

West Bengal Real Estate Regulatory Authority  
Calcutta Greens Commercial Complex (1<sup>st</sup> Floor)  
1050/2, Survey Park, Kolkata- 700 075.

Complaint No. WBRERA/COM000204

Sunil Agarwal ..... Complainant

Vs.

Kish Developers LLP..... Respondent

Sl. Number and date of order	Order and signature of Authority	Note of action taken on order
01 <u>06.11.2023</u>	<p>Advocate of the Complainant Smt. Aparupa Ghosal appeared in the online hearing on behalf of the Complainant. She was directed to send the hazira through email to the Authority immediately after receiving this order through email.</p> <p>Chartered Accountant Amit Kumar Kedia and Advocate Pooja Vijayvargiya are present in the online hearing on behalf of the Respondent filing hazira and vakalatnama through email.</p> <p>Heard both the parties in detail.</p> <p>As per the Complainant the Respondent Developer deviated from the sanction building plan as well as CC plan and constructed some illegal construction over the said project and the Respondent Developer also illegally restrains the complainants to use and occupy the same common portions of the building.</p> <p>Complainant stated at the time of hearing that number of Individual allottees have collectively lodged this Complaint Petition.</p> <p>Respondent stated at the time of hearing the following grounds for non-maintainability of this Complaint Petition before this Authority :-</p> <p>a) As per section 31 of the RERA Act, 2016 only individual allottee can file Complaint or any registered association can file a Complaint ; and</p> <p>b) On the self same cause of action a Writ Petition bearing no. W.P. 1460 of 2023 is pending before the Hon'ble High Court at Calcutta, therefore if it is allowed then there will be multiplicity of suits with the same</p>	

cause of action; and

- c) The Complainant has given false declaration in the Complaint Form 'M' that no case is pending before any other forum.

Complainant also consented to the fact that a matter is pending before the Hon'ble High Court at Calcutta regarding same cause of action.

After hearing both the parties, the Authority is of the considered opinion that as per section 31 of the Real Estate (Regulation and Development) Act, 2016, any aggrieved person may file a Complaint with the Authority for any violation or contravention of the provisions of the said Act or Rules and Regulations made thereunder against any Promoter, Allottee or Real Estate Agent, as the case may be. The Explanation of the said section provides that "**person**" shall include the association of allottees or any volunteer consumer association registered under any law for the time being in force. Therefore number of individual Allottees cannot collectively file a Complaint under section 31 of the RERA Act, 2016, before the WBRERA Authority and this Complaint Petition cannot be admitted for hearing before this Authority.

Hence, the present Complaint Petition is hereby **Rejected being non-maintainable** before this Authority as it violates the provisions of section 31 of the RERA Act, 2016.

Let copy of this order be sent to both the parties through speed post and also by email immediately.



(SANDIPAN MUKHERJEE)

Chairperson

West Bengal Real Estate Regulatory Authority



(BHOLANATH DAS)

Member

West Bengal Real Estate Regulatory Authority



(TAPAS MUKHOPADHYAY)

Member

West Bengal Real Estate Regulatory Authority