



## GOA REAL ESTATE REGULATORY AUTHORITY

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Case No. 3/RERA/Complaint(419)/2024/ 1123

Date: 22/08/2024

### SDK CERAMICS LLP

Shop 18 Dukle Elite  
St. Inez, Panaji Goa- 403001.

.....Complainant

V/s

### Civilco Engineers & Associates,

Represented herein by its partner, Mr.  
Gous Mohammed Shiraguppi

- 1) Shop 1, Shri Satish Co-op Housing Society,  
Near Savitri Hall, Haveli, Curti, Ponda, Goa 403401.
- 2) SF-4, Block D, Qadria Plaza, Haveli,  
Curti, Ponda, Goa, 403401.
- 3) Bunglow02, Sairaj Park, Shantinagar,  
Ponda, Goa, 403001.

..... Respondent

### ORDER

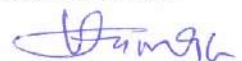
(Dated 22.08.2024)

By this order, I propose to dispose off the preliminary objections raised by the Respondent vide reply dtd 21-06-2024, as to the maintainability of the Complaint dated 07/03/2024 registered online vide No. 986247. The instant complaint has been preferred against the Promoter of the real estate projects i.e.

Empire Village Phase – II, (registration number PRGO10180127) and Civilco Arcade ( registration number PRGO05180122) alleging that the Respondent had placed requisition for certain Construction Material with the Complainant which he had completed and the Respondent had also duly acknowledged the same, however cheques meant to discharge the debt owed pursuant to the invoices raised in this regard were returned unpaid.

2. During the course of hearing, the respondent instead of filing a reply to the Complaint on merits, filed preliminary objections as to the maintainability of the complaint, a copy of which was given to the complainant and the matter was fixed for arguments. Both parties also filed written submissions/arguments on record on the issue of maintainability of the instant complaint.

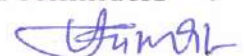
3.(i) In support of his complaint, the complainant has submitted that the registration of the Projects is *inter-alia* subject to compliance of the provisions of section 4(2)(l)(D) of the Act whereby promoter is to ensure deposit of either 70% of the entire amount or the entire amount realized by Respondent in a separate account to cover the *cost of construction* and the land cost and also that the Respondent shall comply with the other relevant provisions of the Act and the rules and regulations made there under. The Complainant further submitted that pursuant to the provisions of sub-clause (g) of sub-section (4) of section 11 of the Act, the Respondent is obligated to pay all outgoings collected by him from the allottees towards any liability, mortgage loan related to the project and interest



thereon before transferring the real estate project to such allottees or the association of allottees and in case it remains unpaid, even after transferring the real estate project to allottees or the association of allottees; besides the cost of any legal proceedings which may be taken there for by such authority or person.

3.(ii) Referring to the subject matter of the complaint, the Complainant further stated that invoices raised by him upon completion/ supply of construction material as per requisitions placed by the respondent; were duly accepted and acknowledged by him and in order to pay the outgoings for the real estate project, viz., the Construction Material, and to discharge the debt owed pursuant to the invoices raised by the Complainant for such Construction Material, the Respondent had drawn and issued cheque bearing number 002044 dated 25-09-2023 for a sum of INR 4,00,000 and cheque bearing number 002045 dated 11-10-2023, for a sum of INR 5,52,656; each drawn on Yes Bank Ltd, Ponda Branch in favour of the Complainant, with an assurance and warranty that the cheques will be honoured as and when presented for encashment. However, when the Complainant presented the cheques to its banker, the cheques were returned unpaid with the remark – “**FUNDS INSUFFICIENT**”.


3.(iii) The Complainant has further argued that the dues owed to the Complainant by the Respondent tantamount to outgoings in relation to the real estate project as envisaged under sub-clause (g) of sub-section (4) of section 11 of the Act and that the Respondent has failed to pay such outgoings despite several reminders



and has violated and continues to violate the provisions of the Act, and also the conditions of registration / approval of the Projects granted by this Authority. The Complainant further stated that such irregularities and unfair practices on part of the Respondent have caused severe hardships to the Complainant, and that there is serious apprehension that the Respondent has not deposited the amounts realised for the Projects in separate accounts and has not used such amounts to cover for the costs of construction as required by Act, and the registration / approval granted by this Hon'ble Authority. The Complainant also stated that such irregularities and unfair practices of the Respondent may also be prejudicial to the interests of the allottees of the Projects.

3.(iv) It was further submitted that this Complaint is filed pursuant to the provisions of section 31 of the Act, which enables any aggrieved person to file a complaint with this Authority, for any violation or contravention of the provisions of the Act or the rules and regulations made there under inter-alia against any promoter (i.e., the Respondent herein). It was thus prayed that in light of the above submissions, the Complaint filed by the Complainant may be allowed and the reliefs prayed for may be granted.

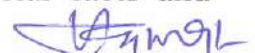
4.(i) The Respondent in his Written Arguments has submitted that the present complaint is not maintainable in law as well as in facts and that this Authority has no jurisdiction to entertain the present complaint as the Complainant is not coming within the definition of section 2(d), 2(zg), and 2 (zk) of the Act and



also that the instant Complainant is also not covered under section 31 of RERA Act as the same is not applicable to the Complainant since the complainant is not allottee as defined under the Act.

4.(ii)It was further submitted that the whole object and intention of the Act is to regulate the promotion of the Real Estate Sector and to ensure sale of plot, apartment of building , as the case may be or sale of real estate project, in a efficient and transparent manner and to protect the interest of the consumer in the Real Estate sector. It was also pleaded that the provisions of sub-clause (g) of sub-section (4) of section 11 of the Act are not at all applicable to the Complainant as the said provision specifies certain categories of payments wherein Complainant case is not covered.

4. (iii) In view of the above submissions, it was thus prayed that the instant complaint is not maintainable under the RE (R&D) Act 2016 as the provisions of the Act are not applicable to the present complaint and therefore, the present Compliant is not maintainable before this Authority also. Further, the remedy is available to the complainant elsewhere and if the complainant is aggrieved then the complainant should approach Civil Court in Civil dispute, however the complainant does not want to avail that remedy and want to bypass the same. It was also stated that the Complaint is just a frivolous, vexatious, malafide attempt and filed with an ulterior motive as the Complainant has not approached this Hon'ble Court with clean hands and has suppressed material facts and



stated false-hoods. Therefore the Application is liable to be dismissed in limine and with cost .

5. I have heard the arguments advanced by both sides on the issue of maintainability of present complaint as well as perused the records of the case. Before reaching at any conclusion on the issue, it would be expedient to refer to the relevant provisions of the Act as also referred to by the complainant and the respondent in their submissions. The same are further extracted herebelow:-

Section 2(d):-

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

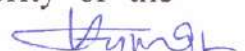
Section 2(zg):-

"Person" means "Person" includes,— (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be; (v) a competent authority; (vi) an association of persons or a body of individuals whether incorporated or not; (vii) a co-operative society registered under any law relating to co-operative societies; (viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;

Section 31(1):-

**"31(1). Filing of complaints with the Authority or the adjudicating officer.-**

(1) Any aggrieved person may file a complaint with the Authority or the



adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

*Explanation.*—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

Section 4(2) (l) (D):-

“(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose: Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the ..... Reserve Bank of India Act, 1934;”

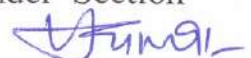
Section 11 (4) (g):-

“(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal

charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;”

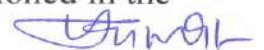
6. Further, Section 2(zk) provides for an elaborate definition of the term Promoter which includes the Development authorities and public bodies also.
7. The case of the complainant is that the registration of the projects of the promoter was granted subject to the conditions that the promoter shall comply with the provisions of the Act and Rules and regulations made thereunder. The complainant further drew attention to the provisions of Section 4(2)(l) (D) and also the relevant rules whereby the promoter is to ensure that 70% of the amount realised or the entire of the amount realised for the real estate projects from the allottees from time to time are deposited in a separate account to cover the cost of the construction and land and the same has to be used only for that purpose. Further, Section 11(4) (g) casts a duty upon the promoter to pay all outgoings collected by him from the allottees towards any liability, mortgage, loan related to the project and interest thereon before transferring the real estate project to such allottees or the association of allottees and in case it remains unpaid, even after transferring the real estate project to allottees or the association of allottees; besides the cost of any legal proceedings which may be taken there for by such authority or person. The complainant has further argued that the dues owed to the complainant by the respondent tantamount to outgoings in relation to the real estate projects as envisaged under Section





11(4)(g) of the Act. It was further argued that the failure of the respondent to make payments to complainant also amounts to irregularities and unfair practices by the respondent and have caused real hardship not only to the complainants but would also be prejudicial to the interest of the allottees of the projects. The complainant also further argued that the complainant has appropriately filed the complaint under the provisions of section 31 of the Act which enables any aggrieved person to file a complaint with this Authority, for any violations or contraventions of the provisions of the Act, rules and regulations made thereunder against any promoter, allottee or real estate agent.

8. The respondent on the other hand has relied upon the provisions of Section 2(d), 2(zj) and 2(zk) and Section 31 of the Act and has also referred to the preamble of the Act to argue that since the complainant is neither an allottee nor a promoter so the complaint preferred under section 31 of the Act by the complainant is not maintainable. Referring to the objection of the Act as available in the preamble of the Act. The respondent further sought to draw support to say that the instant complaint does not attract any provisions of the Real Estate (Regulation and Development) Act 2016 and hence not maintainable, needs to be dismissed in limine and with cost.
9. It was further stated that the provisions of Section 11(4)(g) of the Act, the respondent has sought to argue that various categories of payment i.e. land cost, ground rent, municipal taxes, charges for water/ electricity etc. mentioned in the




provision; do not cover the subject matter of the instant complaint and thereby also the complaint is not maintainable and hence this Authority has no jurisdiction to deal with the matter. Further, the complainant should have approached civil court in a civil dispute

10. During the course of the argument, Ld. Counsel for the respondent also referred to the provisions of Section 37 and Section 38 of the Act to further his argument that the subject matter of the complaint in question is also not covered under the powers of the Authority as delineated in these provisions.
11. The perusal of the various provisions of the Act as extracted hereinabove would reveal that the contentions of the respondent that the complaint is not maintainable in view of the provisions of Section 2(d), 2(zj) and 2(zk) and Section 31 of the Act in as much as Section 31 empowers any aggrieved person to file a complaint with the Authority for any violation or contraventions of the provisions of the Act or rules and regulations made thereunder and the definition of the person is not limited to the allottees. The explanation appended to the Section 31 of the Act further also includes any voluntary consumer association registered under any law and the only condition stipulated under Section 31 of the Act is that any person filing a complaint under Section 31 of the Act should be aggrieved of the some violation or contravention of the provisions of this Act or the Rules and regulations made thereunder and that it should be preferred against any promoter, allottee or real estate agent. Further



Section 11(4) (g) read with the proviso appended to it more than clarifies that the nature of the pay which the matter of the complainant would be covered under the said provision which is further supported by the provision of Section 4(2)(l) (D). In view of what has been discussed hereinabove, the contention of the respondent that the subject matter of the complaint in question is also not covered under the powers of the Authority as delineated under Section 37 and Section 38 of the Act; also does not appear to be of much help to him.

12. In view of the above, the complaint preferred by the complainant is evidently maintainable at this stage and the preliminary objections raised by the respondent are disposed of accordingly. The complaint preferred by the complainant herein is thus allowed and the respondent is further given an opportunity to file reply to the complaint on merit on next date of hearing which is fixed on 05.09.2024 at 11:30 a.m.

  
22/08/24  
**Virendra Kumar, IAS(Retd.)**  
**Member, Goa RERA**