

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mr. Naveen Verma, Chairman &
Mrs. Nupur Banerjee, Member

Case No. RERA/PRO/REG.68/2021

Authorized Representative of RERA

v.

Prominal Reality Associates Pvt. Ltd.

Project – GREEN VATIKA PH 02

HEARING THROUGH VIDEO CONFERENCING

ORDER

24-02-2022

Hearing taken up under section 5 (1) (b) of the Real Estate (Regulation and Development) Act, 2016, for rejection of the application for registration of the project '**GREEN VATIKA PH 02**'.

Real Estate Regulatory Authority, Bihar issued a show-cause notice to Prominal Reality Associates Pvt. Ltd. through its Director Md. Sarwar, on 11.02.2022 as to why the application for registration of the Project GREEN VATIKA PH O2 (Application No. RERAP110201800956-5), filed by the company with the Real Estate Regulatory Authority (RERA), Bihar, on 20.03.2021, should not be rejected under Section 5 (1) (b) of the Real Estate (Regulation & Development) Act, 2016. The ground for rejection was that the applicant failed to furnish duly approved map by the competent Authority as the map submitted by the promoter was approved by Mukhiya Gram Panchayat Raj Deoria, Jalapur, district Saran.

Learned Counsel Mr. Satya Prakash Parashar, appeared on behalf of respondent company and placed before the Authority that the area in which project is proposed falls beyond planning area and on the date of making of an application for registration of the real estate project Mukhiya was the competent Authority to approve maps in the non-planning area. He further placed before the Bench that Authority by its notification has directed to register all the projects which falls beyond planning area, therefore, the present promoter has made an application for registration of the real estate project PERFECT CITY. He further placed before the Authority that rejection of the application for registration would infringe upon the fundamental right of the promoter under Article 19(1)(g) of the Constitution of India to carry on

his business and earn his livelihood. He further submits that the interest of the project which would spur growth in rural areas cannot be put at stake due to fault on the part of state government in not declaring area in which the project is proposed as planning area or declaring the competent authority to approve maps/plans in non-planning areas.

On perusal of records of the case and considering the submissions made on behalf of the respondent company, it appears that the map submitted by the promoter was approved by Mukhiya Sahimpur Gram Panchayat, Block Nagra, District Saran. The area in which the project is proposed is beyond planning area.

The Bench takes note of the fact that in response to letter dated 03.03.2021, sent by Secretary, RERA to the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, a letter from that Department dated 18.08.2021 was received stating therein that the matter was under consideration with regard to grant of powers of local authorities in non-planning areas for real estate project. Therefore, Mukhiya of Gram Panchayat lacks the power of approval of building plan in their respective panchayat areas. It also notes that the Urban Development and Housing Department, Government of Bihar, has urged RERA to ensure that the provisions of Bihar Building Bye Laws are being enforced when maps are submitted to it before projects are registered.

The Bench observes that an application filed under section 4 of the Act must fulfil the requirements of sub-section 2 of Section 4 of the Act as well as Rule 3 and 4 of the Bihar Real Estate (Regulation and Development) Rules, 2017. Section 4 (2) (d) of the Act, which read as follows:-

“the sanctioned plan, layout plan and specification of the proposed project or the phase thereof, and the whole project as sanctioned by the competent Authority”

requires that an application for registration of a real estate project must contained the map approved by competent authority. The term ‘Competent Authority’ is defined under section 2 (p) of the Act, which read as follows:-

“Competent Authority means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land

under its jurisdiction, and has power to give permission for development of such immovable property”

The Bench further observes that right contained under Article 19(1) (g) of the Constitution of India, 1950, which read as follows:-

(g) ‘All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business’.

is not absolute and is subject to certain reasonable restriction as given under Article 19 (6) of the Constitution of India, 1950, which read as follows:-

Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

Therefore, in the light of facts and circumstances mentioned above the Authority observes that it is apparent that the original building map plan of the proposed project has not been approved by the competent authority in terms of section 4 (d) of the Act and construction of building which are not being regulated cannot be allowed putting the interest of allottees in jeopardy, therefore, the application for registration of real estate project the application for registration of real estate project ‘GREEN VATIKA PH O2’ stands rejected as the promoter has failed to submit the requisite documents with the Authority as stipulated by Section 4 of the Real Estate (Regulation and Development) Act, 2016 and Rule 3 of the Bihar Real Estate (Regulation and Development) Rules, 2017, with the liberty that promoter may apply again for the registration of same project in future

along with requisite documents and no fees would be charged from them.

The Authority agrees with the submissions made on behalf of the promoter that the entire issue with its ramifications may be considered by the State Government. It urges Chief Secretary, Government of Bihar to look into this matter. It directs that copies of the order may be sent to the Chief Secretary, Bihar and Principal Secretaries of the Departments of Urban Development and Housing Department and Department of Panchayat Raj, Government of Bihar.

Sd/-

Nupur Banerjee
(Member)

Sd/-

Naveen Verma
(Chairman)