

Real Estate Regulatory Authority (RERA), Bihar, Patna

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

Case Nos. SM/238//2018

Authorised Representative of RERA.....Complainant

Vs

M/s Phenomenal Projects (P) Ltd through their

Managing Director Mr Sanjay Kumar.....Respondent

Present

**For the Complainant - Sri Sumit Kumar, Advocate
Ms. Shivi, Advocate**

For the Respondent - Mr. Pankaj Maijorwar, Advocate

08/07/2019

O R D E R

1. The Principal Secretary, Urban Development & Housing Department-cum-Interim Chairman, Real Estate Regulatory Authority, Bihar, Patna issued a show cause notice in February, 2018 to M/s Phenomenal Projects (P) Ltd, 61A, Akashwani Road, Khwajapura, Patna-800014 for contravening the provisions of Section 3 of the Real Estate (Regulation & Development), Act, 2016 by advertising and inviting the public for booking of plots/flats in their project “NG Town” without registering the project with the Authority. It was followed by another show cause notice issued by the Real Estate Regulatory Authority, Bihar, Patna on 22/11/2018 against the company for non-registration of their project “NG Town” with the Authority.
2. In the notice dated 22nd November 2018, 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 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. 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 “NG Town”, Patna, Bihta & Sonapur 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, the Director of the respondent company Mr Sanjay Kumar stated vide his letter dated 03/12/2018 that they

sell plots of land in different places. He further stated that though the company had not received hard copy of the notice, they had gone to visit RERA Office in the month of March, 2018 itself and to enquire about the proper authority of Sonapur area as their project was in that area. He further stated that the company has not given any type of advertisement after they have come to know that they have been notified in the list of RERA through newspaper. They further claimed that all transactions in the Sonapur area during the last four months in respect of their Sonapur project are not taking place. He further assured that the company shall apply for registration as soon as agreement of the land is completed. As the reply was not found sufficient, they were called for hearing on 04/02/2019.

7. On the first date of hearing i.e.04/02/2019, learned counsel of the respondent company sought for time to submit their response. On the next date of hearing i.e. 22/02/2019 Mr Pankaj Meijorwar, learned counsel for the respondent company submitted an application enclosing therewith a written statement on behalf of the respondent company, an affidavit on behalf of the Director of the company and a few photocopies of Completion Certificate granted by the local authorities.
8. In the written submission, the Director of the company claimed they deal in selling of plots only and their projects were located at Kanhauli, Bihta, NayaGaon, Sonapur and Permanandpur, Sonapur. He further claimed that all these projects were completed on or before 01/05/2017 i.e. the date the Real Estate (Regulation & Development) Act, 2016 came into force. They further claimed that they were not sure as to whether they were required to register under the aforesaid Act or not. Hence, the Director of the company personally visited the Office of the Authority and there he was told that either the answering respondent company was required to be registered under the Act or they have to obtain Completion Certificate from the competent authority because the projects were located in areas under rural local authorities with regard to the

provisions of the Real Estate (Regulation & Development) Act, 2016. Accordingly, they have obtained the Completion Certificate from various local authorities and attached with the application. They further claimed that no new project has been started by them. Hence, no violation has been committed by the respondent company.

9. Learned counsel of the Authority in his response stated that the Real Estate (Regulation & Development) Act, 2016 was also applicable to the projects of developing plots. He also produced the advertisement published by the Respondent Company in the daily newspaper Dainik Jagran dated 21/02/2018 announcing a flat 25% discount in their project “NG Town” located at Patna, Bihta and Sonapur. So through the advertisement, the promoter had also called for online booking on their contact no.09693333666. Learned counsel also stated that the alleged “Notice of completion” submitted by the respondent company on 22/02/2019 in respect of five phases of the project issued on the same day by Mukhia/Sarpanch before the Authority creates suspicion as those certificates were identical but issued on the same day by different Mukhiya/Sarpanch. Further the certificates issued by the Mukhiya/Sarpanch are not as per Bihar Building Bye-laws, 2014. Moreover, the respondent company has not submitted the Occupancy Certificate as per the Bye-laws-16 of the Bihar Building Bye-laws, 2014 of the project “NG Town”.

10. Learned counsel for the Authority also produced a document which has been filed before the Authority by one of the complainants namely; Shakuntala Devi against the promoter Mr Sanjay Kumar, Director, Phenomenal Projects (P) Ltd claiming refund of the balance amount along with 24% interest out of the payment made by her to the respondent company. In her complaint she has stated that she has paid Rs 46.98 lakh during the period 02/10/2017 - 07/07/2018 to the promoter company for six plots of land in NG Town. It was therefore, apparent that the project NG Town was an

ongoing project which has not yet been registered with the Authority.

Issues for consideration :

11. In his response dated 02/12/2018, the Director of the Respondent company had himself admitted that his project at Sonepur was an ongoing project until a few months back and hence they were not able to get any agreement or registry done due to difficulties being faced in the Office of Sub-Registrar. Further the complainant Shakuntala Devi has furnished along with the complaint, a copy of the agreement she had signed with the developer M/s Phenomenal Projects (P) Ltd through their Director Mr Sanjay Kumar dated 01/12/2017 wherein the promoter had agreed to allot six plots of land to the complainant by the end of February, 2018 or after three months of the agreement. She has also submitted copy of the registration of deed of absolute sale dated 25/06/2018 through which the promoter had sold 2400 sq ft of land to the complainant. It is therefore, conclusively proved that the project NG Town, Bihta and Sonepur was an ongoing project as on 01/05/2017, the date on which the Real Estate (Regulation & Development) Act, 2016 became operational. Since the promoter has not applied for registration of the projects and tried to mislead the Authority by submitting the completion certificates whereas they themselves have stated in their response that they were doing registries until August 2018 and their continued advertisements in the real estate websites/portals, deterrent punishment is required to be given to such unscrupulous developers in the sector.

Order :

12. 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 cost of the Bihta (72 kathas) and Sonepur (60

Kathas) based project NG Town, on a very conservative basis, based on information available in the public domain, is estimated about Rs 5 crores.

13.The Bench therefore orders that a penalty of five percent of the estimated cost of the Project NG Town i.e. Rs 25 lakhs (Rupees twenty five lakhs) be levied on the respondent Company, to be paid within sixty days of issue of the order. The Respondent Company is further directed to submit the applications for registration of all real estate projects without any further delay.

14.The Bench also directs the IG Registration, Government of Bihar to issue necessary instructions to the concerned Registering authorities (DSR, Patna, SR, Danapur, SR, Sonapur etc) to stop registering the plots/apartments in the projects (N G Town etc) promoted by the Respondent Company.

(R.B. Sinha)
Member

(S.K. Sinha)
Member