

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Case No. SM/459/2020

Authorised Representative of RERA.....Complainant

Vs

M/s Simhastha Construction Pvt Ltd.....Respondent

Project: Narayan Apna Basera, Shiwala, Patna

Present: For Complainant: Mr Jainandra Kumar, Adv

For the Respondent: None

04.03.2022

O R D E R

Since 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 failed to register or apply for registration of their ongoing real estate project “**Narayan Apna Basera**” located at Shiwala to Naubatpur Road, Phulwari Sharif District Patna, the Real Estate Regulatory Authority (RERA), Bihar issued a suo motu notice dated 31st August, 2020 to M/s Simhastha Construction Pvt Ltd under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 to show cause as to why proceedings under Section 35 & 59 of the Real Estate (Regulation & Development) Act 2016 may not be initiated against them, their company and other Directors/officials of the company.

The learned counsel for the Authority submitted that under the first proviso of Section 3 of the Act, all the ongoing commercial and residential real estate projects were required to register by 31st 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 respondent company filed its reply dated 04/09/2020 stating that the map has not been approved due to which the project could not be registered with RERA.

The respondents were issued notice vide Memo No.05 dated 13/10/2020 to appear in person or through authorised representative for hearing on 29.10.2020 and produce all the documents upon which they intend to rely in support of their defence.

Hearings were held on 29/10/2020, 18/03/2021 and 04/02/2022. On 29/10/2020 Mr Rajesh Singh, MD of the respondent company submitted that they have applied for registration of the project on 27/09/2018 which was put on query. However, on verification, it was found that registration was applied in September, 2018 was for another project i.e. Majestic City. On 18/03/2021 no one appeared on behalf the respondent company and therefore, the Bench directed that fresh notice be issued through Sr SP, Patna under Section 5(2) of the Real Estate (Regulation & Development) Act, 2016 for producing the respondents on the next date of hearing. On 04/02/2022 also no one appeared to represent the respondent company.

The learned counsel for the authority submitted 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. The 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.”*

Thus, it is established that the respondent company has advertised their project without registering the project with the Authority and thereby contravened the provisions of section 3 of the Act.

The Authority observes that the respondent company was given ample opportunity to present its case that they had not violated the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016 by advertising their project “**Narayan Apna Basera**” through the brochure on the website and booking the plots 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 Authority holds that the respondent company has contravened the provisions of Section 3 of the Act as the project “**Narayan Apna Basera**” was proposed to be developed. However, keeping in view of the fact that the map of the said project has not been approved, the Authority decides to levy a minimal penalty of **Rs 10 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 deposit to the date of refund within sixty days of issue of the order.

Sd/-
Nupur Banerjee
(Member)

Sd/-
Naveen Verma
(Chairman)