

REAL ESTATE REGULATORY AUTHORITY, BIHAR
2nd Floor, BSNL Telephone Exchange Bldg, Patel Nagar, Patna-800023

Before the Bench of Mr R.B. Sinha, Member

RERA/SM/461/2020

**Authorised Representative (AR), Real Estate Regulatory Authority (RERA),
Bihar.....Complainants**

Vs

M/s Palviraj Constructions Pvt Ltd.....Respondent

**Present: For AR, RERA :Mr JainandraPradhan, Advocate
Ms Ankita Bhushan, Advocate
Ms Muskan, Advocate
For Respondent :Mr Sanjay Singh, Advocate
Mr Rajan Kumar Sharma, Adv
Mr Sharad Sekhar Pathak Adv
Mr Sanjeev Kr Srivastava Dir**

31/08/2021

O R D E R

1. The Real Estate Regulatory Authority, Bihar issued a Suo - moto show cause notice to M/s Palviraj Constructions Private Limited, Ashiyana Chamber, House No. 401, in front of Hotel Republic, Exhibition Road, Patna- 800003 and in February 2021, through their director Mr Sanjeev Kumar Srivastava s/o Shambhu Prasad, Flat No-203, Upendra Villa, Road No-6 Rukanpura, Patna- 800014, as to why proceedings under sections 35 & 59 of the Real Estate (Regulation and Development) Act 2016 (RERA Act) be not initiated against respondent company, for contravention of section 3 of the RERA Act by advertising their real estate Project "Goa City" in the newspapers, social media, websites etc and inviting persons to book/purchase flats without registration of their ongoing project with the Real Estate Regulatory Authority,

- within two weeks of the issue of this notice.
2. In the notice, it was pointed out that another show cause notice had earlier been issued by the Authority in November 2020 to the Respondent Company for advertising the same project Goa City in newspapers but no response has been received from them till date.
 3. It was pointed out that though the Goa City project was not registered with the Authority, the Respondent company have again advertised the project and solicited the bookings of flats by offering discounts/gold coins from the public through front page advertisement in daily newspapers published from Patna, (Dainik Bhaskar- a Hindi Newspaper) on 25th Feb 2021 highlighting the Bhoomi Poojan at the project-site on 27 Feb 2021.
 4. In the advertisement, the respondent company have also mentioned their RERA application number instead of RERA registration number, for misleading the common man and prospective buyers. They have also mischievously and illegally displayed in the advertisement that the said project was an approved project of RERA.
 5. It was pointed out that the respondent company were repeatedly and deliberately violating the Provisions of the RERA Act. In the notice, the Respondent Company were also directed to refrain from violating the provisions of RERA Act 2016 and to stop forthwith from advertising, marketing, booking, selling or offer for selling or inviting to purchase any apartment, building or plot as the case may be in the aforesaid project "GOA City" without registering it with Real Estate Regulatory Authority, Bihar, as required under section 3 of the RERA Act.
 6. The Respondent company was directed to submit their response within two weeks of the issue of the notice, failing which, they were informed that the case would be decided ex-parte on merits.

Response of the Respondent Company

7. In its response, the Director of the Respondent Company Mr Sanjeev Kr Srivastava admitted the fact that the advertisement mentioning the application no- RERAP08292019121329-4 was mistakenly published in the newspapers

- on 25th February 2021 but stated that it was due to the lapse on the part of another director Mr Ravi Raj Singh, who has since been show-caused for the lapse. He further stated that as his wife Mrs Puja Srivastava was unwell, he was not aware of the details of advertisement.
8. He further stated that the application for registration of the Project Goa City had already been submitted with due fee and penalties to the Authority in September 2020 but admitted that the Registration login ID of the project Goa City has not yet been granted because a few documents/information including development agreement, land documents including non-encumbrance certificate, fire NoC, CA's certificate etc have been sought from him, which he was in process of obtaining them. He claimed that he had already applied for Fire clearance in October 2020 but it has not been received by him till date. He assured that he would furnish the remaining documents soon. He further requested for withdrawal of interim order as it is hurting the company very badly.
 9. In its supplementary response dated 24.03.2021, the Director of the respondent company however changed his stand and claimed that the advertisement was given as it was presumed that the respondent company already has the RERA Registration number under the deemed provision of Section 5 (2) of the RERA Act as thirty days time limit had already passed. He further claimed that all requisite documents/certificates etc, as required under the RERA's letter dated 06.10.2021 have already been submitted to the Authority on 17th March 2021. He further claimed that since the respondent company also has registration as real estate agent with validity up to 09.06.2024, their advertisement was not in contravention of section 3 of the RERA Act. He once again requested for vacation of the interim order.

Hearing

10. Hearings were held on 26.2.21, 10.3.2021, 18.3.2021, 25.3.2021, 09.04.2021, 25.6.2021, 2.7.2021, 8.7.2021 and 27.7.2021. In course of hearing, the Respondent company was represented by Mr Sanjay Singh, Advocate, Mr

Rajan Kumar Sharma, Advocate and Mr Sharad Shekhar Pathak, Advocate whereas the Authority was represented by Mr Jainandra Pradhan Advocate, Ms Muskan, Advocate and Ms Ankita Bhushan, Advocate.

11. On 26.2.2021, the Bench was informed that the respondent company has been advertising, marketing, booking, selling, or inviting person to purchase in their project Goa City without registering their Real Estate project with the Authority. It was also stated that the respondent company had advertised Goa City project on front page in a daily newspaper on 25th February, 2021 calling for booking of the flats again by offering heavy discounts/gold coins under Bhumi Pujan Day Offer on 27th February 2021. In the said advertisement dated 25th February, 2021 the promoter had claimed to be an approved company by the Authority and had also illegally and mischievously given their RERA application Number as Rera Registration Number so as to mislead the common public. The respondent has also been planning for performing Bhoomi Pujan of the project Goa City on 27.02.2021, given a Bhumi Pujan Offer valid for one day and offered a Gold Coin on the spot booking which is nothing but a flagrant violation of Section 3 of Real Estate (Regulation and Development) Act 2016. Keeping in view the recent approach, conduct and flagrant violation of the Section 3 of the Real Estate (Regulation and Development) Act 2016 by the respondent company, the Bench deemed it proper and necessary to issue an interim order under Section 36 to be read along with Section 34 (f) & Section 37 of the Real Estate (Regulation & Development) Act, 2016 against the respondent company thereby restraining the promoter from conducting any kind of Bhoomi Pujan on 27.2.21, freezing the bank accounts of the respondent company, their directors & dependent family members, stoppage of registration of any apartment/plot of projects of the respondent company until further orders. Further, the Authority constituted a multi-disciplinary team to enquire into functioning of the Respondent company as it was found that the Respondent company had collected Rs 6.13 Crores as of 31st March 2020 from customers within one and half years since its incorporation, without getting any projects registered with the Authority.

12. On 10.2.2021, the Bench held a hearing on an urgent mentioning of the counsel of the respondent company and directed the respondent company to furnish their statement on an affidavit so that their request could be considered. On 18.3.2021, the Respondent sought time to file the affidavit. On 25.3.2021, Learned Counsel of the respondent company Mr. Rajan Kr. Sharma submitted that the respondent applied for registration of the project on 16/09/2020 under RERA. On 6/10/2020, the respondent was asked to submit some documents which included FIRE NoC, for which the respondent applied on 17/10/2020 but that NOC was given on 21/02/2021. Therefore the respondent had not submitted the required documents in RERA. On 17/03/2021 all the required documents have been submitted in RERA.
13. He further submitted that the main crux of the case is that Goa City was being advertised without RERA registration. He further submitted that the advertisement was published under some misunderstanding for which an undertaking has been also filed by the respondent that in future no act of the respondent will go against the provisions of RERA. He further submits that all the required documents have been submitted on 17/03/2021. He further prays for vacating the interim order dated 26/02/2021. Learned counsel of the Authority contested the plea and stated that the Respondent company has not submitted all necessary documents.
14. The Bench observed that the report of the High Level committee constituted under section 35 (1) under the Act has not yet been placed before the Bench. Therefore the Bench will wait for the report before taking a decision as the counsel of the Authority had pointed out that the respondent company had been advertising and booking the flats on social media continuously since September 2020, which is also prohibited under section 3 of the Act.
15. On 9.4.2021, the respondent counsel prayed for time once again. The Bench directed the respondent counsel to submit all the details including the bank statements of the respondent company since the date of formation of the company i.e. 7th September, 2018 and also furnish the circumstances under

which the project Goa City was started in November 2016 when the company itself was formed in September 2018.

16. On the next date of hearing on 25.06.2021, the Bench directed that a copy of report of the enquiry committee may be furnished to the learned counsel of the respondent company with the directions that they should furnish their observations/comments within three days. However, on 2.7.2021, learned counsel again asked for time. Learned Counsel of the Authority pointed out that respondent company was continuously advertising the aforesaid project without getting the project registered under RERA. The respondent company filed two replies on 1/03/2021 and 23/03/2021 where in one affidavit the respondent admitted that there was a mistake on their part and rendered unqualified apologies but in another reply, the respondent company claimed that they presumed that the project was registered as they had submitted the application for registration of the project in September 2020 though they had not submitted the requisite documents/clarifications called for, by the Authority In the first week of October 2020.
17. The Bench further observed from the report of the High Power Committee that the clarifications sought on the certificate (UDIN – 20068385AAAAIJ 3211) issued by the CA Mr Gourav Gunjan (Membership No-068385) on 17.03.2021 on the Advance from Customers (Under Other loans & advance head) in Balance sheet Notes of Rs 6.13,88, 519.07 as on 31.03 2020 were not provided by the company inspite of repeated reminders. The Bench therefore summoned CA, Mr. GouravGunjan, Partner, Gupta Sachdeva Co for personal appearance on the next date of hearing to give clarifications on the certificate issued by him.
18. Counsel for the Authority vehemently submitted that the respondent has violated Section 3 of the RERA Act, 2016 to which they have themselves admitted on 26/02/2021 in course of hearing. He further stated that the respondent company had also been show-caused earlier (November 2020) for contravention of Section 3 of the Act in respect of the same project (Goa City) and prays for imposing heavy penalty on respondent as per law. He

further submitted that the respondent applied for registration of the project on 16/09/2020 without submitting proper legal title to the land through valid registered development agreements with the landowners, valid sanctioned plan from the competent authority, Fire NoC, appropriate CA's certificate etc but had been advertising the project on social media and booking the flats in the aforesaid project since August/September 2020 i.e. even prior to submission of application for registration of the project in the Authority. He claimed that the Developer has been claiming in his social media advertisements that he was offering Rs 17 Lakhs discount for 2 BHK fully furnished flat of 864 sqft (Sale price : 10 lakhs) and Rs 25 Lakhs discount for 3 BHK fully furnished flat of 1369 sqft (Sale price-Rs16 lakhs). Moreover, the Developer was also claiming that they would provide sofa set, Round Master beds in bedrooms, dining table, ward-robe, dressing table, multiple ACs, Fridge & LED TVs in each flat along with Washing machine, RO, microwave, geyser etc.

19. The Bench also noted from the report of the Enquiry committee that the respondent company has admitted having received Rs 30.84 Lakhs from 12 customers for the Project Mumbai Residency between 28 January 2019 and 18th September 2019, Rs 66.66 Lakhs from 12 customers in the Bollywood Residency Project between 28.03.2020 to 02.02.2021 and Rs 1,80,27,034 from 42 customers for the project Goa City between 31st august 2020 and 25 February 2021. The Bench further noted that the respondent company has not given complete information about receipt of advances during 2018-19 and 2019-2020 as the figures fell far short of the amount of advances (Rs 6,13,88,519.07) from customers shown under "Other loans & advances" head in Balance sheet Notes as on 31.03 2020. Further, the bank statements furnished by the Respondent company for three banks- HDFC Bank, State Bank of India and ICICI Bank for the period 1.4.2020 to 28.2.2021 show that the respondent company has received Rs 6.89 crores from customers till 28th February 2021 during the financial year 2020-21. It was therefore evident that the Respondent company has already collected Rs 13.03 crores from

- customers during the period September 2018 to 28.2.2021 without getting any real estate projects registered with the Authority.
20. Respondent counsel submits that the project is ongoing and in such circumstance status of the advertisement in the present case should be treated differently. The Bench directed him to quote the mandate/section of the RERA Act under which he is requesting the differential treatment for unregistered project. He failed to provide any cogent response and submitted that he would file his counter reply at the earliest.
21. On the next date of hearing on 8.7.2021, the new Counsel of the respondent company requested for adjournment of the case till the full bench gave its order on registration rejection case being heard by them. The Respondent counsel submitted that as per the last direction, reply was to be filed by the respondent but no reply has been filed as the matter was pending before the Full Bench of RERA, under Section 3 of RERA Act, 2016 for which a notice was served for cancellation of the registration of the aforesaid project. He further submits that since the last date of hearing for the same was on 02/07/2021 and the outcome is awaited, in such circumstance the respondent has not filed any reply in the present case. He further prays to put the present proceeding on hold till the judgment/order of the Full bench comes out.
22. The Bench held that both cases are different in nature. The present case is related to the Suo Moto notice under section 35 & 59 (1) of the RERA Act for contravention of Section 3 of the RERA Act whereas the case before the full bench was under section 5 (1) (b) of the RERA Act for rejection of the application for registration of the Project with the Authority. The present case is not concerned or related with Section 5 (1) (b) of the Act. The Bench therefore held that there is no need to keep the present proceedings on hold. Accordingly, the proceedings continued.
23. On 27.7.2021, Mr. Gourav Gunjan, CA statutory auditor of the respondent company appeared before the Bench and briefed the court. On a specific reference as to whether CA's Certificate dated 17.3.2021 with UDIN 20068385AAAAIJ3211 submitted by M/s Palvi Raj Construction Pvt Ltd to the

RERA was signed by him, Statutory auditor submitted that the details of issue of such certificate was not available on his/CA firm's record. He further submitted that issuance of such certificate doesn't come under his ambit and that the signature on the certificate dated 17.03.2021 is prima facie not his signature.

24. Respondent counsel claimed that Mr. Gourav Gunjan took fees of Rs. 12,000/- from his client in his office for issuing the certificate on 17.03.2021. He further submitted that he will file his reply to the submissions of Mr. Gourav Gunjan. The Bench directed the respondent counsel to submit the copy of the receipt of the fees along with his reply within a week. However, no reply has been received by the Bench till date of writing this order.

Issues for consideration

25. There is only one issue for consideration in the notice issued to the Respondent company i.e. whether the Respondent Company have contravened the provisions of Section 3 of the Act and thereby liable to a penalty under Section 59 of the Act 2016.

Section 3 of the Real Estate (Regulation and Development) Act 2016 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). In this connection, it may be pointed out that RERA Act 2016 was passed by the Parliament of India in March 2016 and several provisions of the Act came into operation with effect from 1.5.2016. All provisions of the Act came into operation in the entire country including the state of Bihar w.e.f. 1st May 2017.

26. Proviso to Section 3 (1) of the Act further enjoins upon the promoters of all real estate projects that are ongoing as of the date of commencement of the Act and

for which the completion certificate has not been issued, to apply for registration of the said projects to the Authority within three months.

27. The promoter had claimed in their application for registration that the Project Goa City was started on 11th November, 2016. Therefore, the project Goa City was an ongoing project as on 1.5.2017 and the promoter was required to apply for registration to the Authority within three months i.e. 31st July, 2017. However, the promoters filed the application for registration of Goa City project on 16th September 2020.
28. In his first response, the director of Respondent Company has admitted that they had not filed several important documents with their application for registration like copy of the Development agreements to prove that they have a legal title to the land on which they propose to develop the project, Non-encumbrance certificate, CA's clarification, Project bank accounts, Fire NoC etc and they were in process of obtaining them. They were aware that they have not been given Registration Login ID by the Authority due to shortcomings in their application. They have further admitted that they had advertised the project Goa City prominently on front page in the newspapers. Learned counsel of the Authority has also shown that the respondent company has been advertising the project Goa City w.e.f August/September 2020 on social media including facebook accounts, website etc on regular basis.
29. It is further confirmed by the affidavit filed by the Director of the Company himself and submitted to the Authority that they have been booking the flats in the Goa City project and collecting advances since 31st August 2020, i.e. even prior to the date of filing the application online for registration of the Project on 16th September 2020. The Respondent company has also furnished the list of 42 customers that have paid Rs 1, 80, 27, 034 for booking the flats in Goa City Project during 31.08.2020 to 25.02.2021 to the Respondent Company. It is therefore proved beyond doubt that the promoters have not only been advertising the project Goa City but also making booking of flats and collecting advances/deposits in the Goa City Project. It is therefore established that the Respondent company have contravened the provisions of the Section 3 of the Act and is therefore liable to a penalty under section 59 of the Act, 2016.

Order

30. 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.
31. It is observed that the Company has itself determined the estimated cost of the project Goa City consisting of 182 flats over the land of 5507 square metres of land as 33.89 crores in their application for registration of the project submitted to the Authority. The Company has determined the cost of land as Rs889.62 lakhs and the cost of development as Rs 25.00 crores. The Bench is inclined to accept it.
32. However, keeping in view the fact that the respondent company have admitted their mistake in advertising the Project and had filed their applications for registration of the project Goa City with the authority, the Bench imposes a token penalty of one and half percent of the estimated cost of the project Goa City i.e. Rs 50.84 Lakhs (Rupees fifty lakhs and eighty four thousand only), payable within sixty days of issue of this order.
33. The interim order passed on 26th February 2021 under section 36 of the Real Estate (Regulation and Development) Act 2016 stands inoperative with issue of this order.

**Sd/-
(R.B. Sinha)
Member**