

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

**Case No. SM/296/2018 & SM/408/2019**

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

**Vs**

**M/s Swansgreen Estate Pvt Ltd .....Respondent**

**Projects: SWANSGREEN EMPIRE/SWANS ECO VILLAGE, PHASE-1**

**Present: For Complainant : Mr Jainandra Kumar, Adv**

**For Ex-Director : Mr. Roshan Verma  
: Mr DK Roy, Advocate**

**04.03.2022**

**O R D E R**

Real Estate Regulatory Authority, Bihar issued a suo motu show-cause notice on 25.06.2019 to the Directors, M/s Swansgreen Estate Pvt. Ltd. for contravention of section 3 of the Real Estate (Regulation & Development) Act 2016 by advertising the project "Swansgreen Empire/Swans Eco Village, Phase- 1, Opposite NIIT, Bihta, Patna through the brochures on their website without registering the project with the RERA, Bihar. The promoters were directed to show cause as to why proceedings under Section 35 and 59 of the Real Estate (Regulation & Development) Act 2016 may not be initiated against them. It was brought to the notice of the Authority that the respondents have been advertising and taking advances against the bookings made in the project.

Reply had been filed on behalf of Ex-Directors Mr. Sumit Sinha and Mr. Roshan Verma through their Learned Counsels Mr. D.K. Roy and Mr. Sharad Shekhar wherein they have stated that they have already resigned from the present company way back in the year 2018-2019.

The respondent company had applied for registration on 06.11.2018 but thereafter, no hardcopy or any document was submitted by the respondent company. An inspection of the aforesaid project was also carried out by the Authority wherein it has been found that only 8 Kathas of land were found to be demarcated in the name of company. The representative of the company during the course of inspection had stated due to internal dispute between the Directors, the said project could not be launched.

The Bench notes that an interim order was issued on 08.01.2020 against the three Directors of the respondent company. After issuance of the aforesaid interim order, Ex-Directors Mr. Sumit Sinha and Mr. Roshan Verma had appeared and prayed for vacating the said interim order because due to the aforesaid interim order, personal bank account have been frozen.

On the last date of hearing, Adv. D.K. Roy appearing on behalf of Ex-Director- Roshan Verma, submits that his client along with Mr. Sumit Sinha applied for RERA registration on 11-06- 2018 but due to some internal dispute, Mr. Roshan Verma resigned on 10-07- 2019 and after fulfilling the formalities his name has been removed from ROC. He further submits after resigning, the respondent company started advertising without RERA registration after which Suo Motu notice was issued and first date of hearing was 18-10-2019 from RERA. It was for the present Director to appear but they did not, while his client did appear even though the cause of action had arisen after he had resigned. He further submits that the interim order by which the bank accounts of the Ex-Director Roshan Verma were frozen may be withdrawn.

The learned counsel for the Authority pointed out that that the promoter had installed a sign board on the construction site which was removed after issuance of notice by the Authority and a brochure was shared in the public platform and distributed amongst the members of the Public. He submitted that under the first proviso of Section 3 of the Act, all the ongoing real estate projects were required to register 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. Further, 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.

The learned counsel of the Authority pointed out that the term Advertisement has been defined in the section 2 (b) of the Act as follows :

**“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.”

The learned counsel for the Authority concluded that it is established that the respondent company has advertised their project without registering the project with the Authority and thereby violated the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016.

In this matter the respondent company has not appeared despite notices having been issued.

The Authority finds merit in the submissions made on behalf of the ex-Director Roshan Verma and directs that his name may be expunged as a respondent in the present case as he has already resigned as director of the company. The interim order passed on 8<sup>th</sup> of January 2020 under section 36 of the Real Estate (Regulation and Development) Act 2016 by which his accounts were frozen also ceases to have any effect. The concerned bank may be informed accordingly.

Since the respondent company has not appeared and rebutted the charges made against them, the matter is being decided ex-parte on the basis of the submissions made by the learned counsel for the Authority.

The Authority agrees with the submissions made by the learned counsel and holds that the respondent company have contravened the provisions of section 3 of the Real Estate (Regulation and Development) Act, 2016 by advertising their project “Swansgreen Empire/Swans Eco Village, Phase- 1, Opposite NIIT, Bihta, Patna through the brochure on the website and booking the plot without registering the project with the Real Estate Regulatory Authority, Bihar.

Section 59 of the Real Estate (Regulation and Development) Act, 2016 states that if any promoter contravenes the provisions of Section 3, he shall be liable to a penalty, which may extend upto ten percent of the estimated cost of real estate project, as determined by the Authority. The project “Swansgreen Empire/Swans Eco Village, Phase- 1, Opposite NIIT, Bihta, Patna” was proposed to be developed at an estimated cost of around Rs 5.35 crores.

The Authority decides to levy a minimal penalty of Rs 25 lakhs on the respondent company to be paid within sixty days of the issue of the order.

The Authority also directs the respondent company to refund the booking amounts to all allottees along with the interest at the rate of MCLR of the State Bank of India as applicable for two year plus two percent from the date of deposit to the date of refund within sixty days of issue of the order.

Sd/-  
**Nupur Banerjee**  
**(Member)**

Sd/-  
**Naveen Verma**  
**(Chairman)**