

**TO WHOMSOEVER IT MAY CONCERN**

Mr. Jayantilal Mody and Mrs. Pallavi Mody are the members of Cosmopolitan Siddharth Premises Co-operative Housing Society Limited ('said Society'). Mr. Jayantilal Mody and Mrs Pallavi Mody hold 5 (five) shares of the face value of Rs.50/- each under Share Certificate No. 26 bearing distinctive nos. 126 to 130 ('said Shares') issued by the said Society.

As such members, Mr. Jayantilal Mody and Mrs. Pallavi Mody are Owners, each having 50% share in Flat No. C3i in the building known as Siddharth situate at 20, Napeansea Road, Mumbai – 400 036 ('said Flat').

In the year 2016, Mrs. Pallavi Mody expired intestate at Hyderabad. On her demise her 50% share in the said Shares and said Flat devolved, in equal proportion, upon her legal heirs being Mr. Jayantilal Mody (husband), Gaurang Mody (son) and Tejal Mody (daughter) as per Hindu Succession Act. The said legal heirs obtained an Heirship Certificate from Competent Court of Hyderabad on 1<sup>st</sup> August 2016.

On 8<sup>th</sup> January 2020 Mr. Jayantilal Mody expired at Hyderabad, leaving behind his Will and last Testament dated 30<sup>th</sup> April 2017. As per the said Will, late Mr. Jayantilal Mody bequeathed his 66.67% share in the said Shares and Said Flat equally to his son Mr. Gaurang Mody, grand-daughter Miss Hridhhi Gaurang Mody and grand-son Master Rishqan Gaurang Mody.

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Accordingly, the said Shares and ownership rights in the said Flat are jointly now held by Gaurang Mody having 38.89%, Miss Hridhhi Gaurang Mody having 22.22%, Master Rishaan Mody having 22.22% and Mrs Tejal Mody having 16.67%.

The said Shares, however, continue to stand in the joint name of Mr. Jayantilal Mody and Mrs. Pallavi Mody in the records of the said Society.

Our opinion is sought by Mr Gaurang Mody and Mrs Tejal Mody as to the procedure required to be followed to have the said Shares transferred in the names of Mr. Gaurang Mody, Miss Hridhhi Gaurang Mody, Master Rishaan Mody and Mrs. Tejal Mody in the records of the said Society.

Section 30 of Maharashtra Co-operative Societies Act, 1960 deals with transfer of interest on death of a member of the Society. Sub-Section (1) of Section 30 inter alia provides that if no nomination form is filed in the Society by the deceased member, then, the Shares should be transferred in favour of the heir or legal heir representative of the deceased member as it may appear to the Committee of the Society. Rule 35 of Bye-Laws of the Co-operative Housing Ltd provides steps required to be taken by the Society to enable the Committee to come to such a conclusion. Rule 35 of Bye-Laws of the Co-operative Housing Ltd is reproduced below:

35. Transfer of Shares and interest of the deceased member in the capital / property of the Society to the heir.

*Where a member of the Society dies without making a nomination, or no nominee comes forward for transfer, the Society shall invite within six months from the information of his death, claims or objections to the proposed transfer of shares and interest of the deceased Member, in the capital/property of the Society by a public notice, in the prescribed form, exhibited on the notice board of the Society. It shall also publish such notice in*

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at least two local newspapers, having wide circulation newspapers, having wide circulation. The entire expenses of publication of the notice shall be recoverable from the value of shares and interest of the deceased member in the capital/property of the Society. After taking into consideration the claims or objections received, in response to the said notice and after making such inquiries as the Committee considers proper in the circumstances prevailing, the Committee shall decide as to the person, who in its opinion is the heir or legal representative of the deceased Member. Such a person will be eligible to be a Member of the society subject to the provisions of the Bye-law Nos. 17(a) or 19 provided that he gives an Indemnity Bond along with his application for Membership in the prescribed form, indemnifying the Society against any claims made to the share and interest of the deceased Member in the capital/property of the Society, at any time in future by any person. If there are more claimants than one, they shall be asked to make the affidavit as to who should become a member of the society and such person, named in the affidavit shall furnish the indemnity bond as indicated above along with application for membership, referred to above. If however, the Committee is not able to decide as to the person who is the heir/legal representative of the deceased Member or the claimants do not come to the agreement, as to who should become the Member of the Society, the Committee shall call upon them to produce succession certificate from the Competent Court. If, however, there is no claimant, the shares and interest of the deceased Member in the capital/property of the Society shall vest in the Society.

In view thereof, if the member dies without filing Nomination Form, the Society is required to adopt following steps :

- i) Invite claims and objections for the proposed transfer of shares by a Public Notice to be displayed on the Society notice board and also publish the same in two local newspapers. Entire cost/expenses should be recovered from the value of shares and interest of the deceased member;

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- ii) After receiving claims or objections in response to the said notice, the Committee should decide the person who in its opinion is the heir or legal representative of the deceased member;
- iii) Such a person will then be eligible to be Member of the Society provided he/she fulfills criteria of becoming a member as provided in Bye no. 17(a), provides documents required under Bye Law 19, furnishes application of membership (Form/Appendix no 17) and Indemnity Bond (Form /Appendix no 19);
- iv) If there is more than one claimant, they should provide names in whose favour the shares should be transferred and furnish Indemnity Bond along with application of membership as per Form /Appendix nos 17 and 19; and
- v) If the Committee is unable to decide about who are the heirs and legal representatives of deceased member or the claimants fail to an agreement in whose favour the shares should be transferred, then the Committee should insist upon Succession Certificate from Competent Court.

In respect of said Shares standing in name of late Mr. Jayantilal Mody and late Mrs. Pallavi Mody, we are informed that Mr. Gaurang Mody and Mrs Tejal Mody have already lodged their claim with the said Society. In view thereof, the said Society should invite claims and objections as provided in Bye Laws 35 above. If no one besides Mr. Gaurang Mody and Mrs Tejal Mody claim right and interest in the said Shares, then, the Society should transfer/transmit the said Shares in favour of Gaurang Mody, Miss Hridhi Gaurang Mody, Master Rishaan Mody and Mrs Tejal Mody as provided hereinabove after obtaining Form /Appendix nos. 17 and 19 from them.

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It may be noted that Miss Hridhdi Gaurang Mody and Master Rishaan Mody are still minors. Section 22 of Maharashtra Co-operative Societies Act, 1960 provides that a minor being not competent to enter into a Contract, cannot be admitted as member of the Society. However Section 30 of Maharashtra Co-operative Societies Act, 1960 makes amply clear that a minor can be made a member of the Society if he acquires share in inheritance. Further, Rule 35 of Bye-Laws of the Co-operative Housing Ltd provides that a minor inheriting shares and/or interest of the deceased member is eligible to become a member of the Society through his natural guardian on an application in prescribed form. Form /Appendix no 1 is required to be obtained from the natural guardian. In view thereof, both Miss Hridhdi Gaurang Mody, Master Rishaan Mody can be added members of the Society through their natural guardian i.e their father Mr. Gaurang Mody.

Dated this 12<sup>th</sup> day of October 2020.

For M/s. Gandhi & Gandhi

  
Partner