

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Bench of Mr. Naveen Verma, Chairman &
Mrs. Nupur Banerjee, Member**

Case No. RERA/PRO/REG.43/2022

Authorized Representative of RERA

v.

Aashritha Homes And Developers Pvt. Ltd.

Project – VAIDEHI VIHAR

HEARING THROUGH VIDEO CONFERENCING

Present: For Authority: Mr. Pratik, Advocate

For Respondent: Mr. Sumit Kumar, Advocate

ORDER

31-03-2022

26.04.2022

M/s Aashritha Homes And Developers Pvt. Ltd., through its Executive Director, Mr. Pankaj Kumar Jha, filed an application for registration of real estate project '**VAIDEHI VIHAR**' before the Real Estate Regulatory, Bihar, on 27.02.2022. Real Estate Regulatory Authority, Bihar issued a notice to M/s Aashritha Homes And Developers Pvt. Ltd., through its Executive Director, Mr. Pankaj Kumar Jha, on 15.03.2022 as to show cause why the application for registration of the real estate Project '**VAIDEHI VIHAR**' (Application No. RERAP79201800826-1), filed by the company with the Real Estate Regulatory Authority (RERA), Bihar, on 27.02.2022, should not be rejected under Section 5 (1) (b) of the Real Estate (Regulation & Development) Act, 2016. The ground for rejection were that the applicant failed to furnish proforma of Agreement for sale as per Bihar RERA Rules, 2017, along with schedule A,B,C,D & E annexed with it, legible copy of current Non-Encumbrance Certificate of all the plots on which the project is proposed, registered Land Deed of plot no.

2267,2268,2265,2266,2275,2263,2278,2269,2262,3300,2271,2279, 2281,2264,2262/3300,2269,2278,2263,2261/3300,2264,2281,2279, 2264,2281,2280,2277,2261,2272,3937,3943,3885,3927,3916,3940, 3941,3935,3885,3933,3932,3889,3888,3862,3863,3947,3952,3974, 3938,3978,3943 & 3935 on which the project is proposed, Mutation Order/Rent Receipt/Land possession certificate of all the plots on which the project is proposed, map approved by competent authority, details of the Bank Account opened in the name of project, details of the project done in last five years, Balance Sheet along with the notes to the account for the financial year 2019-20, 2020-21, Profit & Loss Statement for the financial year 2018-19, Cash flow statement of the financial year 2019-20, 2020-21, Directors Report of the financial year 2019-20, 2020-21 and Auditor's Report of 2018-19 and local address proof of the company.

The matter was heard on 25.03.2022, under section 5 (1) (b) of the Real Estate (Regulation and Development) Act, 2016, for rejection of the application for registration of the project 'VAIDEHI VIHAR', wherein Learned Counsel Mr. Sumit Kumar appeared along with the Director of the respondent company. The learned counsel submitted that all the requisite documents had been sent after receipt of notice dated 15.03.2022 except the map sanctioned by the competent authority as the project area is outside the planning area. He had further requested to waive off the requirements of registration till the determination of the Local Authority in the non-planning area.

Authorised Representative of RERA placed before the Authority that while the promoter had submitted certain documents after the issue of notice dated 15.03.2022 and without going into the details of documents that are still wanting, the major issue is that the map is not approved by competent Authority

in terms of Section 4(2)(d) of the Act. He further placed before the Bench that the map of the project is approved by Mr. Vijay Kumar Choudhary, Consultant Engineer Darbhanga Municipal Corporation, and from the bare perusal of the Building permit letter itself, though not approved by competent authority, it appears that the concerned person i.e. Mr. Vijay Kumar Choudhary runs a private firm in the name of '*Engineer's & Developers*' who in the present case has approved the map of the project, therefore, map submitted by the promoter is not approved by competent Authority in terms of clause (d) of sub-section 2 of Section 4 of the Real Estate (Regulation & Development) Act, 2016.

Mr. Sumit Kumar, Learned Counsel for the promoter stated in his written submission that map is prepared by Er. Narayan Rao, B.E. Civil Engineer and vetted and approved by Sri. Vijay Kumar Choudhary (Panel Engineer of Darbhanga Municipal Corporation) and that map was prepared by Empanelled/Certified Architect/ Engineer as per standard norms. He has mentioned that the notice dated 15.03.2022 issued by the Authority is silent about the requisite permission of local Authority which needed to be taken beforehand by the RERA while directing any project which are being developed beyond the planning area. He further states that in light of second proviso to Section 3 of the Real Estate (Regulation & Development) Act, 2016, there is no requirement of registration of aforesaid project until the present Authority itself takes requisite permission of local Authority. He has stated that the Authority has to take requisite permission of the local Authority & then direct the promoter of such project for Registration beyond the planning area. He has further stated that Act of 2016 is only applicable to planning area and that Bihar Building Byelaws are not applicable beyond planning area and hence either RERA may first take

requisite permission from the Local Authority or to waive off the requirements of registration of the aforesaid project till constitution of local Authority beyond the planning area.

The Authority considered the submissions and the written statement filed by the learned counsel for the promoter. The statute provides that an application filed under section 4 of the Act has to include , inter alia, ...*“the sanctioned plan, layout plan and specification of the proposed project or the phase thereof, and the whole project as sanctioned by the competent Authority”* as provided in sub-section 2 of Section 4 of the Act as well as Rule 3 and 4 of the Bihar Real Estate (Regulation and Development) Rules, 2017.

The term ‘Competent Authority’ is defined under section 2 (p) of the Act, which read as follows:-

“Competent Authority means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has power to give permission for development of such immovable property”

The Authority observes that the map of the project approved by Mr. Vijay Kumar Choudhary, Consultant Engineer Darbhanga Municipal Corporation who has given the approval upon the letter head of a private firm named as ‘*Engineer’s & Developers*’, who is certainly not a competent authority. Therefore, map submitted by the promoter is not approved by competent Authority in terms of clause (d) of sub-section 2 of Section 4 of the Real Estate (Regulation & Development) Act, 2016.

The Bench takes note of the fact that the Real Estate Regulatory Authority (RERA), Bihar in its first meeting held on 3rd May, 2018, had unanimously decided to protect the interest of

allottees/consumers of real estate project which are developed beyond planning area and vide Order dated 03.05.2018, in exercise of power under second proviso to section 3 directed *all the promoters and developers to register their real estate projects which are proposed to be developed or being developed beyond the planning area but with the requisite approval of Local Authority in the State, with the Real Estate Regulatory Authority, Bihar.*

The Bench further observes that Notification dated 03.05.2018, was issued in the interest of general public in order to protect the interest of allottees/consumers in the real estate sector in non-planning area and one of the main objective of the Real Estate (Regulation & Development) Act, 2016, is to protect the interest of consumers in the real estate sector.

The second proviso to Section 3 (1) of the Act, which read as follows:-

“Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which area developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from the stage of registration”.

It is clear from the formulation of the law that this proviso is applicable for projects undertaken with “the requisite permission of local authority” . It is implicit that taking the requisite permission of the local authority is the obligation of the promoter. The meaning is plain and unambiguous. The claim of the promoter that it is for RERA to obtain the permission of the

local authority for projects developed beyond the planning area is contrary to the spirit and words of the law. Hence the submission that RERA ought to obtain permission from the local authority for the projects developed beyond the planning area is rejected outright.

The Authority further observes that it is certainly not the task of RERA to name the local authority or the competent authority. The term 'Competent Authority' as defined under section 2 (p) of the Act entails authority created or established under any law by appropriate government. The legislation has not cast responsibility upon the Authority to name the competent authority who may be treated as competent authority in non-planning area.

The Bench takes note of the fact that in response to letter dated 03.03.2021, sent by the Secretary, RERA to the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, responded with letter dated 18.08.2021 stating therein that the matter is under consideration with regard to grant of powers of local authorities in non-planning areas for real estate project.

The empanelled Architect/Civil Engineer can, by no stretch of imagination be treated as the 'local authority' and hence has no power of approval of real estate project in non-planning area. Therefore, registering the project without clarity on who would approve the map would not be in the interest of the allottees. The request to waive off the requirements of registration cannot be accepted by the Real Estate Regulatory Authority in the overall interest of allottees.

The Bench further observes that clause (B) of Section 8 of Bihar Building Bye Laws provides that "*A separate guidelines may be issued for sanctioning of projects within Gram Panchayat*

area but falling outside side the jurisdiction of any Planning Authority". A reference may be made to the State Government to specify the competent Authority to approve map/plan in non-planning area is under consideration and issue guidelines related to it.

In view of the above the Authority observes that it is apparent that the original map/plan of the proposed project has not been approved by the competent authority in terms of section 4 (d) of the Act and construction which are not being regulated cannot be allowed putting the interest of allottees in jeopardy, therefore, the application for registration of real estate project 'VAIDEHI VIHAR' stands rejected as the promoter has failed to submit the requisite documents with the Authority as stipulated by Section 4 of the Real Estate (Regulation and Development) Act, 2016 and Rule 3 of the Bihar Real Estate (Regulation and Development) Rules, 2017, with the liberty that promoter may apply again for the registration of same project in future along with requisite documents and no fees would be charged from them.

Sd/-
Nupur Banerjee
(Member)

Sd/-
Naveen Verma
(Chairman)