

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

Suo motu Case No. RERA/SM/100/2018

Authorised Representative of RERA.....Complainant

Vs

M/s Patligram Builders Private LimitedRespondent

Present:

For the Complainant

- Mr. Sumit Kumar, Advocate
Ms. Shivi, Advocate

For the Respondent

- Mr. Durga Narayan, Advocate
Mr. Mohit Raj, Advocate
Mr. Vijay Kumar Sinha, Advocate
Mr. Shashi Kant Yadav, Advocate
Mr. BishwajeetGanguly, Advocate

ORDER

30/05/2019

1. The Real Estate Regulatory Authority (RERA) issued a suo-motu notice on 12th June 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 Patligram Builders Private Limited for non-registration of their ongoing project-

Patligram Kingdom, Phase 1, Sarari, 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 Patligram Kingdom, Phase 1, Sarari, 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.
6. The Authority issued another notice on 06-12-2019 with copies to all the three Directors namely; Prabhat Kumar Ranjan, Ms. Priya Kumari and Ms. Sheila Rani u/s 35 and 59 of the Real Estate (Regulation and Development) Act. 2016 for non-compliance with the Section 3 of the Act, due to non-registration of their ongoing Real Estate Project 'Patligram Kingdom, Phase-1', Sarari, Danapur, Patna. The respondent company did not furnish any response to the Show Cause Notice issued to them. Accordingly, a fresh notice was issued for hearing on 09th January, 2019 directing the Directors of the company to appear before the Bench accordingly.

Hearing

7. On the date of first hearing on 09-01-2019, Mr. Vijay Kumar Sinha, Mr. Shashi Kant Yadav and Mr. Bishwajeet Ganguly had filed their *Vakalatnama*, but they did not submit any reply to the Show Cause Notice on behalf of the respondent company. They were directed to submit the audited annual accounts and details of the bank account of the company for the last three years on the next date i.e. 28-01-2019. However, on the next date of hearing i.e. 28th January, 2019 none of the learned counsels, who had submitted *Vakalatnama* on 9th January, 2019, appeared before the Bench. The respondent company had sent an official of the company, Mr. Praveen Kumar Sinha, who happened to be AGM in the company, with a petition on

behalf of the respondent company on 28th January, 2019 seeking more time for filing their reply without any firm commitment for registration of the project with the Authority. In their petition, the Respondent company informed that the Director of the company, Mr. Prabhat Kumar Ranjan was unable to attend the Court, because the police of Rupaspur P.S., Patna was looking for him, because he was named an accused in Rupaspur P.S. Case No.514/2018 under sections 147/148/149/341/323/307/379/384 IPC and 27 Arms Act. The Bench therefore considered it necessary to issue an interim order under Section-36 of the Real Estate (Regulation & Development) Act, 2016 directing all the Directors of the company and other officials working under them to stop all activities related to the real estate sector in the State of Bihar with immediate effect.

8. Accordingly, the Bench issued an interim order u/s 36 of the Real Estate (Regulation and Development) Act, 2016 to the effect that all the Directors of the company and other officials working under them to stop all activities related to the Real Estate Sector in the State of Bihar and all bank accounts in the name of the company should stand frozen with effect from 28-01-2019 till further orders. The respondent company was also directed to inform all its customers existing and prospective customers on their website through copy of the aforesaid order that the company's activities have been frozen as of now. A copy of the interim order was also sent to the Reserve bank of India, State Bank of India, Gola Road, Danapur, Bank of Baroda, Saguna More, Danapur, IDBI, Saguna More, Danapur and ICICI Bank, Saguna More, Danapur and all other scheduled banks

located in the State for information and necessary action. The hearing was adjourned to 08-02-2019.

- 9.** Mr. Mohit Raj, learned counsel appeared for the Respondent company on 08-02-2019 and sought time for filing documents. The prayer was allowed and the hearing was adjourned to 20-02-2019 for final hearing. On 20-02-2019, Mr. Mohit Raj, learned counsel for the respondent company stated that they have already filed Online application for registration along with all relevant documents and hardcopy of the documents shall be filed by 25th February, 2019. When the Learned Counsel was asked as to why the application for registration of the Project indicated that the total area of development was 12431 square metres only when the Respondent was claiming on its website that the project was being built on 105 acres of land, he stated that he had gone through all land papers and included only those lands in the application for which they had firm commitments and registration agreements. Then, the Bench directed the company to state the actual facts on their website and they should inform all their customers the real position that the project was being pursued with only three acres of land. The Company was directed to inform the customers through registered letters and submit copies of the receipts on the next date of hearing.
- 10.** On 15-03-2019 learned counsel for the respondent company appeared and submitted the petition and necessary documents pertaining to the project. The Bench directed for a local inquiry of the project and the hearing was adjourned to 19-03-2019. Further

hearing in this case was held on 28-03-2019 and heard the arguments on behalf of the respondent company.

Issues for consideration

11. There is only one issue for consideration i.e. whether the 'Patligram Kingdom, Phase-1'.was an ongoing project of the respondent company on the date of issue of suo motu notice to the promoter i.e. 12th June 2018 and whether the Respondent company did not apply for registration of the project with the Authority while continuing with the advertisement of the project and booking the plots/Apartments in the Project. The Respondent company has itself admitted and already filed their application for registration of the Project on 16.02.2019 and shown in their application that the project 'Patligram Kingdom, Phase-1 commenced on 21st June, 2017.It was also evident from the website of the Respondent company that they were advertising the project and inviting consumers for booking the Apartments/plots of land. The Audited annual accounts of the Respondent Company further confirmed that bookings in the project were made and advances from customers were taken by the Respondent Company in the financial year 2017-2018. Learned Counsel of the Respondent Company also produced speed post receipts of the letters issued to the customers regarding revisions made in the project.Therefore, it is proved beyond reasonable doubt that the Respondentcompany has contravened the section 3 of the Act.

Order

12. Section 59 of the Real Estate (Regulation & Development) Act, 2016 states that if any promoter contravenes the provisions of Section 3, 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 56.60 crore. However considering the fact that the size of the project has since been restricted, we estimate the cost of project to be 18 crore.

13. 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 leniency towards the Respondent company. However, considering the fact that inspite of SCN issued to the Respondent Company in June 2018, the Respondent Company has submitted the online application and hard-copies of the Application along with requisite documents in February 2019 only, we impose a penalty of one and half percent of the estimated cost i.e. Rupees twenty seven lakhs on the Respondent company, to be paid within 60 days of issue of this order. On payment of penalty, we also direct the administrative side of the Authority to issue orders to the concerned banks for recalling the interim order for freeze of bank accounts of the Respondent Company, issued under section 36 of the Act in March 2019.

Sd
(R B Sinha)
Member

Sd
(Dr S K Sinha)
Member