost task of the Chief Founder and other Founders is
embodied in Section 86 and Rule 132. After constitution of a Board under Section 27 of the Act, the charges held by the Chief Founder, the Chairman, Vice-Chairman and Treasurer shall pass to newly elected Board. There are some agenda of the first Board Meeting which have been specified by above Section 86 and Rule 132. But those are not adequate. An important agendum is to be added with those as “Review of contributions of money made so far by the Founders and default, if any”.

The agendum (c) in Section 86 that “Finalizing the policy and mode of allotment of plots, houses or apartment in multi-storied building” – should be deferred for decision in any special or Annual General Meeting after getting the plan duly sanctioned by competent Authority. In the case of tenant ownership project in which plots of land are allotted, sanctioned plan of whole land is not necessary. If land is purchased by the society, that can be fragmented and plots can be allotted to members of the society. After registration of the Co-operative Housing Society, the name, “founder” shall automatically cease and he shall be termed as member.

VII. After getting the land or building or tenement registered in the name of the Co-operative Housing Society, there shall be necessity to divide land into plots either of equal size or of different sizes in the case of Tenant Ownership Project.
In the case of Tenant Co-partnership Project, a plan of building or buildings comprising of several apartments / flats shall be got sanctioned by the appropriate authority. In the case of building or tenement, those are not necessary except allotment. In the case of building of which apartments or flats are already owned by members of a Cooperative Housing Society, there is no necessity of allotment of sanction of a plan as is required in other cases.

Hence, before allotment of plot of land or flats in a building which is to be constructed on the land so procured, tentative cost of plots or flats are to be determined of course subject to alteration. After determination of cost of an individual plot or flat according to the location and advantages or disadvantages, the matter of allotment should be undertaken by General Body of members in an Annual General Meeting or in a Special General Meeting.

A specific agendum for allotment of plots of flats in multi-storied building should be included in the Special General Meeting such as “to allot plots of land to each member on the basis of lottery to be conducted equitably – to earmark common areas and facilities”.

Thus once allotment of plots or flats to be constructed or already constructed is made, all members shall be definite in their own earmarked
plots or flats. At present, all members in ordinary cases are to bear equal costs for plot of land or flat in a multi-storied building irrespective of location or facilities. If different costs are determined beforehand, no member shall have grievance to his allotment. Fixation of cost shall be done by the Architect engaged for construction of multi-storied building. For allotment of plot, any technical person may assess value of plots differently on the basis of their positions having differential facilities.

So, Rule 134 W.B.C.S. Rules, 1987 under nomenclature of “Allotment of plots or houses or apartments” should be amended so that the power of the Board to allot houses or apartments is withdrawn and is given to the General Body of members and thereby there should be no scope for an appeal to the General Body for any member’s dissatisfaction. Of course, the General Meeting in which such allotment by lottery is to be done, should be attended by all members. Sometimes, the Board may issue notice of such a General Meeting in a pretended manner so that few members get opportunity to attend such General Meeting and allotment is done by those few members arbitrarily.

VIII. While allotment of plot or flat is made on the basis of a sanctioned plan, the common areas and facilities should be kept aside. In such common areas and facilities the members should have equal or proportionate rights. In the Co-operative law every member shall have the right to use
the common areas and facilities which have been embodied in Section 87(5). But this provision does not specify which items are common areas and facilities. In the Rule also there is no such explanation. Hence, following addition should be made either in the Act or in the Rules:

(A) Common areas and facilities in a Co-operative Housing Society containing tenant ownership project shall mean and include:

   i) Remaining land except the total land which has been allotted to all members of a Co-operative Housing Society.

   ii) Internal common passage, lights on it, sewerage, installation of common services such as generator, light.

   iii) Office of the society, parks, playground, market, community hall, security arrangements, place of garbage, pond etc.

   iv) Such other common facilities as may be specially arranged for benefit of all members:

(B) Common areas and facilities in a Co-operative Housing Society containing tenant Co-partnership Project shall mean and include:
i) Land on which the building is located and all easements, rights and appurtenances belonging to the land and building.

ii) Foundations, columns, grinders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire escapes and entrances and exits of the building.

iii) Basements, collars, yards, gardens, parking areas, shopping centers, garages, storage spaces, etc.

iv) Premises for taking rest or lodging of security personels and other employees.

v) Installation of common services such as generator, light, power, gas, hot and cold water, heating refrigerator, air conditioning, sewerage, etc.

vi) Elevators, tanks pumps, motors, compressors, pipes and ducts and in general all apparatus and installations existing for common use.

vii) Such other common facilities as may be specially arranged for benefit of all members.
viii) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

In the Bye-laws, descriptions of above items in details should be included to specifically segregate the common areas and facilities.

IX. From available incidents, it has been gathered that before registration of a Co-operative Housing Society and construction of housing project, the persons in the helm of the proposed society could not give proper account of money received from the promoters (which now has been suggested to be “founders”). Sometimes, some Founder pays money without proper receipt. Moreover, some of them leaves signed blank papers to the Chief Founder or the Chairman, Vice-Chairman or the Treasurer and these papers are used as resignation letters. If after registration of a Co-operative Society, there arises any dispute among members and outsiders having transaction with the society and the society, this is adjudicated by the Registrar under Section 95 & 96 of the West Bengal Co-operative Societies Act, 1983. But, if before registration any dispute arises as to propriety of expenditure made by Chief Founder or as to alleged defalcation of money contributed by all Founders,
there are no provisions for speedy and cheap adjudication like Section 95 & 96. So, it is suggested that a Forum should exist for decision of such disputes before registration of such Co-operative Housing Societies and there should be specific provisions for compensation and penalty caused due to above misdeeds or offences. Registrar may be the adjudicating Forum in such pre-registration disputes in directing to make good the eroded money with compensation.

X. For quasi-criminal acts done by the Chief Founder or any Founder (now promoter) or persons involved in the formation of a Co-operative Housing Society, there should be a new provision for imposing penalty upon delinquent person. So, any founder who commits a criminal breach of trust in respect of any account of money as contribution, advanced payment or deposit made by Founders, shall at the instance of any Founder or in a proper case by the Registrar or any of his authorized officer, on conviction before a Magistrate shall be liable to a fine or to a term of imprisonment or with both.

This provision shall apply notwithstanding the adjudication of any dispute pending before the Registrar.
Again, Rule 136, West Bengal Co-operative Societies Rules, 1987 provides for cessation of membership on some grounds but these grounds are not exclusive. Besides, this Rule is silent how cessation of membership of a person shall be made effective, when he does not quit the housing society or does not transfer his share or surrender share along with the plot of land with house, if any or flat as the case may be. So suitable amendment of the Rule 136 is necessary in two ways viz. one by adding more grounds for cessation of membership and the two providing procedures how such cessation may practically be executed and effected. Hence, the added ground of cessation shall also be for swearing false affidavit under Section 85(3) or subsequently acquiring other plot of land or flat. Moreover, the person who has falsely sworn such an affidavit should be prosecuted with quasi-criminal case at the instance of the society or the Registrar suo-moto.

The cessation of membership shall be effective from the date when a resolution is adopted for the same in a meeting of a Board in which a specific agendum for the purpose shall be included in the notice.
When cessation of membership of a person has been decided, the person shall within a specific period (May be three months) from the date of decision, transfer his share and the plot of land or flat to another person eligible to be a member of that society under provisions of Transfer of Property Act, 1882. In the event of his inability to transfer the share and the plot of land or flat within the said period, he shall surrender the share and the plot of land or flat to the society within one month after expiry of that period. The Board shall transfer the plot of land or flat to any person eligible to be a member of that society and the sale proceeds shall be re-imbursed to the member whose membership has been ceased provided the cost of processing the transfer incurred by the Board and 0.5% of the sale proceeds shall be deducted from the sale value as the State Govt. under Rule 142, West Bengal Co-operative Societies Rules, 1987 issued notification allowing a Co-operative housing society to receive a transfer fee @ 0.5% of sale value of the flat.

XII. The matter of joint membership has been defined in Explanation to Section 2(28). It includes (i) husband and wife, (ii) father and son or unmarried daughter, (iii) mother and son or unmarried daughter etc. This definition is meant
to be applicable to all kinds of Co-operative Societies. But in the case of a Co-operative Housing Society, its applicability is not clear and faces problem while partition of the plot of land or flat arises. If a person is a member, holds a plot of land, constructs a house thereon and has three sons, then after his death the joint membership may be allowed to two sons in the father’s place. But what the third son shall do is not clear. In a tenant ownership plot of land, a three storied building may solve the problem and if one of them becomes a member and others remain as nominal members, the problem may be solved, if the same may be embodied in the co-operative law. But in case of a tenant co-partnership project, a flat can not be divided into three so that all of them can occupy it severally. The problem cannot be solved in the later case. Only family settlement may solve the problem. On the other hand, if joint members are allowed to the pair of brother and brother, sister and brother, then two separate families cannot live together in an individual residential flat. Hence, the explanation of joint members as made in Section 2(28) should be suitably amended in case of Co-operative Housing Societies. Pairs may be the following:
i) Husband and wife;

ii) Father and son;

iii) Father and daughter (married or unmarried)

iv) Mother and son.

v) Mother and daughter (married or unmarried)

And in the event of death of any one of the joint members, the survivors shall be the sole owner of the plot of land, house or flat, as the case may be, to the exclusion of other legal heirs of the deceased joint member.

XIII. In the Chapter IV, the matter of “disposal of land or apartment or house of a member in the event of his death” has been discussed. There are several problems in inheritance of the property in a Co-operative Housing Society. So several amendments to Rule 127 and Section 80 are required.

First of all, the matter of nomination may be dealt with. The manner how a member shall nominate a person shall be specific and so a new Rule in Special Chapter on Co-operative Housing Societies may be added. The content of the new insertion may be on the basis of following lines:

A member of a Co-operative Housing Society shall in accordance with the provision of Section 79, nominate in writing in the Form which
shall be prescribed in the Rule. To one person or two in accordance with, Section 2(28) belonging to his family including his married and unmarried sons and daughters, the share and the plot of land or house or flat shall, on his death, be transferred under provisions of this Act.

If the nominee is a minor at the time of nomination, he shall also name the natural guardian or on their death another person among his successors who shall administer the land or flat or house after the member's death. The natural guardian (father or mother in the event of father's death) shall act on behalf of the minor if the later is benefited till attainment of majority. Otherwise, the membership of the minor shall remain locked in for the period till he attains majority so that the society shall not take any recourse of ordinary law which may be against the minor's benefit. Otherwise, the land, flat or house shall be governed by the Hindu Minority and Guardianship Act, 1956 (32 of 1956) in case of a Hindu or by any other similar law in case of others. If the member has made a will in favour of any of his successors in respect of the share and land or flat or house, he shall send a copy of the will to the Co-operative Housing Society and to the person in whose favour the will has been made. The nomination shall not amount to a gift or a will in respect of the share and land, or flat or house. On the death of the member, only occupancy right shall confer to the nominee (s) and the succession to the said share,
land, flat or house shall be applicable according to the law of succession in which he is governed or wills.

The Co-operative Housing Society on receipt of the particulars filled in the Form as said earlier shall preserve the same and issue a receipt thereof to the member. The member shall give a copy of the filled-in-form along with a copy of receipt of the Co-operative Housing Society to the nominee. The member shall also fill up in the register for this purpose kept in the society and sign it. The filled-in-form and signature of the member shall be attested by the Secretary / Chairman on the date on which he signs. The member may change the nominee at any time by filling up the prescribed Form in the above manner.

After death of the member, his nominee shall, within a specific period from the date of death, apply to Co-operative Housing Society for membership in place of deceased member, if he is eligible to become a member under this Act and Rules. On receipt of this application, the Board of the Co-operative Housing Society, shall disposed of the application within one month from the date of receipt of the application either by approving his membership or refusing it showing ground of such refusal. Before refusal of the application, the applicant shall be given an opportunity of being heard.
Where the Co-operative Housing Society refuses or fails to give approval of member of a nominee who has applied duly, may prefer an appeal within a specific period from the date of communication of the refusal or from the date of receipt of the application by the society to the Registrar. The nominee shall pay service and maintenance charges to the society and continue to pay such charges till disposal of the appeal.

If the nominee is not willing or eligible to become member in the society and does not turn up, the Co-operative Housing Society shall give notice to the nominee and other successors as were named by the deceased member.

If, even after receipt of notice the society does not receive any application or communication either from the nominee or from the successors, the society shall obtain permission from the Registrar for transfer of the plot or house or flat to any person eligible to be a member of the society. The sale proceeds shall be kept aside as the Registrar shall direct. Such sum minus the processing cost shall be disbursed to any legal claimant with his approval.

The nominee or the successors not willing to be a member of the society, shall with the consent of the society transfer the membership in accordance with law.
XIV. As the Co-operative law now in vogue does not provide elaborated regulations of letting out a plot of land or house or flat, there should be added specific provisions in this respect. In Chapter IV, the entangled position among the member-landlord, tenant and the society after a member lets out his plot of land, house or flat has been discussed. To avoid such unpleasant situations, Section 88 should be enriched with some other relevant provisions.

As there is no prescribed manner how a member intending to let out his plot of land or house or flat shall apply to the Co-operative Housing Society and the Registrar and how the society and the Registrar shall dispose of such application in absence of any Rule in this respect, there should be added some provisions in the Rules. A new Rule like 142A may be inserted in the West Bengal Co-operative Societies Rules, 1987 in the following way:

A member of a Co-operative Housing Society may let out his plot of land, house or flat if he has already paid all charges due to the society. He shall apply to the society with documents as below:

i) Documents showing the grounds as specified in Section 88 for letting out.
ii) An agreement between the member and the proposed person to be the tenant in accordance with the West Bengal Premises Tenancy Act, 1997 if applicable in the area where the society is located.

iii) The credential of the proposed tenant and particulars of others of his family who will reside in the house or flat.

iv) Any other document as may be necessary to the society in consideration of the application for letting out.

No person or company or body corporate other than an individual person shall be a tenant and no plot of land, house or flat shall be used for non-residential purpose.

The Board of a society on receipt of an application from a member intending to let out his plot of land, house or flat shall within a period of 30 days from the date of receipt of such application dispose of the same either by giving consent of letting out or refusing it, showing the reason of such refusal. If the society gives consent, it shall send the application with its consent to the Registrar for approval.

Where the Co-operative Housing Society refuses or fails to give consent for letting out by the member and the applicant intends to appeal to the Registrar against such refusal by or failure of the society, an appeal may be preferred within 30 days from the date of communication of the
refusal or within 45 days from the date of submission of the application to the society.

On approval of the Registrar for letting out house or flat, the member and the tenant shall enter into an agreement. If the approval stipulates some other terms and conditions, those shall be inserted in the original agreement. The agreement in writing shall be executed by them and a copy shall be sent to the Co-operative Housing Society for record.

The member who lets out his plot of land, house or flat shall deposit an amount of 10% of the total rent or compensation or income in respect of the same to the society. At the expiry of the agreement of letting out, the tenant shall vacate the plot of land, house or flat within seven days thereafter. For renewal of the original agreement of letting out, the member shall de novo obtain approval of the Registrar, otherwise the tenant shall be treated as an unauthorized occupier.

Any dispute concerning affairs of the society being a subject of Civil litigation among the member, the tenant, any other member, the society, an employee of the society shall be decided according to Section 96 & 97 of the Act.

XV. In Chapter IV it has been discussed that transfer of a plot of land, a house or an apartment may be made by a member in Section 85(9) and in the corresponding Rule 142. But there
is no mention with what kinds of documents, a member intending to transfer his plot of land, house or apartment shall be required to apply to the Co-operative Housing Society. In this case he is to enter into an agreement with a person who is otherwise eligible to be a member. Besides, the member can, in lieu of direct transfer to a new person, surrender to the Co-operative Housing Society and in turn the society may transfer to a new person. The procedure of giving consent of the Society and approval by the Registrar should also be embodied in the Rules. So Rule 142 should be elaborate with following essentials:

A member may apply to the Co-operative Housing Society for transfer of his plot of land, house or apartment or flat in multistoried building with following documents:

i) An agreement between the member and the person to whom the transfer is proposed to be made;

ii) A proposed resignation letter of the member with reasons for such transfer (requisite documents are to be enclosed).
iii) A photocopy of the Registered Deed through which the member became the owner of the plot of land, house or apartment;

iv) A no-objection certificate for such transfer from the West Bengal Co-operative Housing Federation or any financial institution or his employer where the plot of land, house or flat is mortgaged or charged to such institution or his employer;

v) An application of the proposed transferee for membership of the society under Rule 118;

vi) An affidavit of the proposed transferee in accordance with Section 85(3);

vii) 3 copies of passport size of photos of the proposed transferee.

viii) A bio-data of the proposed transferee with particulars of name, address, father’s / husband’s name, names with ages of other members of his family, profession, details of place of employment or business.

On receipt of the approval from the Registrar for the proposed transfer, the member shall execute a deed of transfer under the provisions
of the Registration Act, 1908 within six months from the date of approval of the Registrar. Otherwise, the approval shall automatically be cancelled.

Registration of a Deed of transfer of plot of land, house or flat in a Co-operative Housing Society under the Registration Act, 1908 shall not be allowed by the registering authority under that Act without production of approval of the Registrar.

It has been discussed earlier that a member of a Co-operative Housing Society may transfer his plot of land, house or flat through the society instead of direct transfer with the consent of the society and approval of the Registrar. Otherwise, the member at first may surrender the plot of land etc. to the society and the society in turn transfers or re-allots it to any new person by inducting him as a member in place of the member who surrenders it.

But in present law neither in the Act nor in the Rules, there are specific provisions of transferring such plot etc. through the society. Hence, such proposed provisions should be inserted in the Rules.

A member willing to transfer his flat etc. may surrender it to the society, and the society shall refund the money which he has already paid to it along with an interest at the prevailing Savings Bank rate.

Where the society has no fund return the money, the society may receive money from a person to whom the share with plot of land, house or
flat may be transferred. It is important that the consideration money of the transfer shall not in any way be less than the prevailing market value of the plot of land, house or flat.

XVI. In many of Co-operative Housing Societies, there are facilities, of garages for parking by-cycles, two wheelers or four wheeler cars. But in most of such societies, number of garage spaces are inadequate in comparison with the number of vehicles owned by the members. As a result, some members get allotment where others remain in waiting. Besides, at the initial stage, some influential members specially the office bearers manage to allot such garage spaces in favour of themselves and their close members. As a result, dispute arises. While such disputes are preferred for adjudication, the Arbitrator finds no provision in the law so that he may lawfully decide it. As a result, he is to depend on his good conscience, equity and justice. But had there been specific provisions on allotment to such garage spaces, such disputes might not arise or if it arises, decision might be based upon law. Hence, a new provision should be embodied in the Act or in the Rules wherever it matches in the manner detailed below:
The garage spaces of a Co-operative Housing Society shall be allotted for the purpose of keeping vehicles to the members who are willing to take such spaces by way of lottery. These spaces shall be re-allotted by the same way of lottery at every three years and at a rent and premium as may be specified. If after allotment of garage spaces, vacant garage spaces are still available, the society may let out such spaces to any other member who has already been allotted a space but owns a second vehicle at a rent as fixed by the General Body.

Where after allotment of garage spaces, there is still vacant garage spaces, the society may let out such spaces to any non-member at the rate fixed by the General Body. Shops or any such spaces shall be allotted in the same manner.

This Rule should not apply to a member of a Co-operative Housing Society who has plot of land, house or flat with a garage space as an inseparable portion of his ownership.

A member in a tenant Co-partnership Society while transferring his house or flat may separately transfer to two transferees, one of whom may purchase only the house or flat and the garage space may be transferred to the other transferee or the Co-operative Housing Society. When the garage space is transferred to the Co-operative Housing Society, it may be re-
allotted to any other member or outsider. After expiry of three years, fresh
allotment of garage spaces, shops etc. should be made.

XVII. In Section 85(12), West Bengal Co-operative Societies Act,
1983 the matter of any alteration or addition or repair to
any house or an apartment in a building of a Co-operative
Housing Society is stated. Application for the purpose has
been said to be preferred to the society in prescribed
manner. But actually, in the Rules, there is no such
prescription. Hence there is a gap. Therefore a new Rule
should be inserted in the relevant chapter of the West
Bengal Co-operative Societies Rules, 1987 in following
language:

1) A member of a Co-operative Housing Society
having separate plot of land in a tenant ownership
project may alter or add to his house with prior
intimation to the society and his adjacent
members with a new plan of such addition or
alteration duly sanctioned by the Corporation or
Municipality or Panchayat or the Competent
Authority, as the case may be.
Where a member has any objection in the proposed alteration or addition, the Board of the Society shall amicably settle the matter or if any such amicable settlement is not arrived at, the Board may send its observation to the plan sanctioning authority.

A member of a Co-operative Housing Society having separate plot of land in a tenant ownership project may repair his house already constructed according to the plan sanctioned by the Sanctioning Authority.

2) A member of a Co-operative Housing Society having a flat in a tenant Co-partnership project shall not make any alteration or addition or repair to his flat except with the prior approval of the Society. He shall apply to the Co-operative Housing Society with particulars of the alteration or addition or repair proposed to him. The Board of the society shall give a notice to the members likely to be affected by the proposed alteration or addition or repair and such members may submit their objections, if any, within a specific time.

The Board shall in its meeting decide to give consent or refuse within a specific time.
3) Where the Co-operative Housing Society refuses to give consent for alteration or addition, the member may prefer an appeal before the Registrar within a period, as may be prescribed. The Registrar shall dispose the appeal within a prescribed period by way of giving approval for the proposed alteration or addition or repair of the flat of the member or refusing it stating reasons.

Where the Co-operative Housing Society gives consent to the proposed alteration or addition or repair, the member, after getting such alteration or addition duly sanctioned by the plan sanctioning authority, shall undertake the construction with intimation to the society.

XVIII. Merely in Rule 152(2), West Bengal Co-operative Rules, 1987, cost of maintenance, repair or replacement of common areas and facilities have been said to be apportioned according to carpet area. But this is not scientific as in Chapter IV supra, the matter has been elaborately discussed. The item should be sub-divided as (1) Essential services and (2) Maintenance, repair, or replacement of common areas. Hence, now two Rules should be inserted in the said Rules as Rule 152A and
152B and Rule 152(2) should be deleted. Following is, therefore, the suggestion for embodiment in the Rules:

A. Essential services in a Co-operative Housing Society shall mean and include:

i) Electricity in relation to lift and light, fan etc. in common areas, generator etc.

ii) Water supply, pump set operation, its restoration.

iii) Services of security guard, sweeper, other employees.

iv) Clearance of garbage.

v) Audit fee, postage, stationary and other establishment costs.

vi) Other common services.

The cost of essential services shall be fixed and re-fixed by the general body in an annual or special general meeting. Such cost shall be equally divided among all members or flat owners of a Co-operative Housing Society.

This cost shall be deposited to the society monthly or quarterly or yearly irrespective of the fact that the member has not occupied the flat or is not living there.
For default of payment of such service charges in time, the society may charge on the defaulted amount penal interest as may be fixed and refixed by the General Body. The society shall not cut off, withhold or curtail or reduce in any form the essential services or any of such services rendered to a member without hearing him and without just and sufficient reasons.

A Co-operative Housing Society may, for more effective essential services, create and maintain a separate fund in the name of “Essential Services Fund” which may be created out of the contributions of the members. This fund shall be invested in any Co-operative Bank near the society and may be utilized as the General Body shall decide.

B. For maintenance, repair or replacement of common areas in Co-operative Housing Societies, following suggestions may be given for incorporation in the Rules. The cost of maintenance, repair, or replacement of common areas and facilities in a Co-operative Housing Society shall be apportioned according to carpet area of the flat and the members shall contribute such cost to the fund to be created and maintained in the name of “Maintenance and Repair Fund”.

The General Body shall fix or re-fix the cost of any maintenance, repair or common areas and facilities and determine the mode and quantum
of such works. The General Body shall also determine the mode of payment by all members towards such costs.

For any default of payment of cost by a member, the society may file a dispute under Section 96 to recover the defaulted amount with any interest and cost of dispute, as may be awarded by the Arbitrator.

XIX. Though the Co-operative Law does not restrict to formation of Co-operative Housing Societies with poor persons, it appears that only such type of societies comprising of houses, apartments or flats can be formed. Practically, all such societies comprise of buildings only. There is not a single society in West Bengal which comprises of mud-built houses or small rooms with roofs of tin, asbestos or tali and with walls made of bamboos or thick bricks. Of course, if the both Governments i.e. Central and State Governments patronize construction of such type of small rooms with self-sufficient kitchen and dining and with common privies, latrines, water resources, many poor persons may be benefited and live in a group.

As for example, if 8 rickshaw pullers or small businessmen or fishermen or day-labourers come to a consensus that on a tract of land, they will construct 8 small rooms with kitchen and dining giving rise to a
composite project of inferior type of accommodation which practically is now let out to them at a considerable rent. These types of societies can be formed in and around particularly small towns, market places, block headquarters etc. In big cities, these are not possible to be formed due to mainly paucity of land. In forming such societies of poor persons, the Government may contribute subsidy or allot land at cheaper price. Such a project may be chalked out by the Civil Engineering Section of Zilla Parishad or Rural Development Department or District Rural Development Corporation or Housing Department of the Government. Such a Co-operative Society shall require frequent repair and hence a special fund for repair, maintenance etc shall have to be created on priority basis by the members and both State and Central Governments, may enrich the said special fund by grants. In running the Group Housing, the Govt. official in the appropriate Department shall keep watch and render assistance as and when required, as statutory observance and obligations are difficult for these persons of meager income group to be performed in regular way. So, in the Co-operative Act, a separate new provision for formation and registration of a new type of Co-operative Housing Society solely for poor persons (Below Poverty Line) should be added.

XX. In Rules 145 and 146, the jurisdiction and restriction on borrowing are provided. But by the existing procedure and norms of the West Bengal State Co-operative Housing
Federation Ltd., a member of a Co-operative Housing Society may take loan from the Federation through the society. The Federation maintains accounts of loan and its repayment upon mortgage of the society’s land and collateral security of individual loanee member. But in spite of repayment of full loan with interest by some members, they are not discharged from their liabilities till other members fully repay. For untimely repayment of loan by some members in spite of timely and regular repayment by rest of the members, the society at last remains still indebted to the Federation when all repayments have already been made.

Hence, if individual accounts of loan and its repayment are maintained, above disadvantages will not come out. There should be specific provisions for granting loan to an individual member on mortgage of his own security and pro-rata interest in the Co-operative Housing Society.

Besides, the Federation should be given power to construct houses or flats for allotment or sale to eligible persons who shall form a Co-operative Housing Society. That means, the Federation shall function as a promoter like West Bengal Housing Board, West Bengal Housing Infrastructure Development Corporation etc. Besides, the Co-operative
Federation should be given power to undertake projects under any joint venture with other private sector Companies or Co-operatives. Hence, by the above propositions, new insertion should be made in Rule 145 of the West Bengal Co-operative Societies Rules, 1987 by deleting Rule 145 (2).

XXI. There are other problems like commercial activities in the premises, plying of vehicles in the premises, illegal and immoral activities in flats. By mere making particular law and penal clauses, the above problems can not be fruitfully solved. Only the owners or members should be cautious and in the Bye-laws, restrictions of such things should be incorporated. Contravention of the provisions in the Bye-laws must face consequence of punishment.

6.2 Proposed amendment of West Bengal Apartment Ownership Act, 1972, Rules 1974 and Bye-Laws, 1974:

I. Section 2 of the West Bengal Apartment Ownership Act, 1972 is compulsorily applicable, as has been discussed in Chapter IV supra, to every building in West Bengal which is used or is proposed to be used. A building is meant as to contain two or more apartments. A building containing four or more than two apartments shall come under this Act.
The property shall be subjected under this Act by way of observing formalities under Section 2 and 10. Hence, every building has been brought under the purview of the Act. Further, by Section 11, if a building which has already been subjected to this Act is withdrawn from the purview of this Act, then the force of Section 2 is defeated. Besides owners of a building containing 8 or more than 8 apartments possessed by 8 individuals or more may form a Co-operative Housing Society. So Section 2 should be optional. Like the right of the Apartment Owners to withdraw their property from the provisions of the Act, the State Government should be empowered to drive out the property from the provision of the Act due to default of observance of the provisions of the Act in addition to recourse of Section 16A & 16B.

Hence, Section 2, Section 11 and 16A should be suitably amended and this may be done in following manner:

This Act shall apply to every property comprising of building containing four or more apartments which is used, or is proposed to be used, mainly for residential purposes, and the sole owner or all the owners of every such building shall submit the same to the provision of this Act by duly executing and registering a declaration setting out the particulars referred to in Section 10.

Suggestion for amendment of Section 3 (c) may be as under:
“Building” means a building containing four or more apartments or more than one building, each being a complete unit or each containing four or more apartments comprised in the same property.

Before withdrawal, all owners shall liquidate all debts to creditors, if any, and distribute the surplus according to the terms of Declaration made initially under Section 10 read with Section 2.

In the case where the Competent Authority or the State Government takes steps for compulsory withdrawal of the property from the purview of the Act, the Competent Authority or the State Government shall appoint a Liquidator at the remuneration to be paid to him out of the fund or contribution of the Apartment Owners for the purpose of squaring up assets and liabilities of the property.

II. When all owners of a property decide that their property for which a Declaration under Section 2 and 10 has already been executed and registered should be divided into more than one property for the purpose of smooth functioning separately, such proposed division may be allowed. For this, further modified separate Declaration for each segregated property should be executed and registered. So, a new provision may be added either in the Wet Bengal Apartment Ownership Act, 1972 or Rules under it.
Besides, if all owners of more than one adjacent properties want to merge their properties into one property, similar provision should also exist in the Act or the Rules for fresh Declaration of the total of the properties and the procedure to be adopted by the owners in separation or merger of the properties.

III. The Bye-Law No. 3(2) of the West Bengal Apartment Ownership Bye-laws, 1974 should be amended to the extent of six apartment owners in place of four. The reason behind this proposed amendment is that three owners out of 4 as permitted now shall be Managers keeping only one outside the Board and these three Managers shall retire after one year under Clause 7 of the Bye-laws. Then only one owner is available to form the Board, so, if the number is amended to six in place of four, three owners may be available for the next Board.

IV. In the Clause No. 5(5), Bye-laws, it has been provided that in the first meeting of the Board of Managers, only the President shall be elected. The proposed amendment is that not only the President but Secretary, Treasurer and other office-bearers, if needed, should be elected.

V. It has been discussed in Article 4.3.4 in Chapter IV that a Manager may be removed at the instance of the Board. But there
is no provision if general owners want to remove any Manager. This should be inserted in Bye-laws Clause No.8. At least 1/3rd owners should requisition to the Board of Managers for removal of any or all Managers. The Board may show reluctance to convene general meeting on the requisition. In that case the Competent Authority should be conferred with power to convene general meeting at the cost of the Association. In the said Bye-laws, cause of removal of a Manager is not specified. This should be categorically spelt out.

In Clause 8(b), casual vacancy of a Manager has been shown to be caused due to death or resignation. But there are other instances when a Manager does not attend Board Meetings consecutively for several times. In that event, his absence may be treated as casual vacancy. This cause should be incorporated in the Bye-laws.

For causal vacancy, remaining Managers of the board has been given power in the Bye-laws, 1974 to co-opt any apartment owner as a Manager in his place. But if the number of casual vacancy be more than half of the total Managers, it should not be wise for a smaller Group of Managers to co-opt. a larger group of owners as Managers. Further, if all Managers resign enmass, there is no provision how a Board shall be reconstituted. The suggestion is that in such cases, the Competent
Authority should be given power to appoint a Board for a limited period and this should be inserted in the relevant clause of the Bye-laws.

Clause No.7 and Clause No.11 are paradoxical. This has been discussed in Article 4.3.6. So, necessary alteration should be made to keep parity of provisions of these two clauses.

VI. In Clause 11(1) of the Bye-law, "officers" have been meant as the President, Secretary, Treasurer and others. They are apartment owners basically. In Clause 11(2) "officers" have been described as staff. So this confusion should be abolished. President, Secretary, Treasurer etc. should be described as "office-bearers" to differentiate with the staff.

VII. By Clause 12 of the Bye-laws, President or Secretary or Treasurer may submit resignation to the Board. But there is no provision where resignation letter shall be submitted when all Managers want to resign. Hence, a new insertion in the Bye-laws is needed and the Authority to whom all Managers may submit resignation should be specified.

VIII. Amendment of Section 16B, West Bengal Apartment Ownership Act, 1972 is required for the reasons as stated in Article 4.3.7. In Section 16B, the matter of superseding the Board of Managers and the Manager is given. As the Board and the Manager do not
occupy the same status, the word “Manager” is to be deleted. Moreover, the Administrator appointed on supersession should be given remuneration out of the fund of the Association if he is a Govt. employee or outsider. Hence on two points, amendment is necessary. In Section 16B, the maximum period of the tenure of Administrator is 3 years. But if within 3 years, no new Board is reconstituted, the Competent Authority should have extraordinary power to extend this maximum period for reconstitution of the Board. Otherwise, the property of the Association should be left out of the purview of the Apartment Ownership Act. Hence, such amendment is proposed.

For non-performance or irregular performance of the Administrator, there should be a provision to withdraw him and appoint another Administrator. Another amendment is also required for appointment of a Board by the Competent Authority or the State Govt. in place of Administrator. There should remain another provision in the West Bengal Apartment Ownership Rules, 1974 for the procedure of handing over charges by a Board of Administrator to a new Board or Administrator. For contravention of any order of the Competent Authority under this Section 16B, and for defalcation by a Manager of the Board or the Administrator, there should remain a penal provision to be inserted in Section 16A and so a suitable amendment is proposed to the above effect.
IX. As discussed in Chapter IV in the head of Common Expenses, there should not be a proportionate rate on the value of the Apartments as prescribed in Bye-law 20. There should be two components on the common expenses, one component should be divided equally among all owners and the other component to be apportioned pro-rata on the value of the Apartments. Suggestions on amendment of the Bye-law 20 may be in the following lines:

A. The Assessment in Clause (1) shall be made on two heads of which one head shall be named as "Essential Services" comprising of:

i) Electricity in relation to lift and light, fan etc. in common areas, generator etc.

ii) Water supply, pump set operation, its restoration.

iii) Garbage clearing.

iv) Security arrangements, sweeping.

v) Establishment cost for staff, postage, audit fees, stationary etc.

vi) Other common services.

The cost of essential services shall be fixed and refixed by the owners in a General Meeting. Such cost shall be equally divided among all Apartment Owners.
B. The other head shall be named as “Repair and Reconstruction of common areas and facilities”.

The cost on this head shall be apportioned pro-rata according to the value of the apartment unit as specified in the Declaration in pursuance to the provision of Clause(g) of Sub-section (1) of Section 10.

C. An Association of Apartment Owners may establish two separate funds namely “Essential Services Fund” and “Repair and Construction Fund” created by contribution made by all owners. The fund may be invested in the manner as all owners may decide.

If for realization of defaulted amount of Essential Services and Repair and Construction, any amicable settlement of the Board of Managers fails, a dispute may be preferred to the Competent Authority for an award to direct the defaulting owner for payment of arrear with interest and cost of dispute.

The award passed by the Competent Authority shall be enforceable by any Civil court having local jurisdiction in the same manner as a decree of such Court as if it were a decree of the Court.
Alternatively, the money awarded in a dispute may be recovered as a public demand under Bengal Public Demand Recovery Act, 1913 by a Certificate Officer having local jurisdiction.

X. Matters of letting out, transfer of flat, alteration, addition or repair of individual flat or common areas, nomination etc. which are silent in the Apartment Ownership Act, Rules and Bye-laws, should be provided in the law in the lines as suggested in Article 6.1.

6.3 Proposed amendment in W.B. Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 and Rules, 1995:

I. Adjudication of dispute between a promoter and any purchaser is made by an officer appointed by the State Govt. as provided in Section 6 of the Act.

Here, only the purchaser may make an application in the manner as provided in Rule 7. But there is no provision when the promoter is aggrieved with any act of a purchaser. Hence, a promoter should also be given right to sue a proposed purchaser and even any contractor in the construction work. Thus Section 6 should be amended to the above proposal giving right to a promoter and a contractor to apply for adjudication of disputes like a purchaser.
Elaborate procedure for filing an application on dispute should be inserted in Rule 7 in its Rules, 1995.

After proper amendment as proposed above, Form G under Rule 7 (1), the W.B. Building (Regulation of Promotion of Construction and Transfer by Promoters) Rules, 1995 shall have to be enlarged accordingly.

II. As discussed in Chapter IV at Article 4.4.2, a Promoter may be allowed to retain a flat and the owner of the land may be allowed also to retain a flat for having a residential unit and so the Section 2 (g) should be amended giving a new definition as below:

"Promoter" means a person who constructs or causes to be constructed a building of flats on a plot of land for the purpose of transfer of the flats of such building by sale, gift, perpetual lease or otherwise to any other person or to a company, co-operative society or association of persons and includes –

i) his assignee, if any.

ii) the person who construct, and person who transfers by sale, gift, perpetual lease or otherwise, the flats of the building if the two are different persons.
iii) any Board, Company, Corporation, Firm or other association of persons, established by or under any law for the time being in force.

Provided that the promoter or the owner of the land may retain one flat each in such building.

6.4 Summing up:

In the foregoing clauses in this Chapter, some suggestions for alteration, addition or modification have been put in respect of Cooperative Societies law, also in Apartment Ownership law and Building Construction and transfer by promoters law as these laws are associated with Group Housing. It is hoped that if the above suggestions are allowed to be incorporated in relevant laws, the mass people shall be benefited. Number of litigations in Group Housing projects either in Co-operative Sector or in Private Sector is expected to come down. Besides, poor persons may avail of the opportunity to build their own residences by dint of a Group Housing, however inferior their rooms may be.

In the Co-operative law, proposals for amendment have been provided in twenty one areas, which have been identified in previous Chapters particularly in Chapter I and Chapter IV. Persons willing to form a Co-operative in most of the cases can not determine how to begin. In Article 6.1 the promoteś (proposed to be renamed as founders) shall find
the process at the beginning. The Article gives also to all founders equal status so that none of them is deceived or driven away form the group. In that proposed Article, a new important insertion inter alia has been suggested as to how transactions in a proposed Co-operative Housing Society shall be closed and squared up in the event of non-registration. As in the present Co-operative law, there is not specification how and with what documents and application of registration shall be submitted, a new provision for this has also been proposed to avoid harassment in registration offices. Proposal for amendment has also been kept for review of expenditure of money contributed by Founders. Regular review shall definitely control any defalcation or malpractice by the persons in the helm of the proposed society.

Further, according to position of flats, value should be fixed. As a result, no member shall be disgruntled. The manner of apportionment of contribution of flat cost equally among all members is not justified and hence, a new addition has been proposed also. This will naturally neutralize dissatisfaction of members having flat at top floor, ground floor or facing West or North. A new insertion has been proposed for adjudication of any kind of dispute arising during the period before registration of a Co-operative Housing Society in a quasi-judicial Forum. This shall dispose of such disputes speedily and with low cost and shall not
compel aggrieved persons to file cases in civil courts involving much expenditure.

In the Apartment Ownership Act, its Rules, Bye-laws and in the Building (Regulation of Promotion of Construction and Transfer by Promoters) Act and its Rules, 12 main proposals for amendment therein have also been put forward to remove ambiguity, to keep consistency with the given provisions and to elaborate procedures so that there remains transparency in the business of the Promoter, Purchaser and the Contractors and a healthy and happy atmosphere prevails all along.