

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Case No. SM/36/2018

Authorised Representative of RERA.....Complainant

Vs

M/s R.R. Builders & Developers.....Respondent

**Present: For the Complainant:- Mr Sumit Kumar, Advocate
Ms Shivi, Advocate
For the Respondent:- Ms Rajesh Kumar, Partner
Mr Amit Singh, Advocate**

27/02/2019

O R D E R

1. The Real Estate Regulatory Authority (RERA), Bihar issued a suo motu notice to M/s R.R. Builders & Developers, a Partnership firm under Section 35 and 60 of the Real Estate (Regulation & Development) Act, 2016 for submitting forged/fabricated and false documents and information in course of registration of their project “Sanchar Nagar” located at Adampur, Lakhani Bigha, Patna on 24/01/2019. It was stated in the notice that in course of scrutiny of the application for registration of the project, it was found that the respondent firm had submitted the following documents :-
 - (i) Non Encumbrance Certificate (NEC) No.6921/2018 issued by Sub-Registrar Office, Danapur by Memo No.7111 dated 05/12/2018.
 - (ii) Non Encumbrance Certificate (NEC) issued by District Sub-Registrar Office, Patna by Memo No.9629 dt 05/12/2018.

2. Both documents were sent to the concerned issuing authority i.e. Sub-Registrar, Danapur and District Sub-Registrar, Patna for verification and confirmation whether such certificates were issued by their offices.
3. In response thereto the Sub-Registrar, Danapur informed vide their letter No.784 dt 18/12/2018 that on verification it was found that NEC No.6921/2018 dt 05/12/2018 had not been issued by his office, while the Joint Sub-Registrar, Patna vide his letter No.3619 dt 13/12/2018 informed that NEC No.9629/2018 dt 05/12/2018 had not been issued by his office and prima facie it was a false document.
4. In the notice, it was stated that the action of the respondent firm in submitting forged/fabricated and false documents was in contravention of the provisions of the Real Estate (Regulation & Development) Act, 2016 and attracts penalty under Section 60 of the Act which may extend up to 5% of the total estimated cost of the real estate project as determined by the Authority. Since the charges leveled against the respondent company were grave and serious in nature, they were directed to explain as to why criminal proceeding should not be initiated against them for providing forged/fabricated and false documents and false information for registration of their project. The respondent was directed to submit explanation within a week of receipt of the notice.

Response of the Respondent Firm

5. In their response the respondent firm stated that the alleged NECs have not been submitted by them. They also stated that they did not have any knowledge as to how these certificates were inserted or placed in their file for registration of the project “Sanchar Nagar”. The firm has stated that they have only submitted the NEC bearing Nos.4352/2018 dated 14/05/2018, 10866/2018 dated 18/12/2018, 14944 dated 11/12/2018 and 5147/2018 dated 11/05/2018 and none of them were either forged or fabricated.

6. It was further stated that they had submitted more than 700 pages of documents and each page had the company's seal and authorized signature whereas the alleged two NECs did not have the same.
7. He further alleged that officials of the Authority did not accept their application for nearly two weeks on the ground that each page of the application did not have the signature of the authorized representative of the firm along with the seal of the firm in May, 2018 and resultantly, they had to pay 100% late fine. So presence of those two NECs without company's seal and signature in their file was intriguing and a surprise to them.
8. It was further submitted that on 07/12/2018, a call was received by them from the Office of the Authority for submission of NECs for all the plots of the project. Accordingly, NECs bearing No.14944/2018 dated 11/12/2018 were submitted. Further the Respondent firm submitted that the alleged NECs were never submitted by them or their representative and their insertion in their file was completely unknown to them. They have thus requested that their application may be processed and registration certificate may be granted in the interest of justice at the earliest.

Hearing

9. The partners of the respondent firm were called for hearing on 06/02/2019.
10. Mr Rajesh Kumar, Managing Partner of the firm was present at the hearing along with Mr Amit Singh Advocate. The Managing Partner of the firm was told that it was not possible for anyone in the Authority to put an NEC in the file of the respondent company for the registration of their project. He was informed that such files are kept under lock and key and are generally kept in confinement of a room and no one has raised such complaint or allegations when nearly 900 applications have been received by this Authority during the last 10 months. As regards the stand of the firm that all other pages had the seal and signature of the firm's representative, it was stated that there were several such pages in his

application which didn't have the Firm's seal and/or signature of the Firm's representative. Then the Managing Partner stated that at least he did not have any knowledge regarding both the NECs and it might have happened that some staff of his firm might have, on their own, submitted those certificates. He stated that he was not keeping good health and had been travelling frequently in the last two-three months to Delhi for consultations with senior physicians. He further stated that he had sacked a few employees from his firm in the recent past and they might be instrumental in doing such acts. He was there upon directed to file an affidavit or make a written submission in this respect.

11. On 07/02/2019 the respondent firm submitted a written statement. At the outset they tendered their unconditional apology for all or any act and statement made in this respect. They further contended that all or any act as alleged to have been purportedly done by them had been done without their consent and approval and they were totally unaware of the alleged misconduct. They further submitted that the leveled charges against them may be dropped and their inadvertent mistake ignored and condoned by the Authority.

Analysis of the issues involved

12. There is no doubt that two NECs were submitted to the Authority in respect of "Sanchar Nagar" Project of M/s RR Builders & Developers. The plea initially taken by the Managing Partner of the firm that it was not signed by him and there was no seal of the company on those NECs and that they were not responsible for their submission or insertion in the file, is not correct and acceptable as no one else would have any inclination or motivation to put in such important documents in the file for furtherance of the case of the firm without direct or indirect involvement of staff/officials of the firm.
13. The Managing Partner has since accepted the fact that it could have been done by a few delinquent staff of his firm who have since been sacked albeit, on other grounds and has apologized for the act and the conduct on behalf of those unauthorized persons of the firm.

14. After deliberation, we are inclined to be a bit lenient in the instant matter, as this appears to be the first instance wherein such unsavoury act has been committed and the Managing Partner who has been very ill in this period appears to have trusted his subordinates. However, the Managing Partner cannot be totally absolved of his responsibility.

Order

15. Section 60 of the Real Estate (Regulation and Development) Act 2016 states that if any promoter provides false information or contravenes the provisions of Section 4, he shall be liable to a penalty which may extend up to 5 per cent of the estimated cost of the real estate project, as determined by the Authority. The estimated cost of the project Sanchar city, as declared by the promoter is Rs.104.52 crores. In view of unqualified apology, leniency sought by the Managing Partner on humanitarian grounds and the fact that the firm had unblemished records until now, it is felt that a nominal penalty may be levied on the firm. It is therefore, ordered that a penalty of rupees five lakh be imposed on the firm M/s RR Builders & Developers to be payable within sixty days of issue of this order. We also direct the office of the Authority to process the application file of the project "Sanchar Nagar" of the firm as per law.

Sd
(S.K. Sinha)
Member

Sd
(R.B. Sinha)
Member