

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

**Before the Bench of Mr R. B. Sinha & Mr S.K. Sinha, Members of the
Authority**

Suo Moto Case Nos. SM/283/2018

Authorised Representative of RERA.....Complainant

Vs

M/s Balaji Tirupati Homes Pvt Ltd.....Respondent

Present : For the Complainant : Ms Shivi, Advocate

For the Respondent : Mr Amit Kishore, MD

Mr Vipin Kumar, Advocate

30.12.2020

O R D E R

1. The Real Estate Regulatory Authority, Bihar, Patna issued a suo moto show cause notice under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 on 06/12/2018 to M/s Balaji Tirupati Homes Pvt Ltd for non-registration of their ongoing project "Divya Krishna Apartment, Hathua Enclave, Digha, Patna with the Authority and thereby non-compliance of the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016.
2. In the notice, it had been stated that Section 3 of the Act provides 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 without registering the real estate project with the Real Estate Regulatory Authority established under this Act.”

3. Under sub-section (1) of Section 3 of the Act it has also been specifically mentioned that all ongoing commercial and residential real estate projects were required to be registered with the Authority within three months of the date of commencement of the Act i.e. by July 31, 2017 except in projects where area of the land proposed to be developed didn't exceed 500 sqmetres or number of apartments proposed to be developed didn't exceed 8 (Eight) inclusive of all phases.
4. In the notice it had also been stated that in spite of several extensions of deadline given by the State Government, the Respondent Company had failed to register or apply for registration of its real estate projects - “Divya Krishna Apartment, Hathua Enclave, Digha, Patna - with the Authority.
5. Accordingly, the respondent company was directed to show cause as to why proceedings under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 be not initiated against them, their company, other Directors and officials of the company for non-compliance with the provisions of Section 3 of the Act.

Response of the Respondent Company:

6. The respondent company submitted their reply on 26/12/2018 in which they claimed that their project was finished by March, 2017, landlord share allotted to them and shares held in the name of the company has already been transferred to respective owners/buyers of such flats and

no inventory left with the company as on 31st March, 2017 and the last flat registered by the company was on 31st March, 2017. They have further submitted that as on 1st May, 2017 their project has already been completed and occupied by the flat owners/purchasers. They have also further submitted that they have not made any advertisement for the above project after March, 2017. Further the company is under the process of striking off.

Hearing :

7. The response of the company was not found satisfactory and therefore, the matter was fixed for hearing. Hearings were held on 05/02/2019, 01/03/2019, 05/04/2019, 15/05/2019, 22/07/2019 and 26/08/2019. In course of hearing, the respondent company was represented by their Managing Director Mr Amit Kishore and Mr Vipin Kumar, Advocate. The MD reiterated the written response given by the respondent company and stated that the promoters were not obtaining the Completion Certificate (CC)/ occupancy certificates (OC) earlier in the state.
8. Mr Sumit Kumar, learned counsel of the Authority who was directed to visit the site and submit inspection report, has since submitted his report in which he has reported that the complex was fully complete in all respect with all common facilities to the allottees of the apartment, internal and external common areas of the building were well constructed and no part of the alleged apartment is said to be incomplete in any way.

Issues for consideration :

9. There is only one issue for consideration i.e. whether the respondent company was required to get their project registered with RERA under Section 3 of the Real Estate (Regulation & Development) Act, 2016. It was brought to the attention of the Bench that the notice was issued based on the report of the Executive officer of Danapur Municipal Council, which highlighted the unauthorized construction on the fifth floor of the project. It was however found that the promoter stopped the construction on the fifth floor as it was pointed out that no construction beyond 4th floor was permissible on roads with 6.3 metres width. It was also pointed out to him that any further construction in the complex can only be undertaken after getting the building plan revalidated by the competent authority as the original plan approved in 2011 was valid for three years only and registration of the project with the Authority.

Order :

10. In view of discontinuance of the construction work, the Bench orders the dropping of the proceedings against the promoter with the direction that they should apply for CC/OC for the project Divya Krishna Apartment to the competent Municipal Authority within thirty days of issue of the order.

Sd
(S.K. Sinha)
Member

Sd
(R.B. Sinha)
Member