

**Real Estate Regulatory Authority (RERA), Bihar, Patna**

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

**Case Nos. SM/268//2019**

**Authorised Representative of RERA.....Complainant**

**Vs**

**M/s Muskan Construction Pvt Ltd.....Respondent**

**Present For the Authority :Mr Sumit Kumar, Advocate**

**Ms Shivi, Advocate**

**For the Respondent: Mr Rajesh Kumar, MD**

**08/07/2019**

**ORDER**

1. The Real Estate Regulatory Authority (RERA), Bihar, Patna had issued a suo motu notice against M/s Muskan Construction Pvt Ltd, Kankarbagh, Patna for contravening the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016 due to non-registration of their ongoing real estate project “Shivraj Plaza”, West Church Road, Gaya, 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 31<sup>st</sup> July, 2017 with the Real Estate Regulatory Authority except in projects where area of the land proposed to be developed does not exceed 500 sqmtrs 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 Shivraj Plaza, West Church Road, Gaya 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 Respondent Company:**

6. In their response dated 26/11/2018, the authorized representative of M/s Muskan Construction Pvt Ltd stated that the project “Shivraj Plaza” situated at West Church Road, Gaya was already completed in the month of September, 2018. Further they were not selling any portion or part of the building and not taken any booking advance from the buyer in this regard. They informed that they have leased the whole building to Aditya Consumer Marketing Limited and Aditya Vision Limited. Along with their response, they sent a copy of the lease agreement with the Aditya Consumer Marketing Limited and Aditya Vision Limited and copies of the bank statement of the company to show that they were receiving rental from these companies.

**Hearing:**

7. As the reply of the respondent company was not considered satisfactory, the Respondent company through their Directors were directed to attend the hearing on 04/02/2019.

8. Hearings were held on 04/02/2019, 11/02/2019, 03/04/2019 and 14/05/2019. While on the first date of hearing no one represented the company. On the next date of hearing i.e. 11/02/2019 the Managing Director of the respondent company attended the hearing personally. In course of hearing, the company was directed to file for registration of the project with the Authority as the project was developed by the respondent company in which only 50% share was allotted to the developer while the other 50% of the share of the project “Shivraj Plaza” was given to the land owners. Further, since the project was ongoing till September, 2018 and completion and occupancy certificates have not yet been issued, the project was required to be registered with the Authority under Section 3 of the Real Estate (Regulation & Development) Act, 2016.

9. Again on 03/04/2019, no one turned up on behalf of the respondent company in course of hearing. The Bench, therefore, directed the Directors of the company to be personally present on the next date of hearing. On 14/05/2019 Mr Rajesh Kumr, MD of the respondent company attended the proceedings and informed the Bench that they have applied for registration of the project “Shivraj Plaza” on 08/03/2019 with the Authority. They have also submitted a copy of the receipt of hard copies of the applications of the project to the Authority.

**Issue for Consideration:**

10 There is only one issue for consideration i.e. whether the project “Shivraj Plaza”, Gaya was an ongoing project as on 01/05/2017 i.e. the date on which the Real Estate (Regulation & Development) Act, 2016 came into operation in the State. The respondent company in its first response had already admitted that the construction of the project

was going on till September, 2018. It is therefore conclusively established that the project “Shivraj Plaza” was an ongoing project as on 01/05/2017 and was required to be registered with the Authority. The Respondent company has since admitted the mistake and applied for registration with the Authority.

**Order:**

11. Section-59 of the Real Estate (Regulation & Development) Act, 2016 provides that if any promoter contravenes the provision of Section-3, he shall be liable to a penalty, which may extend up to ten percent of the estimated cost of the real estate project as determined by the Authority. The Respondent Company has estimated the cost of the project as Rs 5.86 crores. We are inclined to accept it.

12. As the Respondent Company has already applied for registration of the project, we feel leniency should be shown to them. The Bench therefore orders a token penalty of half percent of the estimated cost i.e. Rs 2.93 lakhs on the Respondent Company, to be paid within sixty days of issue of the order.

Sd

**(R.B. Sinha)**  
**Member**

Sd

**(S.K. Sinha)**  
**Member**