

REAL ESTATE REGULATORY AUTHORITY, BIHAR

**Before the Bench of Mr. Naveen Verma, Chairman &
Mrs. Nupur Banerjee, Member**

Case No. RERA/PRO/REG.42/2021

Authorized Representative of RERA
v.
Soumyvinayak Construction Pvt. Ltd.

Project – YUGRAJ RESIDENCY

15-02-2022

ORDER

M/s Soumyvinayak Construction Pvt. Ltd., through its Director Pappu Kumar, filed an application for registration of real estate project **YUGRAJ RESIDENCY** as an ongoing project before the Real Estate Regulatory, Bihar, on 03.03.2021. Real Estate Regulatory Authority, Bihar issued a show-cause notice to Soumyvinayak Construction Pvt. Ltd., through its Director Pappu Kumar on 24.01.2022 as to why the application for registration of the Project 'YUGRAJ RESIDENCY' (Application No. RERAP11302019215818-6), filed by the company with the Real Estate Regulatory Authority (RERA), Bihar, on 03.03.2021, 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 approved by the competent Authority as the map submitted by the promoter was approved by Mukhiya Kanuji Kachhuara Gram Panchayat, Anchal Sampatchak, district Patna.

The matter was heard on 02.02.2022, under section 5 (1) (b) of the Real Estate (Regulation and Development) Act, 2016, for rejection of the application for registration of the project 'YUGRAJ RESIDENCY'.

The learned counsel for the promoter submitted that the map of the proposed project was prepared and approved by certified architect and Mukhiya has only marked his signature on it. He had further placed before the Bench that projects developed beyond the planning areas are required to be approved only by Certified Architect and Bihar Building Byelaws are not applicable

beyond planning area. Such projects are only governed under Bihar Apartment Ownership Act, 2006. He further placed before the Bench that 50% construction work has already been completed and with respect to this particular project 14 allotments have been made by the promoter since 2016

The matter was reserved for orders.

On perusal of records of the case and considering the submissions made on 02.02.2022, it is clear that appears that the map submitted by the promoter was approved by Mukhiya Kanuji Kachhuara Gram Panchayat, Anchal Sampatchak, District Patna. The area in which the project is proposed is beyond the planning area. The Bench took 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 is 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.

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 from the bare reading of the object of the Bihar Apartment Ownership Act, 2006, which read as follows:-

“An Act to provide for the ownership of an individual Apartment in a multi-storied building and of an undivided interest in the common areas and facilities appurtenant to such Apartment and to make such payment and interest heritable and transferable and for matters connected therewith or incidental thereto.

Whereas it is expedient to provide for giving ownership of an individual Apartment in a building and to make such Apartment heritable and transferable property and to provide for the matters connected with the purposes aforesaid;”

and Section 3 (L) of the Bihar Apartment Ownership Act, 2016, which read as follows:-

***"Competent Authority"** means the officer or authority who or which may be vested by the State Government, by notification in the official gazette with executive powers to perform duties and functions of the competent Authority and for implementing the provisions of the Act and the rules made thereunder for such areas as may be specified in the notification under the general guidance, superintendence & control of the State Government:*

Provided that the State Government may notify more than one officer or Authority as competent authority and distribute the work among them in the manner as it may deem fit.

and Section 32 of the Bihar Apartment Ownership Act, 2016, which read as follows:-

***“32. Powers and duties of the Competent Authority.** - (1) The competent authority shall have the following powers and duties:*

- (a) to permit further time to the promoter to execute Deed of Apartment;*
- (b) to receive the certified copies relating to Deed of Apartment instruments or undertaking, deeds of lease, document of transfer of Apartment and management and endorsements thereon and hire purchase agreement;*
- (c) to impose penalty upon developers, promoters, Apartment owners for any delay or failure to execute instruments in favour of purchasers of Apartments, to issue certificate to Registration officer;*
- (d) to direct Association of Apartment owners repair damaged property and to, allow further time to an Association of Apartment owners to repair, reconstruct or rebuild a property which is damaged/destroyed;*
- (e) to ensure compliance, by the promoters, Association of Apartment Owners of the obligations under the Act, Rules or Bye-Laws, by issuance of proper directions;*
- (f) to issue directions consistent with the Act, Rules and bye-laws to the Associations of Apartment owners;*
- (g) any other function which the Government may by notification entrust to the competent authority; and*
- (h) three percent in registration charge would be payable to concerned authority.”*

The Authority is of the opinion that Bihar Apartment Ownership Act, 2016, deals with the ownership of an individual Apartment and matter relating thereto, and does not specify who will be the competent Authority to approve maps in the non-planning area. It also does not provide that the project developed beyond the planning areas can be approved by certified architect. The Authority, thus, does not find merit in the arguments put forth by the learned counsel of the promoter.

The question of protecting the interest of allottees of the project have to be seen together with ensuring that the construction of a project is as per the prescribed norms. Since admittedly the competent authority is not defined, it would be difficult to enforce the standards. The Authority can at best reiterates its earlier recommendation sent to the State Government regarding addressing such issues.

In the light of facts and circumstances mentioned above Bench 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 , the application for registration of real estate project 'YUGRAJ RESIDENCY' 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.

The promoter is at liberty to apply again for the registration of same project in future along with requisite documents and no fees would be charged from them, after the issue of the competent authority is settled by the state Government

Sd/-
Nupur Banerjee
(Member)

Sd/-
Naveen Verma
(Chairman)