



## REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

**Suo motu Complaint Case No. RERA/NC/177/2018**

**Authorised Representative, Real Estate Regulatory Authority,  
Bihar- Complainant**

**Vs**

**M/s Shree Lok Nath Baba Homes Pvt Ltd.....Respondent**

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

**For the Respondent-Mr Himanshu Kumar, Company Secy**



**27/11/2018**

### **ORDER**

1. The Real Estate Regulatory Authority (RERA), Bihar issued a suo motu show cause notice to M/s Shree Lok Nath Baba Homes Pvt Ltd in July, 2018 under Section 7, 35, 59 & 60 of the Act for non-compliance with Section 3 and 4 of the Act by advertising and booking of apartments in their project "Sarvayoni City" located at Lakhni Bigha near DRM Office, Danapur, Patna without getting registration with the authority. It was also stated in the notice that the promoter had submitted contradicting two applications online for registration of their project -Sarvayoni City. In the application submitted on 02/05/2018, the promoter had claimed that their project was an ongoing project which had commenced on 01/01/2017 while in the application for registration of project filed on 12/06/2018, they claimed that the project was a new real estate project scheduled to commence on 14/06/2018. In the notice, the Authority had

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informed the promoter that as per the balance sheet of the company for the financial year 2016-17 submitted along with their application on 14<sup>th</sup> June 2018, the promoter of the project have been running this project and booking and collecting advances against apartment/flats since 2016-17. Further, the company had also collected Rs 2.77 crore as booking amount against flats/plots from customers since 2016-17. The promoter had also uploaded the under construction photographs of the project on its website and had been claiming that the company has been running and developing other real estate projects viz; Avighna & Vrindavan City and advertising them for sale on their website in violation of Section 3 of the Real Estate (Regulation & Development) Act, 2016. The Authority also informed the promoter that under first proviso of Section 3 of the Act, all ongoing residential/commercial real estate projects were required to be registered with RERA by 31st July, 2017 except where the area of land proposed to be developed does not exceed 500 sq mtr or number of apartments proposed to be developed does not exceed eight inclusive of all phases. It was further informed in the notice that Section 3 of the Act stipulated that no promoter can advertise, market, book, sale 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 their real estate project with the Authority.

2. In the notice, the Authority also informed the company that the Director of the Company had failed to furnish correct information in respect of his ongoing project in their application form for registration of their real estate projects with the Authority. Further, the company was show caused as to why their application for registration of the project "Sarvayoni City" be not rejected under Section 7 of the Act and proceeding under Section 35, 59 and 60 of the Real Estate



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(Regulation & Development) Act, 2016 be not initiated against him, his company and other directors and officials of the company for advertising, selling and booking the flats/apartments/plots of land in the projects Avighna, Vrindavan City without registration of the Projects with the Authority and thereby not complying with Section 3 of the Act.

**Response of the Promoter :**

3. In their response dated 21/07/2018, the Managing Director of the Company Mr Rohit Kumar claimed that his company was a fully law complying company and stated that their first application filed online on 02/05/2018 had a few mistakes. Resultantly, the project was shown as an ongoing project, having commenced on 01/01/2017. The correct position was that the project was a new project and date of the commencement of the project should have been depicted as 14/06/2018. Hence, the mistake was rectified by filing a fresh application after making necessary changes in the application on 12/06/2018. The Director of the Company further claimed that the project had not yet started and advances from the customers shown in the balance sheet for the financial year 2016-17 was the balance of the early period of the year 2016 when RERA was not in force. They have further claimed that under construction photographs were nowhere on their website and the company was not running any other real estate project and the projects named by the Authority - Vrindavan City and Avigna were only proposed to be developed in future. The Director of the Company further committed that the company would abide and comply with the provisions of the Real Estate (Regulation & Development) Act, 2016 and nothing will be done without prior approval of the Authority.



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4. As the reply of the respondent company was prima-facie not found satisfactory and convincing, the director of the respondent Company was called for personal hearing either in person or through their authorized representative at 11:00 AM on 11/09/2018.

#### Hearing on 11<sup>th</sup> September/25<sup>th</sup> October 2018

5. In course of hearing, the respondent company was represented by Mr Himanshu Kumar, Company Secretary. He admitted that the company was advertising these projects on their website but claimed that it was being done on their website in 2016 prior to enforcement of RERA and since then they have closed their projects. When he was confronted with photographs of the website showing the advertisement till the month of July, 2018 he could not give any cogent response. Again when he was asked to clarify as to how the date of commencement of the project could be changed in the project- Sarvayoni City from 01/01/2017 to 14/06/2018 particularly when the plan of the project was sanctioned by the Mukhia, Lakhni Bigha Gram Panchayat on 1<sup>st</sup> January 2017, he didn't give any satisfactory answer. He just reiterated that it was a new project which started on 14<sup>th</sup> June 2018. He further claimed that while filing the application in May, 2018, the concerned individual of the company by mistake put it as ongoing project with the date of commencement as 01/01/2017. However, the representative of the company also admitted that they would get all the three projects registered as ongoing projects within a fortnight. The representative was directed to submit the audited annual accounts of the company for the financial year 2017-18 on the next date of hearing to which he agreed.



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6. On 25/10/2018 the company was again represented by Shri Himanshu Kumar, Company Secretary. He submitted the audited annual accounts of the company for the financial year 2017-18 and stated that the Authority may consider the plea of the company for the registration of project "Sarvayoni City". However, the applications for registration of the other two projects – Vrindavan City & Avigna were not submitted to the authority till 25<sup>th</sup> October 2018. He also admitted that the advertisements for sale or booking in these projects were removed from the website of the Company.

7. In this connection, it is worthwhile to note that all sections of Real Estate ( Regulation and Development) Act 2016 became operational with effect from 1<sup>st</sup> May 2017. Section 3 (1) proviso 1 of the Act enjoined upon the promoters of all ongoing real estate projects to register their projects with the Authority within a period of three months i.e. 31<sup>st</sup> July 2017. Government of Bihar extended repeatedly the period of registration of the ongoing projects firstly upto 30<sup>th</sup> November, then to 31<sup>st</sup> January 2018, again to 31<sup>st</sup> March and finally to 30<sup>th</sup> April 2018. The Real Estate Regulatory Authority (RERA) Bihar started levying late fee charges at prescribed rates on the applications of ongoing projects which were submitted online to the Authority with effect from 1<sup>st</sup> May 2018. late fee charges are, of course, not levied on applications for registration of new real estate projects.

**Issues for consideration:**

8. There are two issues for consideration before the bench:

1. Firstly whether the respondent company has changed the date of start of project –Sarvavoni City from 1<sup>st</sup> January 2017 to 14<sup>th</sup> June 2018 so as to avoid the levy of late fee charges and thereby giving false and incorrect information

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in their application to the Authority, necessitating rejection of the Application for registration of their project Sarvavoni City;

2. Secondly whether the respondent company has violated the section 3 of the Act by advertising the projects and making bookings against apartments/plots of land in the aforesaid mentioned projects;

9. The application of the company submitted on 14<sup>th</sup> June 2018 to the Authority revealed that the Respondent Company Shree Lok Nath Baba Pvt Ltd was incorporated as a company with the share capital of Rs 5 Lakh on 30<sup>th</sup> January 2016 with Mr Rohit Kumar as a Director having 75 equity shares. The other Director Mr Pradeep Kumar Sharma had 25 percent share initially but transferred it to Mr Pawan Kumar who had the 25 percent share as on 31<sup>st</sup> March 2018. The application also revealed the total estimated cost of the Project – Sarvavoni City was Rs 19.63 crores.



10. The Authority was shown several photographs being displayed in July 2018, on the website of the Respondent company including that of Bhumi Pujan of the Project – Sarvavoni City on 11<sup>th</sup> October 2016 with the signage “Booking Open”, site –work etc. The Company’s website also classified the project-Sarvavoni City as “Running Project”. Further the audited annual accounts of the Respondent Company for financial years 2016-17 & 2017-18 conclusively confirmed that the company had been booking and taking advances against the Apartments/Flats/ plots of land since 2016-17. As per the books of accounts, the Company had received Rs 2.77 crores as advances from the customers against the booking done as on 31<sup>st</sup> March 2017 and spent Rs 2.54 crore on “building materials & direct labour” during 2016-17. Further, the audited accounts for the FY 2017-18 showed that the Company had received Rs

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7.16 crores as advances from the customers against the booking done as on 31<sup>st</sup> March 2018 and spent Rs 5.03 crore on “building materials & direct labour” during 2017-18. The application for registration itself claimed that plan of the project- Sarvayoni City was sanctioned by the Mukhia, Lakhni Bigha Gram Panchayat on 1<sup>st</sup> January 2017. It is therefore proved beyond any reasonable doubt that date of start of the project was much earlier than that was depicted in the application submitted on 14<sup>th</sup> June 2018 in the Authority. It is therefore proved that the company has given false and incorrect information regarding start of the project in their application to the Authority for registration of their project Sarvavoni City. Further the MD of the Company in his written response and the representative of the respondent in the course of hearing gave false and misleading information to the Authority.

11. As regards the second issue, it is evident from the photographs on the website presented to the Authority that the respondent company had themselves been displaying their real estate projects – Sarvavoni City, Vrindavan City and Avigna projects as running/ongoing projects on their website until July 2018. Further, when they received the show-cause notice from the Authority in July 2018, they removed these photographs and advertisements from their websites. It was however brought to the attention of the Bench that the advertisements for these three projects continued to be displayed as ongoing projects on the real estates websites like 99 acres, quikr.com, commonfloor.com. Further, the audited financial statements of the Company for the FYs 2016-17 & 2017- 18 confirmed the receipt Rs 2.77 crores as advances from the customers against the bookings done as on 31<sup>st</sup> March 2017 and Rs 7.16 crores as advances from the customers against the bookings done as on 31<sup>st</sup> March 2018. It was therefore conclusively proved that the respondent company has violated the



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section 3 of the Act by advertising the projects and making bookings against apartments/plots of land in the three real estate projects- Sarvavoni City, Vrindavan City and Avigna without registering the projects with the Authority.

### Order

12. As the both charges against the respondent company were serious and grave in nature and have been proved beyond any reasonable doubt, the equity would demand that their application for registration should be rejected and the Company along with their directors should be black-listed and barred from any dealings in the real estate sector in the state. However, considering the fact that the respondent company has already made large number of bookings and received several crores of rupees from consumers, non-registration of the project would affect the consumers very badly and harshly. Thus in order to protect the interests of the Consumers, we issue direction for registration of the project – Sarvavoni City as an ongoing one, with applicable late fee charges as on the date of submission of the application, with the Authority. However, in order to prevent recurrence of such incidence, we feel that the respondent company should be penalized so as to prevent recurrence of such incidence.



13. Section 59 (1) of the Act states that if any promoter contravenes the provisions of section 3 of the Act, s/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 total estimated cost of the project – Sarvavoni City has been shown by the promoter in their application for registration as Rs 19.63 crores. We are inclined to accept it. The total estimated cost of other two projects- Vrindavan city and Avigna is not known to us. Considering the fact that the main promoter is a young person (34 years old) and appears to be new



*Rashid*  
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in the real estate sector, we feel that an opportunity should be given to him to reform himself and mend his ways. Accordingly, we impose a penalty of 1.5 percent only of the total estimated cost of only one Project viz Project – Sarvavoni City i.e. Rs 29,44,500 ( Rupees twenty nine lakhs, forty four thousand and five hundred only) on the respondent company to be payable within sixty days of the issue of the order. We are not levying any penalty for non-compliance with the Section 3 of the Act in respect of the other two projects – Vrindavan City & Avigna with the hope that the promoters of the respondent Company will follow the provisions of the Act meticulously in future. However, we also direct the Managing director of the respondent company to file their applications for registration of two other ongoing projects- Vrindavan City and Avigna with the Authority without any further delay but not later than 30 days of issue of this order.



  
Member 27/11/2018



  
Member 27-11-18