

Real Estate Regulatory Authority (RERA), Bihar, Patna

Before Mr R. B. Sinha & Mr S. K. Sinha, Members of the Authority

Case Nos. SM/187/2019

Authorised Representative of RERA.....Complainant

Vs

M/s Bhawani Infracon Pvt Ltd.....Respondent

Present For the Authority : Mr Sumit Kumar, Advocate

Ms Shivi, Advocate

For the Respondent :Mr Jairam Singh, Advocate

08/07/2019

O R D E R

1. The Real Estate Regulatory Authority, Bihar, Patna issued a suomotu show cause notice on 13/07/2018 to M/s Bhawani Infracon Pvt Ltd, Purnea for non-compliance of the provisions of Section-3 of the Real Estate (Regulation & Development) Act, 2016 by non-registering their ongoing project “Vasundhara Enclave” with the Authority.
2. In the notice it was stated that Section 3 of the Act provides that no promoter can advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area within the State without registering the real estate project with the Real Estate Regulatory Authority, Bihar. The promoter of ongoing real estate project in which all buildings as per sanctioned plan have not received Completion Certification, shall also be required to be registered for such phase of the project which consists of buildings not having Occupation or Completion Certificate.
3. In the first proviso of Section 3 of the Act, all ongoing commercial and residential real estate projects were required to be registered within three months of the date of commencement of the Act i.e. by 31st July, 2017 with the Real Estate Regulatory Authority except in projects

where area of the land proposed to be developed does not exceed 500 sq mtrs or number of apartments proposed to be developed does not exceed 8 (eight) inclusive of all phases.

4. It was stated in the notice that in spite of several extension of the deadlines given by the State Government, the respondent company have failed to register their project “Vasundhara Enclave” Patna with the Authority though they have been advertising and taking advances against the booking made in the project since long ago.
5. Accordingly, the respondent company was directed to show cause as to why proceedings under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 be not initiated against them, their company, other Directors and officials of the company for non-compliance with the provisions of Section 3 of the Act.

Response of the Company:

6. In their response dated 31st July 2018, the Director of the Respondent company admitted that map of the Project was sanctioned in January 2012 and the development agreement was executed on 16.05 2013 between the developer and the land owner of the plot for construction of a multi-storied building. The Respondent Company admitted that the construction of flats was completed in the year 2017 and some finishing work such as painting / tiles fittings etc were left due to the request of extra work of concerned flat owners. He also claimed that registration of many flats of his share were executed before commencement of the Real Estate (Regulation & Development) Act, 2016 and some are left as they have not paid the entire consideration amount. However, construction was also completed in those flats. He also claimed that 16 flat owners of his share of the building i.e. 21 flats were residing there after execution of their absolute sale deed. He has therefore, claimed that the concerned project was completed before commencement of the Act.

Hearing:

7. When his response was not found satisfactory, the respondent company was called for hearing on 17/02/2019. In course of hearing, Mr Jairam Singh, Advocate represented the company and filed his Vakalatnama.

Hearings were held on 17/01/2019 and 04/02/2019. In course of hearing the learned counsel reiterated the claim made by the Director of the company and claimed that the project was completed prior to commencement of the Real Estate (Regulation & Development) Act, 2016. He however, did not produce either the Completion Certificate or the Occupancy Certificate in spite of direction from the Bench. He was also not sure about the present status of the apartment of the land owners and just stated that 16 apartments of the promoter's share of 21 flats were occupied.

8. When it was pointed out by the learned counsel of the Authority that occupancy does not mean that the project was complete, he could not satisfactorily answer. When his attention was invited to the statement of the Director of the respondent company that many flats were still unfinished as paintings and tiles work had not been done on them, he could not give any cogent answer. Learned counsel for the Authority also brought before the Bench that there was a complaint petition filed by a petitioner against the respondent company stating that 20% work has not yet been done and several measures like gen set, installation of fire fighting equipment, installation had not been done till October, 2018.

Issue for Consideration :

9. There is only one issue for consideration i.e. whether the project Vasundhara Enclave was ongoing project as on 01/05/2017, the date on which the Real Estate (Regulation & Development) Act, 2016 came into operation.
10. The Director of the company has himself admitted that certain portion of many apartments of his share which happen to be only 50% of the entire building were incomplete as on the date of commencement of the Act and were subsequently completed. He did not even claim that the apartments belonging to the land owners share were completed before commencement of the Act. Further in spite of the direction of the Bench, he did not produce either the Completion Certificate or Occupancy Certificate from the competent authority. He could not even

produce the Certificate of Completion issued by his Architect to the competent authority for verification and completion of the construction.

Order:

11. The Bench imposes a penalty of Rs one lakh on the Respondent Company and orders them to register their project Vasundhara Enclave within thirty days of issue of this order.

Sd/-

(R.B. Sinha)
Member

Sd/-

(S.K. Sinha)
Member