

# **REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR**

**Case No. SM/211/2018**

**Authorised Representative of RERA.....Complainant**

**Vs**

**M/s Jalapur Green Infrastructure Pvt Ltd.....Respondent**

**Project: RN Enclave, FCI Road, Phulwari Sharif**

**Present: For the Complainant: Mr Jainendra Kumar, Adv**

**Ms Ankita Bhushan, Adv**

**For the Respondent : Mr Bholu Shankar, Adv**

**25/11/2021**

**O R D E R**

1. The Real Estate Regulatory Authority (RERA), Bihar issued a suo motu show-cause notice on 11<sup>th</sup> November 2018 to the directors of M/s Jalapur Green Infrastructure Pvt Ltd under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 to show cause as to why proceedings under Section 59 of the Real Estate (Regulation & Development) Act 2016 may not be initiated against them, their company and other officials of the company for contravention of section 3 of the Act.
2. In the notice, it was stated that the Government of India have enacted the Real Estate (Regulation & Development) Act, 2016 to protect the interests of the consumers and regulate and promote the real estate sectors in the country. All the sections of the Act have come into force with effect from 1<sup>st</sup> May, 2017 in the entire country except the State of Jammu & Kashmir. Real Estate Regulatory Authority for the State of Bihar was constituted by the Government of Bihar and is in operation since April, 2018.
3. Under the first proviso of Section 3 of the Act, Promoters of all ongoing real estate projects (Residential Commercial, Mixed & Plotted development) as on 1.5.2017 were required to register their projects by 31<sup>st</sup> July, 2017 with the Real Estate Regulatory Authority, Bihar except in projects where area of the land proposed to be developed does not exceed five hundred square meters or number of apartments proposed to be developed does not exceed eight inclusive of all phases.
4. 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 a State, without registering the real estate

project with the Real Estate Regulatory Authority (RERA) established under this Act. Promoter of ongoing real estate projects in which all buildings 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.

5. If any promoter fails to register the project as per the Act, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project. On continued violation, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both. Apart from registration, the promoter shall be required to provide quarterly updates on the status of the project to the Authority.
6. In the notice , it was stated that it was brought to the attention of the Authority that in spite of several extensions of the deadline given by the State Government, the respondent company have failed to register or apply for registration of their ongoing real estate project "RN Enclave" located at FCI Road, Phulwari Sharif, Patna though they have been booking, selling or offering for sale the flats/apartments in the project.
7. Since the respondent company did not file its reply to the aforesaid show cause, another notice dated 09/05/2019 was issued and the matter was fixed for hearing on 05/07/2019. The respondents were directed to appear in person or through authorised representative for hearing and produce all the documents upon which they intend to rely in support of their defence.

## **Hearing**

8. Hearings were held on 05/07/2019, 21/08/2019, 19/10/2019, 19/12/2019, 22/01/2020, 24/02/2020, 11/09/2020, 25/09/2020, 14/10/2020, 12/11/2020, 31/03/2020, 10/09/2021 and 21/09/2021.
9. In course of hearing, the respondent company or their representative did not appear on successive dates before the Bench. Accordingly, on 21/08/2019 cost of Rs 20,000/- was levied against the respondent company for non-appearance. Again on 19/10/2019 cost of Rs 10,000/- was levied on the respondent company for non-appearance.
10. In course of hearing, the counsel for the Authority brought on record two agreements for sale executed by the respondent company in August/ December 2017 for 940 sqft flat and 1050 sqft flat respectively with the allottees. As per the agreements for sale, the flats were to be ready by April 2018 with a grace period of six months.. He stated that the Project R N

Enclave consists of 12 flats and is being developed on 4083 sqft plot of land on the basis of development agreement executed between the developer and landowners in July 2013. The plan of the project was approved under the Plan case no- 05/2016 dated 29.02.2016.

11. On 11/09/2020 the Bench directed the Counsel of the Authority to visit the complex of the project and submit status report. On 20/10/2020 the inspecting team submitted its report in compliance to the order of the Bench dated 11/09/2020, the salient features of which are as follows :-

- (i) RN Enclave is a G+3 storied residential apartment with 12 flats.
- (ii) Though the building structure was almost complete but no plaster work was done on the inner and outer wall of the building and brick work on the third floor was also not complete.
- (iii) Plastering, plumbing, electricity, wooden-works-doors/windows and finishing work-washrooms/kitchen slabs were still required to be done in the project.
- (iv) The lift has also not yet been installed.
- (v) There was no boundary wall and nowhere the name of the project and the builder was displayed.

12. On 25/09/2020 learned counsel of the Authority stated that the MD of the respondent company was informed personally about the next date of hearing but in spite of that, he did not appear for hearing even after receiving the link for video conferencing. The Bench directed the legal team to get an estimate of the cost of the project. On 14/10/2020 the Bench again directed the learned counsel of the Authority to visit the site and measure the LBH of the building and LB of the land and also to get the estimated cost of the project.

13. Since in spite of issuance of notices and various orders passed by the Authority, neither the order/direction of the Authority has been complied with nor has the respondent company appeared, the Bench issued an interim order on 12/11/2020 against the respondent company under Section 36 to be read with Section 34(f) and Section 37 of the Real Estate (Regulation & Development) Act, 2016 by which all the bank accounts of the respondent company and its three Directors were frozen with immediate effect and IG Registration was requested to issue directions to all the DSRs/Sub-Registrars, Patna/Phulwari Sharif/Danapur not to register any apartment/plot of the project "RN Enclave" and any other project of the respondent company until further orders.

14. On 31/03/2021 Mr Bholu Shankar, learned counsel appeared on behalf of the respondent company and submitted that application for registration of the project will be filed with all the concerned documents in RERA Office by the evening. On 10.9.2021, the counsel of the respondent company informed the

Bench that his client was unreachable and he has no instructions from him in the case. Since it was felt that the MD of the respondent company has been deliberately abstaining from the hearing, in spite of information communicated by the learned counsel of the Authority and interim order passed on 12/11/2020 freezing their bank accounts and restraining them from selling any apartment/land in any project, the Bench decided on 10.9.2021 to reiterate its interim order passed earlier. As on the next date of hearing i.e. 21/09/2021 no one turned on behalf of the respondent company, the Bench decided to put the case on order.

### **Issues for Consideration**

15. There are following issues for consideration :

Firstly, whether the Project R N Enclave was an ongoing project as on 1.5.2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar;

Secondly, whether the project R N Enclave fulfils the criterion of a real estate project for registration with the Authority under section 3 of the Act.

16. As regards the first issue, it is established beyond doubt that the project was an ongoing project as on 1.5.2017 because the plan of the project was approved in February 2016 and as per both agreements for sale placed on record by the counsel of the Authority, the project was to be completed by April 2018 with a grace period of six months. The project was found to be incomplete during inspection in October 2020. Hence, the project was an ongoing project as on 1.5.2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the State of Bihar
17. So far as 2<sup>nd</sup> issue is concerned, section 3 of the Act has only two exceptions i.e. projects where area of the land proposed to be developed does not exceed five hundred square meters or number of apartments proposed to be developed does not exceed eight inclusive of all phases. The Project R N Enclave though being developed on 4083 sqft land, consists of twelve flats. Hence, the Project is covered under section 3 of the Act and required to be registered with the Authority.
18. The RERA team has determined the cost of the project as Rs 1.76 crores. The Bench, after due verification of the process of estimation, is inclined to accept it.

### **Order**

19. The Bench orders the respondent company to register their ongoing project R N Enclave with the Authority without any further delay. The Bench also levies

a penalty of Rs 1000 for everyday's delay in applying for registration of the project with the Authority under section 63 of the Act

- 20 Section 59 of the Real Estate (Regulation & Development) Act, 2016 states that if any promoter contravenes the provisions of Section-3 of the Act, 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.
21. As the promoter has deliberately tried to avoid the hearing and has not appeared even once during two and half years, inspite of repeated notices and personal contacts through his legal counsel and RERA legal team and has also not applied for registration of their ongoing project, the Bench feels that promoter should be given deterrent punishment.
22. The Bench therefore imposes a penalty of ten percent of estimated cost of the project i.e. Rs 17.6 lakhs on the respondent company, to be paid within sixty days of issue of this order.

Sd

**R B Sinha**  
**Member**