

REAL ESTATE REGULATORY AUTHORITY, BIHAR, PATNA

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

Case No. SM/298/2018

Authorised Representative of RERA.....Complainant

Vs

M/s Neelgeet Constructions Pvt LtdRespondent

**Present: For the Complainant: Mr Sumit Kumar, Advocate
Ms Shivi, Advocate**

**For the Respondent: Mr Deepak Kumar, Advocate
Mr Bhola Shanker, Advocate**

27/12/2019

O R D E R

1. The Real Estate Regulatory Authority (RERA), Bihar, Patna had issued a suo motu show cause notice under Section 35 & 59 of the Real Estate (Regulation & Development) Act, 2016 against M/s Neelgeet Constructions Pvt Ltd for contravention of Section 3 of the Real Estate (Regulation & Development) Act, 2016 by non-registering their ongoing projects “Kabil Sao Enclave” and “Bimal Business Park”, 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. Under 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. In the notice it was stated that in spite of several extensions of the deadline given by the State Government, the Respondent Company have failed to register or apply for registration of their real estate projects “Kabil Sao Enclave” and “Bimal Business Park”, Patna. The respondent company was accordingly directed to state on 11th December 2018 as to why a proceeding under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 be not initiated against the respondent company for contravening the provisions of Section 11(2) of the Act within two weeks of issue of the notice.

Response of the Respondent Company :

5. The respondent company did not reply to the show cause notice within stipulated period. Therefore, the matter was fixed for hearing on 19th March, 2019 and accordingly the directors of the respondent company were directed to be present or send their authorized representative to attend the hearing.

Hearing :

6. The matter was heard on 29/03/2019, 04/04/2019, 15/05/2019, 22/07/2019, 06/08/2019 and 08/08/2019. In course of hearing, the respondent company was represented by their learned Counsel Mr

Dipak Kumar, Advocate and Mr Bhola Shanker, Advocate. On the first date of hearing, the Learned Counsel of the Respondent Company contended that they have filed the application for registration of the project “Kabil Sao Enclave” on 21st December 2018 immediately after receipt of the show-cause notice. As regards registration of the Project “Bimal Business Park”, Patna, he sought for time. In course of hearing, the learned counsel of the Authority placed on record the advertisements given by the Respondent company for booking of 2,3,4 BHK apartments in these residential real estate projects in December 2018 without registering them with the Authority. The Learned Counsel of the Authority brought to the attention of the Bench, definition of advertisement given in the Act 2016. Section 2B of the Real Estate (Regulation & Development) Act, 2016 defines “advertisement” as under :-

“Advertisement means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes.”

7. In view of the very wide ambit of the definition of “Advertisement”, learned Counsel of the Authority claimed that the Respondent Company has violated the Section 3 of the Act by advertising the Projects without registering the projects with the Authority.
8. During the course of hearing on 15/05/2019, learned counsel of the respondent company was again directed to file application for registration of their second project and intimate the Authority accordingly within a fortnight. On 08/08/2019 the learned counsel

of the respondent company informed the bench that they have filed the required papers for registration of the project “Bimal Business Park”.

Issues for consideration :

9. There is only one issue for consideration i.e. whether the promoter has violated Section 3 of the Act, 2016 by advertising, selling, booking or inviting persons to purchase in any manner apartments in these real estate projects without registering the project with this Authority. In course of hearing, the learned counsel of the Respondent Company admitted that they had made advertisements on their websites and claimed that they didn't know the provisions of the Act. They however contended that they have submitted the applications for registration of their projects Kabil Sao Enclave on 21st December 2018 and Bimal Business Park on 8th August 2019. They prayed for leniency from the Bench. Learned Counsel of the Authority informed the Bench that audited financial statements of the Respondent Company for the year 2016-17 & 2017-18 also confirmed that these two projects were ongoing since 2016-17.

Order :

10. 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 have themselves estimated the cost of their two projects as Rs 24.40 crores. We are inclined to accept it.
11. As the directors of respondent company are young and relatively new in real estate sector and have submitted their applications for registration with the Authority after receipt of the suo motu notice, the Bench feels that another opportunity should be given to them and leniency be shown to them. Accordingly it is ordered that a

token penalty Rs 10.00 lakh (0.4 percent of the estimated cost of two projects) be levied on the respondent company. The penalty should be paid within sixty days of the issue of this order.

Sd/-

(R. B. Sinha)
Member

Sd/-

(S.K. Sinha)
Member