

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

**Case No. SM/462/2020**

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

**Vs**

**M/s R D Eco Developers Pvt Ltd.....Respondent**

**Projects: Ramswaroop Apartment, Gola Road, Patna/Baba Complex, Gulab Bagh, Purnea/RD Heights, RK Puram, Patna.**

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

**Ms Ankita Bhushan, Adv**

**For the Respondent: Mr Rajan Kumar Dubey, Adv**

**25/11/2021**

**O R D E R**

1. Real Estate Regulatory Authority, Bihar has issued a suo motu show-cause notice on 13<sup>th</sup> November 2020 to M/s RD Eco Developers Pvt Ltd through their director as to why proceedings under sections 35 & 59 of the Real Estate (Regulation & Development) Act 2016 may not be initiated against them for contravention of the section 3 of the Real Estate (Regulation & Development) Act 2016.
2. Section 3 of the Act mandates that no promoter shall 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.
3. In the notice, it was pointed out that the promoter had advertised prominently their projects Ram Swaroop Apartment (B+G+5 structure on 19 Kathas of land), near St. Karen's High School, Gola Road, Patna/Baba Complex ( B+G+10 structure on 23 Kathas of land), near Gulab Bagh Mandi, NH-31, Purnea/R D Heights ( B+G+18 structure on 6 acres of land), RK Puram, Patna in a national newspaper published from Patna without getting these projects registered with RERA, Bihar as per provisions of Section 3 of the Act.
4. The Government of India has 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 in March 2018 and was operating from April, 2018.

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.

### **Response of the Promoter**

6. In response to the show cause notice, the respondent company filed its reply on 26/11/2020 wherein they have tendered unconditional apology for publishing the advertisement and submitted that their two projects viz; Devdhari Pratap, Gola Road, Patna and Chetna Residency, RK Puram, Patna were already registered with RERA against which advertisement was to be made but inadvertently advertisement was made for these three projects also which was unintentional and bonafide mistake of their staff for which they tendered unconditional apology.
7. The respondent company further submitted that they have not received any amount or even not negotiated with anyone regarding those projects which were upcoming projects and nor ongoing projects. They further submitted that they have applied for registration of one of these three projects and are under process of preparing/arranging the necessary documents for the remaining for their registration with RERA.
8. The Authority considered the reply of the respondent company as not satisfactory and the case was fixed for hearing on 25/01/2021.

### **Hearing**

9. Hearings were held on 25/01/2021, 04/02/2021, 19/02/2021, 19/03/2021 and 29/09/2021.
10. In course of hearing, the learned counsel of the respondent company filed the show cause response on affidavit stating therein that out of the three projects, for the two projects i.e. Ramswaroop Apartment and Baba Complex, applications for the registration have already been filed and Baba Complex has been registered with RERA and separate bank account has been opened. So far as RD Heights is concerned,

papers/documents are being collected/arranged for filing it before RERA for registration. As regards advertisement for these three unregistered projects, they have submitted that it was a human error and that they have not taken any booking amount against any flat or even not negotiated with anyone. Learned counsel of the respondent company prayed for accepting the oath by the Director to which the Bench agreed to consider.

11. Learned counsel of the Authority however raised doubts on the claim of the MD of the Respondent Company regarding inadvertent lapse on behalf of the junior staff and said such large prominent (Full Page) advertisements in a national newspaper can not be given on front page by junior staff of the promoter. He further stated that promoter of RERA registered projects ought to be aware of the obligations of the promoters under the Act and should have to put in place strong internal control systems to ensure that the provisions of the Act are followed meticulously. In this connection, he pointed out that the section 11 of the Act also mandates the promoters to publish the **RERA Registration number** prominently in the advertisements issued by the promoters, which they had failed to do even for two registered projects (Devdhari Pratap Commercial Complex & Chetna Residency), attracting levy of the penalty under section 61 of the Act.
12. He further claimed that the respondent company was a habitual violator of the provisions of the RERA Act and has not submitted a single quarterly progress report of any project out of the five RERA registered projects since their dates of registration, though section 11 (1) of the Act and Rule 16 (d) of the Bihar Real Estate (Regulation and Development) Rules 2017 enjoin upon the promoters to upload the quarterly progress report of each project, within 15 days of expiry of each quarter, indicating therein , list of number and types of apartment booked, list of number garages booked, the status of the project including status of construction of each building with photographs, status of construction of each floor with photographs and status of construction of internal infrastructure and common areas with photographs, status of approvals etc.

The Respondent company has since submitted the application for registration of the project R D Heights in November 2021.

**Order:**

13. Section 59 of the Real Estate (Regulation & Development) Act, 2016 states that if any promoter contravenes the provisions of Section-3, 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.

14. In their applications for registration of the three projects i.e. Ram Swaroop Apartment, Baba Complex and R D Heights, the promoter has himself estimated the cost of the project Baba Complex as Rs 10.79 crores, the project Ram Swaroop Apartment as Rs 5.70 crores and the project R D Heights as Rs 64.00 crores. The Bench is inclined to accept the estimated cost of these three projects as indicated by the respondent company in their applications for registration of the projects with the Authority.
15. The Bench however feels that since the respondent company has tendered unqualified apology and claimed the publication of advertisement as an inadvertent mistake by the staff, a token penalty of rupees five lakhs only (i.e. less than 0.1 percent of the estimated cost of three projects) be levied on the respondent company, to be payable within sixty days of issue of this order.
16. The Respondent Company is also directed to be extremely careful in future. They should put in place a robust internal control system to ensure that the obligations of the promoters as stipulated in the provisions of the Act/Rules are followed meticulously. The Promoter is also directed to submit the quarterly progress reports of each RERA Registered project with effect from quarter following the date of registration of the project as stipulated under section 11 (1) of the RERA Act and Rule 16 (d) of the Bihar Real Estate (Regulation and Development) Rules 2017.

Sd

**(R.B. Sinha)**  
**Member**