Chapter – I

INTRODUCTION
1.0. Need of Group Housing:

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widow-hood, old age or other lack of live like..."

The above declaration is included in the Universal Declaration of Human Rights, 1948 and has also been approved in 1966 by the International convention of Economic, Social and Cultural Rights. India, being a signatory to both the Declarations and convention is expected to take appropriate steps to ensure realisation, among other rights, of the right to housing.

Housing is an essential part of human life. The modern concept of housing does not limit the ideal of housing merely to provision of shelter. At present it means comfortable shelter, surroundings and services for keeping man healthy and cheerful. Adequate shelter is essential if a human being is to live with dignity. Shelter provides the physical framework in which social, economic and cultural resources of an individual are released, enriched and integrated. Housing is an economic activity with a high employment generating potential also.
But there is nothing about housing in Lists I, II and III of the Schedule VII of the Constitution of India. The constitution gives in the Part III regarding Fundamental Rights that all citizens shall have the right to reside and settle in any part of the territory of India.\(^2\)

In various judgments of the Apex Court of our country, the right to housing has been established. In Shantisar Builders -Vs- Narayan Khimalal Totame\(^3\) the Supreme Court by a three-Judge Bench held that the basic needs of man have traditionally been accepted to be food, clothing and shelter. The Bench also observed that the constitution aims at ensuring fuller development of every child which would be possible only if an appropriate house is provided.

In another leading Case between Chameli Singh -Vs -State of U.P.\(^4\) a three-Judge Bench held that "right to social and economic justice conjointly co-mingles with right to shelter as an inseparable component for meaningful right to life. Providing house sites and the houses in the implementation of the Directives contained in Art 38 and Art 39(b) of the Constitution was up-held".

Again, a three -Judge Bench in P. C. Gupta -Vs -State of Gujrat \(^5\) held that "right to residence and settlement is a fundamental right under Art 19(1)(e) of the Constitution of India and protection of life guaranteed by Art 21 encompasses within its ambit right to shelter to enjoy the
meaningful right to life. Right to equality of status and right to social and economic justice and dignity of person assured or dignity of life guaranteed by Article 21 ".

In the case: J. P. Ravidas -Vs-Navy Harijan Uthapan Multi Unit Industrial Co-operative Society Ltd.,\(^6\) the Supreme Court of India observed the following –

"The ultimate object of the Directive Principles is to liberalise the Indian masses, free them from centuries old coercion, ignorance, object conditions, and to prevent exploitation. The Union of India in implementation of the above Directive Principles in Art 39(b) and in discharge of its obligation under Art 38 and 46 to provide facilities and opportunities to the dalits, has allotted two acres of land in Bombay City for construction of houses to make their right to settlement and to enable them to live with dignity of persons and providing economic empowerment of settled residence to enjoy the right to meaningful life."

Thus, the residential housing is the basic need of the civilised living. Despite various efforts to solve the housing problem, there is an increasing gap between the construction and the demand for housing. It is important next only to food and clothing. A house provides shelter and protection and plays an important role in shaping one's destiny. The journey of the mankind from the caves and woods to the present situation is surely awe
inspiring. It grows from a mere shelter to the most asset and wealth. This is not only a shelter but is significant in shaping the life style of the individual and moulding the future of the society. In this way, it sets in motion a spiraling multiplier effect on the socio economic and cultural development of the society as a whole.

The characteristics of the present housing reflects various phases of the evolutionary process in the socio-cultural growth of the country. These have close linkages with historical and cultural backgrounds.

But for millions of our citizens, desire to own a house has remained a long cherished dream. Years have passed but this desire has not been fulfilled largely due to poor socio-economic conditions, prevalent among the masses and lack of concerted efforts at various levels. Millions of people, either have no place to live or live under highly unhygienic, inhuman conditions of deprivation. Over crowding, lack of privacy, total absence or inadequacy of basic amenities, use of sub-standard building materials and unhygienic surroundings dominate the scene of settlements. Slums and unauthorised colonies are proliferating.

Though housing is conceived as a total environment that exerts profound impact on the socio-economic and physio-psychological development of human beings forming it an important ingredient of quality of human life, about one-fourth of the world's population does not
have adequate shelter and lives in extremely insanitary and unhygienic conditions. Thus housing problem has assumed alarming proportions and as a corollary of poverty has become a chronic problem.

House problem in the context of rural areas in India assumes a significant dimension at even the end of the 20th century. On the other hand, the fast deteriorating living conditions in big urban centres are also closely linked with poor living conditions in rural area. It is evident that the slum problems resulting from a shift of population from villages to cities cannot be solved without ameliorating rural living conditions.

Problem in rural housing differs significantly from the problem in urban areas. The perceptions and the need of villagers regarding housing, perhaps, differ significantly from the urban dwellers. The constraints of land availability for housing in rural areas does not operate so severely as in case of urban areas.

On the other hand land is recognised as a major problem in urban areas in developing countries as land prices are major cause in wealth and income distribution. Historically, urbanisation and economic development are closely associated with rising land values. Many of urban growth and higher urban productivity are capitalised in the land market. The economy in towns attracts rural people, migrants and new enterprises. They compete for scarce urban land in several ways. Land competes for investment of
surplus funds in the formal and the parallel economy along with other assets like gold. There is very little land, which is recognised as needed for housing the poor. Housing costs, especially for migrants, are raised by the increasing value of the land component. This leaves them with little choice other than to squat illegally on vacant land, or to occupy sites on the urban periphery far away from jobs.

The Group Housing mainly in the form of co-operative housing societies by and large, undertake construction of composite, integrated housing complexes inclusive of various physical, social and community infrastructure, which are essential for better quality living environment. The brother-hood, bonhomie, mutual trust and respect, which are the hallmark of these group-housing have contributed significantly to communal harmony, religious tolerance and cultural co-existence among people of diverse faith and beliefs. These singular achievements make such group housings eminently suited as a reliable and capable institutional mechanism for not only delivering accommodation but for social and economic development of the country.

It is known that human being respond spontaneously when they are confronted with the requirement of satisfying their basic needs. Housing is one such basic need for which the most spontaneous response is to adopt the mechanism of group housing particularly co-operatives. This attitude is a manifestation of human behaviour of seeking solution to their problems
through group housing. This is collective efforts by sharing resources of knowledge, skill, material and wealth among a compatible group of people. By pooling these resources, humans, by instinct, achieve economy over space, time and quantity, which effectively means cost savings and surpluses.

Thus Group Housings are more satisfying experience in terms of affordability, durability, utility and reliability. Collateral benefits which accrue to people through co-operative housing activities are multifarious better living environment through better accessibility to household services and basic amenities of drinking water, drainage, sewerage and waste disposal, improved physical infrastructure support of internal roads, electricity and higher quality or quantity of social infrastructure components of schools, hospitals, dispensaries, parks, play-grounds etc. all of which form part of a well planned human settlement.

1.1. Need of Residence in Towns or agglomerated areas :-

A huge number of the rural persons seeking residences in towns are depended on agriculture mainly. But due to fragmentation of holdings caused by division among co-perceners, agricultural produce is unable to cope with demands towards maintenance of livelihood. Apart from few persons employed at a remarkable position in offices, schools, colleges and the like institutions and some businessmen, most of these persons may be
termed as poor. Substantive improvement of these persons requires a great
effort for their economic, social and physical development, to address the
main problems like employment, incomes, shelter and other basic services
and needs. Due to decline in work force in agriculture and non-viability of
decreasing portion of agricultural land in comparison with rural population,
the economy of our country has been undergoing structural transformation
since some years after independence, with an increasing proportion of the
national income which is derived from secondary and tertiary activities.
Thus, density of population in towns breaks all past plannings, drainage,
health measures etc. with housing problems side by side. The constitution
of India in the division of functions and powers between the Central Govt.
and the State Govt. empowers all State Govt. to formulate and execute
schemes and policies for settlement of citizens in the concerned State.
Every state in solving the problems of housing, mainly in towns,
promulgated several enactments and regulations controlling Municipalities,
Corporations, Metropolitan Development Authorities, Infrastructure
Development Agencies on housing, joint venture with Government
undertaking on house construction like Housing Board, Bengal-Ambuja,
Bengal-Peerless Housing Development Corporations. These laws and
Regulations control land use, floor space, sizes of plots, maintenance and
development, open and common spaces, Car Parking etc. Though Housing
for persons of Low Income Group (L.I.G.) and Middle Income Group
(MIG) have been launched, a few number of needy persons got the advantage leaving a wide gap of unsuccessful persons. There are laws of promoting housing construction by an individual person. Twenty to twenty-five years ago, some persons could gather small plots of land in towns from private persons or from Government through lottery. But these plots are for construction of houses mainly but not for leaving some portion unused or gardening or digging tanks. As demands have been increasing, available land is decreasing. In the heart of towns, there remain very rare opportunity of getting a piece of land for the purpose of erecting houses. Now construction of houses on individual plots is hardly possible at this stage of rare availability of land. Thus, concentration has been diverted to construction of group housing in the form of multi-storied project giving rise to several apartments on a piece of land. Men in need of residences at towns or at its agglomerated areas were mainly accustomed to use residential spaces comprised of houses either mud-built or semi pucca, a pond in front of house, store of crops, cow-sheds etc. Now they have changed their minds to inhabitate in such a place where no such pond, cow-shed, storage of crops are required. They are eager to leave those things in the changed scenario of life and they want to settle at a place where nothing more than a shelter, however small it may be, is the burning need. They have changed the habit of culture and way of living.
1.2 Government Land for Residential Accommodation:

The needy persons are running after Group Housing projects. But these projects are not easily available. As the expanding Metropolitan economy attracts migrants and new enterprises, they compete for scarce of urban land in different ways. Land-lords are accelerating land values rapidly. Land competes for investment of surplus funds in the formal and the parallel economy alongwith other assets like gold. Thus, there is very little scope which is recognised as needed for housing the poor. Besides, housing costs, specially for migrants from rural areas are raised by increasing value of the required materials and other appliances apart from the land component. This leaves the needy persons with a little choice other than to squat illegally on vacant land, if they find. Therefore, the population pressure in a limited available area is the main cause for the deterioration in living standards and housing shortage. Considering the tremendous demand of land, there should be control over the prices of land. So far there is no data or statistics of land transactions and movement of land prices in and around cities ad towns. In some agglomerated area of towns, a move has been taken by the State Govts. to acquire the area for distribution to needy persons for construction of houses. But in comparison to the total number of waiting persons, a) few of them could get opportunity. Besides, there are numerous alleged statements against the policy and procedure of allotting land to persons. In some states, plots are
allotted to group of persons. Groups are comprised of 8 or 12 needy persons. These persons form a Co-operative Housing Society or an Association under the State Apartment Ownership Act. Allotment letter is, issued to the persons of the group by name or in the name of the leader or Chief Promoter of the Group. The group is ordinarily chosen on fulfilment of some conditions. These conditions inter-alia include that the person has no other land or flat or house in a specified area which is ordinarily defined as the town or city area. But in many cases, it has been observed that some persons dare not declare false statement in spite of the fact that they possess another land or house or apartment in the specified area. Sometimes, when the matter of false declaration comes into the sight of plot allotting authority or the State Govt. no major and rigid step are taken against them. Thus, the genuine needy persons are being debarred from availing of the normal right. Unscrupulous persons have by this way got the facility for which they have no right.

Moreover, the persons in whose name allotment of plot has been made, appoint their leader who acquires a superior position over others. This happens because his role in getting such allotment of plot of land is much more substantial and somewhat more than others. One of the conditions by the land allotting authority is that after registration of the group housing project as a Co-operative Housing Society, the group shall be then eligible to get the land delivered to them. At this initial position,
all persons of the group have to subscribe proportionate land value for
depositing to the land allotting authority. At the time of application for
registration of Co-operative Housing Society, several complications arise.
At first, necessary documents are not furnished by the group inmates and
delay is caused. Ordinarily an individual person applies to the land
allotting authority which arbitrarily makes a group and selects the group
leader. Thus the persons included in the list are in most of the cases not
acquainted with each other. Sometimes, the land allotting authority invites
application seeking land from groups. In this case, 8 or 12 persons make a
group and apply for land. These persons are all well acquainted with each
other. Sometimes it is observed that relatives form a group. But
subsequently, their co-habitation becomes unpeaceful.

Private land after acquiring by Govt. in towns or its agglomerated
area became also scarce for the purpose of erecting housing projects. Very
few able persons can only afford to purchase a tract of land for his own
alone. But persons having insufficient fortune try to make groups for
entering into group housing projects to solve the problem of
accommodation. Such a group often falls in the trap of middle men and
dishonest brokers. Reasons behind this trap are that none of the group has
ample time to afford for searching land and most of them have little
knowledge about title of land. It is very difficult in towns to find out actual
owner of land and have opportunity to negotiate with him directly. Thus,
the brokers or middlemen or touts get a wide scope to mislead such a desirous group and ultimately many such groups leave hope of accommodation of their own after wasting some hard-earned money. Besides, the group leader who functions as the leader of the group shows a superior position over the other group members. In many cases, the group leader raises money from many persons all of whom are not ultimately given opportunity to be included in the group. When after negotiation, a private land is purchased, it is seen that the deed is executed in the name of the group leader but in the deed there remains no mention of other group members. But the land has been purchased on the contributions given by all members of the group. After purchase of land, the group leader proceeds as per his sweet will and takes his own persons in the group and discard others. Of course, the discarded persons are given their contributions back but in some instances, this refund of contribution is made after along time or in some cases this, is made not in whole at a time. Sometimes the amount of return is less than the amount so contributed. As a result, litigation between the discarded person and the group leader comes out. Both sides in the litigation are to spend a considerable amount of money. But the group leader meets up litigation cost out of the fund of the group i.e. not from his own. The cause of litigation is the irregular and capriced action of the group leader. Ultimately, quantum of contribution is bound to be escalated and the group members inspite of dissatisfaction are
to collect additional money from other sources. By provocation of the
group leader and other members of the group, some members of the group
want to leave the group under bitter experience. The group leader becomes
very much happy when he sees some members leaving the group in such a
way. But at the time of refund of money, the group leader hesitates and
makes delay and even if he pays back the contributed money to the
outgoing member, he pays less amount than that the later contributed.
Reason of refunding such less amount is shown as several other expenses,
litigation cost etc. The establishment cost is sometimes shown so high that
it seems that the group leader spends the group's money without observing
normal norms and propriety.

1.3 -Relation among members of a Group :

After getting the land either from the Govt. or from any Govt.
authority or from any private owner, such groups generally take steps for
formation of a Co-operative Housing Society. Though such formation and
registration of Co-operative Housing Society are the primary need, the
actual purpose is to get exemption of Stamp Duty and Registration Fee
payable to the state Govt. at the time of Registration of deed of sale of the
subject land from the vendor to the group under Registration Act, 1908.13
Registration of sale deed or perpetual lease deed in case of Govt. land or
land of any Statutory authority is not allowed before registration of Co-
operative Housing Society intending to launch a group housing project.
Hence, registration in the Co-operation Department of the state under State Co-operative Societies Act is the initial step after procurement of land but before registration of Sale/Lease Deed under Registration Act. But at the time of registration, many documents are required to be furnished to the Cooperative Registering Officer. Preparation of such documents is the task of the group leader, who is called by the Co-op. Societies Rules as Chief Promoter. In preparing such documents he is to call the members in a meeting. This meeting is the vital meeting where the members of the group bind themselves in forming a Co-operative Housing Society. The beginning of the group in a Co-operative Housing Society would show its future. If there is a division of opinion and co-relation among the members, the process towards completion of the project is bound to stumble. The principle of a co-operative is based on mutual faith and confidence and honesty. In the first meeting, proposed office-bearers are elected and if they all do not function in a concert at this initial stage, the project would require longer time to complete. As day passes, cost of materials increases, and the originally estimated cost is escalated if there is inordinate delay due to internal chaos or untimely payment of contribution of money towards construction. It is observed that due to personal reasons and their absence in the project area, many members remain aloof. Some of them, of course, contribute regularly but do not keep contact with the office-bearers of the Co-operative Housing Society. These persons do not find time to see
if their contribution are properly utilized or not. When they come to understand erosion of contributed money without tangible progress of construction of the project, they get little chance to control it. But delay in realising such actual position of the project, causes an irreparable loss to them. Some of them run after the office-bearers to recover the eroded money. Complaints are lodged to the registering authority of the Co-operative Housing Society (Registrar of Co-operative Societies, or Deputy Registrar of Co-operative Societies or Assistant Registrar of Co-operative Societies of the concerned District) for redressal. Administratively, this Registering Authority has little power to take steps against such allegations under the provision of law dealing with Co-operative Societies like West Bengal Co-operative Societies Act and Rules laid thereunder, or other State Acts and Rules. Dissolution of the Board of such Co-operative Housing Societies is the ultimate remedy in the hand of the Registering Authority. It takes at least three months' time to take recourse of the provision of this law. At first the registering authority is to make an inspection or an inquiry into the affairs of the society with particular reference to the allegation. He gets the report of inspection or inquiry and if it is found that the report substantiates the allegation, he may dissolve the Board of the Co-operative Housing Society. In other laws concerning Association of groups, such provisions are not in existence except in West Bengal Apartment ownership Act, 1972. However, if on the action of the Registering
Authority, the Board is dissolved and an Administrator or a Board of Administrators is appointed, taking over charge from the office-bearers of the Society so dissolved is not so easy. The Office-bearers evade the Administrator or Board of Administrators in handing over charge and file appeal against such dissolution to the Co-operative Tribunal. From this stage, a considerable amount of money on the score of litigation is spent. As a result, the fund of the Co-operative Housing Society is eroded. The fund has been raised towards construction of the Housing Project but not for meeting litigation cost. Hence, the burden of litigation cost is ultimately shouldered by all members. The litigation continues from one Forum to another higher Forum. Sometimes, by interlocutory orders passed by the Tribunal or the High Court, works of construction remains stopped. Project cost is escalated. If such type of differences between the Board and any member is initially amicably settled within the periphery of the co-operative, this type of stand still situation may be avoided.

Sometimes, after sanction of the plan of the Housing Project, the Board of Directors arbitrarily decides allotment of flats before construction. Every member of the project wants to get a flat at comfortable position, such as a flat facing south or at first floor. When allotment of flats is declared before construction of the Project, there comes to light division of members forming sharp groups. One group thinks them deprived and the other group remains satisfied with good flats.
In some cases, all flats bear equal value. If the flat cost is determined on the basis of position, then such type of grievances is to some extent wiped out. Of course, members should priorly be ready to fix their mind to remain happy with whatever flat is allotted to them.

1.4 - Problems in Housing Project:

Before construction, engagement of a Contractor and an Architect is made through advertisements. The function of the Architect is to supervise the works of the Contractor according to the sanctioned specification and plan. In many cases, an Architect has its own Contractor in an disguised name. There is a collusion or connivance between the Architect and the Contractor. As a result, quality of construction becomes not to the mark. The Office-bearers of the Board in many instances also connive with the Contractor and the Architect and manage to get their flats more well constructed than others or even they can manage to get their flats without spending a farthing. Such type of dishonesty is ordinarily observed in case of a project with a considerable number of flats e.g. a project with 100 flats or more than that. The Directors of the Board in many cases take reimbursement of Travelling Allowances at first Class rate or at inflated amounts. By this way, a considerable portion of money leaks out from the fund generated by all members. Sometimes, such persons raise bill without any document of receipt or expenditure but show that they had to pay to several offices as bribe. In the present situation of our
society, probably in some cases bribes are required but as the matter is very touchy, plea not to produce documents of tendering bribe results leakage of huge money. In a project, skeleton structure is sometimes erected with floors and roof. An individual member is allowed to construct internal portion of works of his flat. Dispute occurs when different floors of flats are made differently, without assessing load-bearing capacity of the floors, Some flat-owner makes his floor with precious and weighty tiles or mozzaics. This some times causes quarreling situation between the member of the upper flat and the member of its just lower flat. In some cases water leaks from bath-room or lavatory of the upper flat. If the Project is a Co-operative Housing Society, its Board sometimes takes up the matter and solve it. But there are instances where this issue rolls to the Court. No provision of law in this respect is in existence to solve it and prevent the unhealthy situation. During construction, timely deposit of construction money is a vital thing. Many members are to borrow money from Banks, Financial Institutions like Co-operative Housing Federation, their employers etc. But due to lack of timely processing, deposit of the assessed money for construction of the housing project may not be regular. In some provision of Co-operative law, if a member fails to deposit construction cost for a continuous specified period, he may be expelled by the Board of Directors.\textsuperscript{21} If such defaulting member pleads his temporary inability to pay the deposit to the society and if it is found genuine, the
Board may not think of his expulsion. But in case of a small Project of 8 members, if one person stops payment towards construction cost, the whole project stands stumbled. In a project of 200 or 300 flats, if one or two members are unable to deposit construction cost, the project remains running. But it is very difficult in a small Group Housing. In some States, the concerned Co-operative Societies Act and Rules thereunder provide for an approval of the Registrar of Co-operative Societies in respect of any proposed expulsion of a member. If the expulsion is approved by the Registrar, in most of the cases, the expelled aggrieved member does not stop there. He institutes further suit at Co-operative Tribunal or the High Court. The behaviour of such persons seems to be paradoxical. Because, he is a defaulter in payment of construction cost in one side and simultaneously at the other side, he spends money for continuance of litigation against the Co-operative Housing Society. On such litigation, the Co-operative is to incur a considerable amount of money too. The resultant effect of such unhealthy situations results on members. The fund contributed by them comes short of the required amount. Hence, the society is doubly affected by such consequence. Ultimately, the project, particularly a small project, is chocked. The burden is Shouldered by other members. Some other members have sympathy on the expelled member. They also hesitate to contribute further. Sometimes, dishonest Office bearers obtain by fraud blank signed paper from some members who reside
far from the land area. After few months, the blank signed paper is used by
the office-bearers as an important paper containing the intention of the
member to resign from his membership of the Co-operative Housing
Society. By virtue of that forged document of resignation, the Board of the
Co-operative Housing Society relieves him from his membership. In his
place, another person is admitted as a new member from whom the office
bearers take an underhand money as bribe. In Co-operative law of some
States, provision is embodied requiring such resignation of a member and
introduction of a new person as a member in his place approval by the
Registrar of Co-operative Societies. Such a dishonest Board manufactures
requisite documents and even adopts a resolution in this regard in a Board's
meeting for the purpose of accepting resignation and inclusion of a new
person in his place. In a fine morning when the member visits the Socy's
place and meets office-bearers, he surprisingly comes to know that his
membership has been extinguished and he is no longer a member of the
society. He protests but with no result. He is consoled by an assurance of
returning his deposits made so far to the Society. He quits the Society by
taking return of his contributed money towards construction of the housing
project. But most of such persons being victims of fraudulent acts of the
office-bearers want to establish his right. He vindicates his grievances at
first to the Registrar or the Administrative Department. If the Group
Housing is a Co-operative Housing Society, there are some sort of
provision to approach to the Registrar who has executive power as well as quasi-judicial power. Executive power has very little scope to intervene and to give rise to redress to the aggrieved person. This power may go up to dissolution of the Board and appointment of an Administrator in its place against which the complaint is lodged. But this would invite further litigation. The Board does not want to quit the administration and leave the fund and property of the society to the Administrator easily. They rush to the Co-operative Tribunal to get the order of dissolution set aside. Fund of the Society is thereby applied and eroded. It results to stoppage of the construction work of the Housing Project and escalation of cost of construction becomes unavoidable. The extra burden then falls upon all members. In showing litigation cost in the Cash Book, sometimes inflated expenditure is shown thereby giving an opportunity of mis-appropriation by office-bearers. On the other hand, the member who lodged the complaint is made a respondent party to the Suit. The Suit moves from the Tribunal to the High Court and even to the Supreme Court. This causes expenses of a huge amount of money on the part of the Co-operative Society and also on the part of the person alleging against the society. Moreover, the Registrar and the State Government become involved in such litigation. The Registrar or the State Government engage State Lawyers to defend in the Suit. Some State lawyers' role in such cases is allegedly not satisfactory. Either, he remains aloof or does not attend Court
in regular way or the Board of the Society attempts to connive with him. This results to the action of the Registrar to be declared null and void. Thus, if another member becomes aggrieved in like manner, the same delay and wastage of money repeat and the Housing Project does not complete in initially estimated time and money.

Most of the members are to borrow loan from Banks or other financial Institutions or their employers. Those authorities want documents of title in the Housing Project. Sometimes, the Office-bearers do partial treatment to some members on small causes. They show reluctance in issuing allotment letter, copy of Sale Deed of the land, Society's resolution to accept him as a member, share certificate in his name etc. If there exists a cordial relationship among the members, these documents are easily available and loan from the financial institutions is speedily obtained. Sooner the payment of entire contribution for construction cost is made by all, earlier shall be completed the Housing Project.

1.5 Problems in allotment of Garage:

Regarding garage spaces, it is hardly possible for any Housing Project to afford sufficient space for making garage for all members of the Group Housing Project. Now-a-days in middle class families with a moderate earning, car is a part of life. So, in Co-operative Housing Societies almost all the members claim for garage space. When demand is
higher than the number of available garage space, generally allotment is
made by way of lottery. Plying of vehicles in the Housing Complex creates
annoyance to other residents particularly to the members and their inmates
residing on the ground floor. Problem in respect of garage space arises
again when a member, who has a garage space, transfers the flat vis-a-vis
his membership to a new person. The new person claims the garage space
in his favour. But the old members who could not be afforded with such a
space remained waiting to get one. At the initial stage, if the society makes
a Conveyance Deed of a flat along with a garage space in favour of a
member and if this member transfers his flat to a new person, the title and
possession of the flat moves to the new person along with the garage space
as an inseparable part of the flat. But if the flat does not include the integral
part of the garage space, its transfer is affected only for the flat and the
garage space is surrendered to the Co-operative Housing society. The
society is to refund the deposit for the space to the outgoing member and
the Board should decide to allot this space to a member who is at the top of
the panel or to a member who will be successful in a lottery. In some
societies, rent from garage spaces are collected. Rent so collected
constitutes a fund. It may be spent towards repairing or remodeling of the
garage spaces or to meet Service Charges. Instances are there in some Co­
operative Housing Societies where garage spaces are allotted by lot. But
some members who have been allotted space have no car. Nevertheless he
does not refuse to take the allotment but allows an outsider to keep his vehicle at the allotted space and the member raises rent from the outsider. While some needy members are waiting to have an allotment of garage space, the member who has been allotted a space but who has no car, derives some profit out of common asset of the society. Sometimes, a contractor who is entrusted for the construction work does not hand over the garage spaces for alleged non-payment of full construction cost. Members begin to live in their allotted flats and still the Contractor does not leave its possession. He rents out the garage spaces to outsiders. Subsequently, there comes difference between the contractor and the members of the housing project. The members want to take the garage spaces in their possession but the Contractor on the plea of escalation of the cost does not part with the spaces. By this way, the matter ultimately goes to the court.\textsuperscript{23} As in many cases the contractor and the Architect connive with each other, the Architect does not take necessary steps for obtaining completion certificate from Corporation or Municipality or Competent Authority. As a result, connection of electric lines, water lines etc. remain pending. Temporary electric line of the Contractor is used by members, having no other course open, and they are to pay electric charges at commercial rate which is ordinarily very higher fixed by Electricity Board or Electric Supply Corporation than that of domestic rate. So long this situation continues, members are compelled to sustain a considerable
loss of money in the score. Question arises in housing projects why a
member in whose favour allotment of garage space has initially been
allotted and where the Project cannot afford garage space to every member
and where the other members without garage spaces are waiting for such
spaces, should retain the space all along. Suggestion has been put forward
from some corner that for a specific period a member shall retain a garage
space and leave it to the Co-operative Housing Society and the Society
shall re-allot the space to another member who has not been given any such
allotment. Thus, in a society where number of garage spaces are less than
the number of member, its equitable distribution / allotment like above
demanded formula is called for.

1.6 Service and Maintenance Charges:

After taking occupation of all flats or houses in the Housing
Projects, for security purpose, security personnels are employed. For
common causes, the housing project or the Society is to incur a
considerable amount of money. The common expenditure apart from
security measures includes lighting arrangement at common places of the
premises of the project, clearance of garbage, cleaning in common spaces,
water supply, emergency light at load-shedding, maintenance of park, if
any, expenditure for running the office of the housing project or the Co­
operative Housing Society. The total expenditure on this score may be
termed as the 'SERVICE CHARGE'. There is also one kind of common
expenditure which can be termed as "MAINTENANCE CHARGE". This is mainly meant for repairing of outer sides of the building (consisting of flats) repairing of boundary wall, roof etc. The Service Charge is a regular expenditure whereas the Maintenance Charge is required after 10-15 years of construction of the Project and on interval of a considerable period.

Now, regarding Service Charge, the expenditure on this head is a regular expenditure which is borne by contribution of members. But, in several cases, it has been found that the Service Charge is not collected in regular manner. Some members default it. As a result, the Society's works become standstill. The regular urgent work of the Society stops. Sometimes, litigation cost is borne from the fund meant for Service Charge. As discussed supra, litigations occur between the society and a member or outsiders having transaction. The legal costs for such litigations are generally apportioned to the members including that very member who is a party to such Suit. As a result, the inflated service charge becomes an additional burden over the initially fixed service charge. Some members stay outside the area and do not send service charge regularly or do not pay service charge at all. The society sends notice which in most of the cases returns undelivered. Thus fund on service charge falls short of the requirement. Then the society has no course open than to take legal steps against the defaulting member. Legal step in Co-operative sector is to institute a dispute case to the Registrar of Co-operative Societies. Such
provision of taking recourse of law is absent in any other law concerning groups like the law on registration of societies (not co-operative societies) law on Apartment Ownership etc. In such association or societies, Civil Court is the appropriate Forum where such dispute cases may be agitated.

In case of Co-operative Societies, disposal of disputes for recovery of service charge is quite speedy and with low cost. But its appellate Forum is the Co-operative Tribunal from where further appeal under Article 227, Constitution of India lies to the High Court. So, to realise some hundreds of rupees as service charge from the defaulting member, many thousands of rupees are spent. If the society's office-bearers defend the case in person, cost of litigation may be low. But in most of such dispute cases, infiltration of lawyers became inevitable.

It would be much acceptable to the society, if the defaulting member pays the amount of defaulted service charge on amicable settlement. On the other hand, when such amicable settlement fails, the society has no other alternative than to institute a dispute case. If the society does not take action in realising defaulted service charge, service in the society remains part performed or stopped and other members who regularly pay service charge, abstain from paying the same or pay not in whole of it, but a part thereof. Thus, though the prevailing provision of law in case of co-operative housing society is a way for realisation, it is not so fruitful or useful but invites litigations with resultant effect of consequential
litigations. In a housing complex, several types of flats of different areas are constructed. Some members claim that according to the carpet area, service charge should be apportioned and so it should not be equally divided among members. On this plea, some members of smaller flats stop payment of service charge. As a result controversy arises mainly between two clear groups - one owning smaller flats and the other owning bigger flats. This controversy results to stoppage of service or withholding of service in part. If the number of members of any group of these two types of flats is greater than the other group, the bigger group's decision prevails over the other. The group of smaller flats wants to calculate service charge per member according to carpet area of flats, whereas the other group of bigger flats wants it to be calculated equally irrespective of area of flats. Hence, anyone group whose number is smaller becomes aggrieved and stops payment towards service charge. Litigation starts. In a Co-operative Housing Society, the litigation starts as a dispute case which is filed to the Registrar of Co-operative societies of the State whose power is also ordinarily vested to his other sub-ordinate officers posted in districts or metropolitan areas. In a society under Societies Registration Act or an Association of apartment owners, such disputes may only be agitated in the Civil Court of local jurisdiction. And as narrated supra, the litigation goes upto highest court of the State. The Society experiences several conflicts between two groups - not only in respect of service charge but also in other
affairs. The smaller group then wants separation. Separation of two groups by formation of two separate societies may solve this problem but the main obstacle in dividing the society into two parts is an impossibility of dividing common area, distribution of water supply security arrangement etc. This problem is much complicated when different types of flats are mingled with each other and when there are more than two types of flats. Fragmentation of the main society is in most cases impossible on those grounds. Hence if, adequate precaution is not initially taken, a far reaching consequence in the form of a bad atmosphere in the project shall exist. Cordial relation is then very hard to be attained in the complex. Regarding Maintenance Charge which has been previously discussed is also an issue in the Co-operative Housing Society or the housing complex. If all the flats in the project are of same size and area, mode of raising fund at equal rate is not a problem but if all members do not come forward simultaneously, it is very difficult to adopt the work of maintenance i.e. repairing, minor construction etc. If some members avoid in paying the portion of individual contribution towards maintenance charge, the work is stopped at the middle position. The course of recovery of the contribution from unwilling members is to file a dispute case if the housing complex is under the management of a Co-operative Housing Society. The same hazardous and expensive process is to be adopted here causing a huge sustenance of monetary loss to the society. Ordinarily a
decision of undertaking a repairing work or minor construction is adopted in a general meeting of all members. In some cases, some members give opinion against the majority and they do not want to pay the portion of contribution as fixed in the general meeting. Hence, the required repairing work or other works in buildings remains unattended. Thus buildings of the group housing depreciate. There is no legal provision how a job of repairing or colouring walls or minor construction may be undertaken. The management of the housing and particularly the Board of Directors in case of a Co-operative Housing Society sometimes is blamed to have defalcated such money of maintenance fund. For a huge volume of work, quotations by way of tender are not obtained. Works are sometimes awarded to persons of the office-bearers of the Board of Directors.

1.7 Letting out:

Some members due to their nature of work are to remain outside the area of the housing complex. They induct tenants in their flats. In the law relating to Co-operative Housing Society, there is a provision in some State requiring the member who is willing to let out his flat, to take no objection from the Board of Directors of the society and approval of the Registrar of Co-operative Societies. But some member does not take prior consent and approval from the society as well as the Registrar respectively. Suddenly a new family is seen to reside in the flat. Of course in some societies, it is not possible without concurrence of the Board. due to the
Board's vigil. On the other hand, inspite of prior application by such a member for getting consent of the society, the Board does not take proper steps. Even some Boards want underhand money from the member for giving such consent. Of course, in some States there is a provision for submitting appeal before the Registrar of Cooperative Societies in the event of failure or refusal of the co-operative to give consent within a stipulate period. But inspite of according approval by the Registrar, the Board tries not to implement the approval. Sometimes, a member inducts a company or an institution as tenant. In the residential complex, functions of a company or institution makes great disadvantage and disturbance to others of the complex. Outsiders visit the office and security of the premises falls in danger. In such cases, without consent of the society and the approval of the Registrar, the member inducts companies or institutions. Problem arises when a tenant does not vacate the flat in spite of expiry of the agreed period. Eviction suit starts and for no fault of the society, it is made a party in such litigation. Some members do business with their flats. They have got other residential accommodation in near areas. They reside there and let out the flat and earn money. To arrest this practice, some provision in co-operative laws in some States have been embodied but those are insufficient to prevent these malpractices.

In case of Cooperative Housing Society, some sorts of financial benefits are available. At the time of registration of the land in favour of
Co-operative Housing society, exemption of the whole stamp duty and registration fee are allowed by the State Governments. This exemption is not limited to any specific area of land. It is available irrespective of however big the area of land may be. Besides, at the time of registration of flats to individual members under Registration Act, 1908, exemption of such stamp duty and registration fee are allowed by the state Govt. to a certain limit. Thus, the members of the Co-operative Society enjoy a special benefit under the law. So arbitrary transfer should be restricted in order to control money making by letting out and transfer of the flats. Truly, undertaking of such a housing project is only resort for solving housing problem in our country. But it is observed that a class of persons are engaged to derive special benefit from such housing projects for which the Govt. is allowing benefits. So, restriction should be in the law to arrest frequent and arbitrary letting out. Hence, letting out should be allowed in restricted way on the basis of compelling circumstances under which a member is bound to stay outside the area of the flat. Special provision in concerned legislation should therefore be incorporated for the above purpose. It has also been observed that some members are living in subsidised rented quarter of their employers near the area of their housing project. To get money, they let out their flats at high premium and rent. So actually needy persons are debarred from getting their residential accommodation, whereas these persons are having more than one
residential accommodation in a particular area. If restriction be introduced, housing problem can be solved to a great extent.

1.8 Transfer of flat:

Now, in respect of transfer of any flat or house by a member, it is observed that if the housing complex is under a Co-operative Housing Society, the transfer is guided by co-operative law in some States where special provisions for only Housing Co-operatives are embodied. A member can transfer his flat by way of sale or mortgage or lease or exchange, or gift. Problems arise when the management of the Housing Complex or the Board of Directors of the Co-op. Housing Society is not posted beforehand with any transfer made by a member. Consent of the management should be obtained to get a member's flat or house transferred. But in any other law of Group Housing such as in Apartment Ownership Acts, such restriction is not imposed. It is quite natural that in a Group Housing, any transfer of a flat or house should be made within the knowledge of the owners of adjacent flats or houses and the management of the Co-operative Housing Societies or the Association of owners, as the case may be.

1.9 Summing up and objectives:

Most of the Group Housing Projects are concentrated in urban areas focusing on middle income group. Attention to rural areas and the poor is
scantily paid. In urban areas slums have not got any benefit of Group Housing Projects to a desired extent. Similarly, in rural areas, although inhabitants have some sort of shelter, its standard is not satisfactory.

Group Housing and particularly Housing Co-operatives face great difficulty for the increased cost of land and bias of financing institutions towards middle and higher income groups of people. Group loans to Housing Co-operatives as institutional borrowers is generally not preferred by financing institutions. In such a procedural difficulties, poorer sections or lower income group people face hardship in having adequate resources. The operational management of a Co-operative Housing Society is almost the same as other types of Co-operative societies. But the co-operative laws do not cover a lot of technical issues, such as land allotment process, getting approval of building plan, supervision of construction etc. Special skill is required in the area.

Therefore, the existing laws in respect of Group Housing should be suitably amended to wipeout the present difficulties. From above discussion, it becomes evident that Group Housing Schemes should be expanded to make it available to more weaker and poorer sections of the people than the rich one. The objective of this research is, therefore, to suggest specific pieces of provision of law particularly on the Co-operative Housing Societies and associations of apartment owners in West Bengal with reference to West Bengal Co-operative Societies Act, 1983 and
Endnotes:


2. Article 19(1)(e), The Constitution of India.

3. AIR 1990 SC 360 ; (1990) 1 Scc 520.

4. AIR 1996 SC 1051 ; 1996 (1) Scale 101 : 1996 AIRSCW 542

5. 1995 Supp (2) Scc 182 ; 1995 AIR SCW 1540


7. Scheme launched by Housing Departments of States.

8. Practice of Urban Development Department.


10. Rule of allotting land by Urban Development Department.

11. Several enquiry reports in the office of Registrar of Co-operative Societies, W.B. and the office of Dy. Registrar, Kolkata Metropolitan Authority (Housing).

12. Several Complaints made by members of Housing Co-operatives.

14. Main terms and conditions of assurance letter of U. D. Department for land.


20. Rule 133(2), ibid.


22. Rule 142 ibid.


24. Ibid


26. A dispute in a Housing Co-operative in Kolkata

27. " " "another" " " "


30. Dispute in Co-op. Housing Societies.
