

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Bench of R. B. Sinha and Dr S. K. Sinha, Members of RERA, Bihar

Suo motu Case No. SM/279/2018

Authorised Representative of RERA.....Complainant

Vs

M/s Bricks Estate Private Limited.....Respondent

**Present: For the Complainant:- Mr Sumit Kumar, Advocate
Ms Shivi, Advocate
For the Respondent:- Mr Arvind Kumar, Advocate
Mr Pramod Kumar, MD**

09/05/2019

O R D E R

- 1.** The Real Estate Regulatory Authority (RERA) issued a suo motu notice on 20th November 2018 under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 for non-compliance of the provisions of Section 3 of the Act against M/s Bricks Estate Pvt Ltd for non-registration of their ongoing project Sai Motilal Enclave, Near Hathikhana, Danapur, Patna 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 Certificate, 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 Act, i.e. by 31st July, 2017 with the Real Estate Regulatory Authority except in projects where area of land proposed to be developed does not exceed 500 sq mtrs or number of apartments proposed to be developed does not exceed 8 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 Sai Moti Lal Enclave, Near Hathikhana, Danapur, Patna with the Authority though they have been advertising and taking advances against the bookings made in the project since long ago.
5. Accordingly, the respondent company were 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 Respondent Company:

6. In response on behalf of the Respondent company, Managing Director, Mr. Pramod Kumar stated on 4th December 2019 that they had entered into a Development Agreement with the land owners during October-November, 2017 for the project and the Map for the said project was submitted in Nagar Parishad, Danapur in December, 2017 for approval. They claimed that they had even tried to upload their application for registration on the portal of RERA, Bihar on 10/11th January, 2018. However, due to non-availability of approved Map, they could not proceed further. The

Respondent company also claimed that they had not even initiated any kind of bookings because of the following reasons:-

- (a) Before going for booking, they had to complete sample flat, from their own fund, to show clients/ visitors.
- (b) Bookings must be made on the pre-announced date in the presence of respected gathering including RERA officials.
- (c) Before launching probable date in January/February, 2019, all formalities should be completed along with opening of separate bank account for the project.
- (d) Advertisement on the website was just symbolic to show their presence and it had nothing to do with the offers or business of any kind.

The Managing Director assured that they would submit the application along with the hard-copies of the documents along with requisite fee to the Authority before any kind of launching activities.

Hearing:

7. On the date of first hearing on 28th December, 2018 the Respondent company was represented by Mr. Arvind Kumar, Advocate when a petition was filed, wherein statements made in their response to the notice issued by the Authority was reiterated and a prayer was made that they may be given one months' time for filing the application before the Authority. The Respondent company was directed by the Bench to submit the application for registration of the project before the next date of hearing i.e. 16th January, 2019. On the next date of hearing, the Managing Director of the company personally attended and admitted that they had done the casting up to the second floor. He accepted that the Respondent Company had been trying to make sample flat though their plan had not yet been approved by the Nagar Parishad, Danapur as yet. He further claimed initially that the respondent company has not done any bookings but when informed that Authority was in possession of documents, which suggested that the company had been advertising and making bookings in the project, he yielded and expressed his regrets for false statements made in their written submission. He was again directed to apply for registration of the

ongoing project with the Authority and submit hard-copies of the application by 31st January, 2019. On 7th February 2019, the Respondent company informed that they have filed online application for registration of the project with the Authority on 31st January 2019 and sought a week's time for submitting the hard-copies of the application along with relevant documents and requisite fee. The Respondent Company was further given time on 18th February, 2019 and 28th February, 2019 for submission of the hard copies of the documents along with requisite fee but the same had not been submitted till date. The Respondent company kept on requesting for some time on one or other pretext. The Respondent company have not yet submitted the hard-copies of the application for registration till now (08th May, 2019).

Issues for Consideration

8. There is only one issue for consideration i.e. whether the Respondent company has been advertising and making bookings for their ongoing project 'Sai Motilal Enclave' in November 2018. In course of hearing, the MD of the Respondent Company had admitted that they had been advertising and booking the Apartments in the Project. He also admitted that casting up to the second floor has been done without approval of the plan by the competent Authority. As per the records available with the Authority, it was proved beyond doubt that the company has made a detailed brochure for the project and had been making bookings since 16th January, 2018 at the rate of down payment @ Rs.4,000/- per sq.ft. (furnished Duplex Rs.4,500/- per sq.ft.), and construction linked plan @ Rs.4,500/- per sq. ft. (Furnished Duplex @ Rs.5,000/- per sq.ft.). The Authority had in possession of the photocopy of application for allotment of land/apartment wherein the Respondent company had accepted the bookings and issued Provisional Receipts to the customers for the cheques paid by them in April, 2018. As per Audited Financial Statements of the company, it was apparent that the company had made bookings even during 2017-

18 without registering their project with the Authority. It is, therefore, established beyond doubt that the Respondent company had contravened provisions of section-3 of the Real Estate (Regulation and Development) Act, 2016.

9. Thus the Respondent Company had not only failed to apply for registration of their ongoing Project Sai Moti Lal Enclave while advertising and booking apartments in the project but also failed to submit the hard-copies of the application for registration along with relevant documents and requisite fee even after three months of online filing of application on 31st January 2019, in-spite of repeated directions of the Bench and their own commitments in the course of hearing in the Authority. We therefore hold that the Respondent company has contravened the provisions of the Section 3 of the Act with impunity.

Order

10. Section 59 of the Real Estate (Regulation & Development) Act, 2016 states that if any promoter contravenes the provisions of Section 3 of the Act, he shall be liable to a penalty which may extend up to 10% of the estimated cost of the real estate project as determined by the Authority. In his application, the MD of the company has himself estimated the cost of the project as Rs 18.30 crore. We are inclined to accept it.

However, Keeping in view, the fact that the Respondent company is a new company established barely three years ago and this is the first project of the promoter, we feel that the Authority should be considerate and show a little leniency towards the Respondent company. However, considering the fact that inspite of repeated directions of the Bench, the Respondent Company has not submitted the hard-copies of the Application in the last three months, We impose a penalty of one percent of the estimated cost

i.e. Rupees eighteen lakhs and thirty thousands on the Respondent company, to be paid within 60 days of issue of this order. We also direct the Respondent Company to apply for registration of this ongoing project without any further delay.

Sd
(R. B. Sinha)
Member

Sd
(Dr S.K. Sinha)
Member