

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Case No. RERA/SM/352/2018-19

Authorised Representative of RERAComplainant

Vs

M/s Redbrick Infrabuild Pvt. Ltd.Respondent

Present:

For the Complainant

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**Sri SumitKumar,Advocate
Ms Shivi, Advocate**

For the Respondent

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**Mr Anjesh Kumar, Director
Mr Shubham Kumar, Advocate**

11/07/2019

O R D E R

1. Real Estate Regulatory Authority, Bihar, Patna issued three suo-motu notices to M/s Redbrick Infrabuild Pvt. Ltd. for non compliance with the Section 3 of the Real Estate (Regulation and Development) Act 2016 due to non-registration of their ongoing real estate projects, "Green Park" at Sonapur, "Chessi Garden" near AIMS, Patna and "Redbrick Prithvi Greens", at Bihta, 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 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/plotted land 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 sqmtrs.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 projects “Green Park” at Sonepur, “Chessi Garden” near AIMS, Patna and “Redbrick Prithvi Greens”, at Bihta, 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 and 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 7th February, 2019, Mr. Anjesh Kumar, Director of M/s Redbrick Infrabuild Pvt. Ltd. stated that their company believe in non-violation of laws and they abide by the rules and regulations applicable to them. As regards, their project “Green Park” at sonepur, he stated that it was very much completed project and delivered way back in the year 2016 before RERA Act came into force. As regards the project “Chessi Garden”, the company stated that the project could not proceed as per their plan, therefore, the same was dropped much before in the year 2017 itself and they were still in process of purchasing the land to initiate

their project. They committed that once they plan the project and propose to launch the same, the provisions of the RERA Act would be complied with. They also claimed that they have not advertised, marketed, booked, sold or offered for sale or have not invited any person to purchase even an inch of the plot since RERA Act came into force. Therefore, they claimed that they have not violated any provisions of Section 3 of the RERA Act.

7. As regards their project Redbrick Prithvi Green, Bihta, Patna is concerned, it is stated that they have already applied for registration of this project with the Authority, vide their Application No.RERA/P-2311201801068-3 and they were waiting for mutation order from the concerned Circle Officer. They claimed that they have never sold or offered for sale or even have not invited any person to purchase even an inch of land since RERA Act came into effect. They have also claimed that they were waiting for the formalities to be completed. They have further claimed that they had started this project way back in the year 2016, but dropped the idea of carrying the same before RERA Act came into force. Even the vendors were directed by the company to remove the advertisements, boards and hoardings from the respective places/websites, as soon as the project was decided to be dropped. They committed that they would be initiating the project only when their registration process with RERA is complete.

Hearing

8. As their reply was primacy not satisfactory, the Respondent Company was called for hearing on 27th February, 2019. On the first day of hearing i.e. 27th February, 2019 no one turned up on behalf of the Company. Accordingly, the Respondent Company was again invited on 1st April, 2019. Mr. Anjesh Kumar, Director of the company was present and submitted that their company followed all the clauses of the Act and

they were very much interested to see that the provisions of the Act are followed meticulously. Learned Counsel of the Authority brought to the attention of the Authority to the Section 2B of the Real Estate (Regulation & Development) Act, 2016 which 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.”

9. Thereafter he presented before the bench several advertisements that had been given by the respondent company during earlier months/years on their website/face-book accounts and/or real estate websites/portals like 99 acres etc in respect of not only these three projects but also two other projects (Convas & Empire) for which the Respondent Company had filed application in the month of January 2019 claiming them to be new projects but both of them had commenced much earlier and were ongoing projects.

The Bench, therefore, directed them to submit an affidavit, along with relevant/back up documents on the next date of hearing. They were also directed to submit the Audited Annual Accounts of the previous years i.e. for the financial year 2017-18 along with statement of bank accounts for the last 3 years ending on 31st March, 2019.

10. On 3rd may, 2019, Mr. Anjesh Kumar, Director of the Respondent company along with Mr. Shubhan Kumar, Advocate attended. They were once again directed by the Bench to submit an affidavit along with necessary response and requisite documents desired by the Bench by 10th May, 2019 positively. On the next date of hearing i.e. 10th May,

2019, Mr. Anjesh Kumar, Director of the company submitted an affidavit along with all necessary documents. A perusal of the audited annual accounts for the 2017-18 in course of hearing confirmed the ongoing nature of all these projects. There were several entries in the “advances from customers” column in each of these projects which were outstanding as on 31st march 2018. Thus written statements made by the Director of the Respondent company in their response in February 2019 to the suo motu notices issued to them by the Authority were incorrect, false and fictitious and were done with ulterior motives to misrepresent and mislead the Bench. The Respondent Company requested for leniency from the Bench on the fact that they have already filed applications for registration of four projects with the Authority.

Issue for consideration

11. There is only one issue for consideration i.e. whether the Respondent Company had these real estate projects namely “Green Park” at Sonapur, “Chessi Garden” near AIMS, Patna and “Redbrick Prithvi Garden”, at Bihta, Patna ongoing as on the date of issue of the suo motu show cause notices to them and that they had not yet been registered with the Authority.

12. The Respondent company in its response dated 7th February 2019 had claimed that their project “Green Park” at Sonapur was very much completed project and delivered way back in the year 2016 before RERA Act came into force. As regards the project “Chessi Garden”, they claimed that the project could not proceed as per their plan, therefore, the same was dropped much before in the year 2017 itself and they were still in process of purchasing the land to initiate their project. They committed that once they plan the project and propose to launch the same, the provisions of the RERA Act would be complied with. The Respondent Company claimed on 7th February 2019 that they have

already applied for registration of this project Redbrick Prithvi Green, Bihta, Patna vide their Application No.RERA/P-2311201801068-3 and they were waiting for mutation order from the concerned Circle Officer. They claimed that they have never sold or offered for sale or even have not invited any person to purchase even an inch of land since RERA Act came into effect. They have also claimed that they were waiting for the formalities to be completed.

13. The written statement of the Director of the Respondent Company in respect of these three projects was however not corroborated by the audited annual accounts of the Company. The audited annual accounts for the financial year 2017-18 showed that all three projects were ongoing as on 31st March 2018. The Accounts also indicated that these projects were running from the previous years. As on 31st March 2018, the Respondent Company had bookings/advances amounting to Rs 1,19,24,455.00 from 48 customers in Prithvi Green Project, Rs 24,95,300.00 from 24 customers in Green Park Project and Rs 30,62,982.00 from 9 customers in Chessi Garden Project. The ongoing nature of these projects from 2017-18 or earlier years was further confirmed by the advertisements published on their websites/ facebook accounts, real estate sector portals like 99acres.com etc which clearly indicated that advertisements were given since earlier years for booking of the plots in these projects.

14. Even the claim of the Respondent Company on 9.2.19 that they have already applied for registration of this project Redbrick Prithvi Green, Bihta, Patna vide their Application No.RERA/P-2311201801068-3 was factually incorrect as they finally applied for registration of project Redbrick Prithvi Green on 10th April 2019 in which they claimed that the project would start on 15th May 2019 whereas this project was running/ongoing since 2016-17 itself, if not from earlier years.

15. Thus, the Respondent company has tried to mislead the Authority by misrepresenting the facts, giving false and fictitious statements. Deterrent punishment should be given to the Respondent company so as to desist the promoters from contravening the provisions of the Act

Order

15. 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 the application for the project Prithvi Greens, the estimate cost of the project has been stated to be Rs 35 lakh on 15.5 kathas of land. We consider it unrealistic and extremely low. The Respondent company in its advertisement on 99acres.com has claimed this project to developed on 6 acres (9 Bighas or 180 kathas)). Similarly, the Chessi Garden project is claimed to be developed on more than 10 acres of land and Green Park on more than 20 acres of land. The estimated cost of these three projects, on a very conservative basis, would be Rs 40 crores.
16. Keeping in view, the fact that the respondent company is a relatively new company, established barely five years ago and they have also applied for registration of other three real estate projects recently, we feel that the Authority should be considerate and show leniency towards the Respondent company. However, considering the fact that inspite of SCNs issued to the Respondent Company in January 2019, the Respondent Company has not yet submitted the application for registration in two projects and have submitted for third project claiming it to be new project, we impose a penalty of one percent of the estimated cost i.e. Rs 40 lakhs (Rupees forty lakhs) on the Respondent company, to be paid within 60 days of issue of this order.

17. The Respondent Company is also directed to apply for registration of all other real estates projects within thirty days.

Sd/-
(R.B. Sinha)
Member

Sd/-
(Dr S.K. Sinha)
Member