

**Real Estate Regulatory Authority, Bihar, Patna**

**Bench of Mr R B Sinha and Dr S K Sinha, Hon'ble Members  
of the Authority**

**SM/330/2018**

**Authorised Representative of RERA----- Complainant**

**Vs**

**Mr Mrinal Singh for Late Shailendra Kr Singh/  
M/s UNO Digital Pvt Ltd..... Respondent**

**Present : For the Complainant : Ms Shivi, Adv  
Mr Sumit Kumar, Adv  
For the Respondent : Mr Jai Ram singh, Adv**

**04.01.2021**

**Order**

1. Real Estate Regulatory Authority issued a suo-moto show-cause notice on 28<sup>th</sup> December 2018 to Mr Shailendra Kumar Singh owner of plot No-168, Near Polytechnic More, Patliputra Colony Main Road, Patna-800013 for non-registration of his ongoing Project/under construction of a commercial complex/building UNO Business Centre on his plot at Patliputra colony.

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 He further informed that his company had purchased the plot number 168 Pataliputra colony vide registration number 1338 dated 25 May 2011. The MAP of the building was sanctioned on 13.05.2016 by the Patliputra Cooperative Housing Construction society Ltd, Patna and the construction was started and completed in the year 2018.

except in projects where area of the land proposed to be developed didn't exceed 500 sq metres 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/Authority, the Respondent Company had failed to register or apply for registration of his/under construction real estate project/building at the Plot No-168, Patliputra colony main road, Patna -800013 - 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**

6. In its response dated 16 January 2019, the promoter Mr Shailendra Kumar Singh stated that the building he was constructing was not meant for sale either now or in future and hence it was not required to be registered under section 3 of the RERA Act 2016 with the Authority. He stated that he was the Director of M/s UNO Digital Pvt Ltd, a company registered under the Companies Act 1956. He further informed that his

company had purchased the plot number 168 Pataliputra colony vide registration number 1338 dated 25 May 2011. The MAP of the building was sanctioned on 13.05.2016 by the Patliputra Cooperative Housing Construction society Ltd, Patna and the construction was started and completed in the year 2018.

7. The promoter had also enclosed a copy of the assessment order for payment of holding tax by Patliputra housing cooperative Society, copy of the approved plan of the building and receipt of payment of holding tax for commercial uses for the financial year 2018-19 to the Patna municipal Corporation. He claimed that when he came to know in 2018 that Patliputra area has come under the jurisdiction of PMC, he deposited holding tax for commercial uses in the PMC.

8. As the response of the promoter was not considered satisfactory, he was directed to appear for personal hearing on 13<sup>th</sup> March 2019.

### **Hearing**

9. Hearings were held on 13<sup>rd</sup> March 2019, 18<sup>th</sup> June 2019, 22<sup>nd</sup> July 2019, 8<sup>th</sup> August 2019, 28<sup>th</sup> August 2019, 18<sup>th</sup> October 2019, 11<sup>th</sup> December 2019 and 16<sup>th</sup> January 2020. In course of hearing, the respondent was represented by his Learned Counsel Mr Jai Ram Singh. On the first date of hearing, the Bench directed the learned counsel of the respondent to submit annual accounts of the respondent company, bank accounts, evidence in support of competency of the Patliputra Cooperative Housing Society to approve the building plans in supersession of the provisions of Bihar Municipal Act 2007, completion/Occupancy certificate issued by the Competent Authority/PMC etc. Learned Counsel Mr Jai Ram Singh in his response dated 8<sup>th</sup> August 2019 informed the

Bench that the Respondent Mr Shailendra Kumar Singh expired on 26<sup>th</sup> March 2019 and in his place, another director Mr Mrinal Singh may be substituted. He claimed that no advertisement was given by the Company and hence they have not contravened the provisions of Section 3 of the RERA Act 2016. Learned Counsel of the Respondent also submitted copies of order of Municipal Commissioner, Patna dated 10<sup>th</sup> May 2019 in vigilance case number 97A/2018 initiated against the same commercial building of the respondent regarding violation of the provisions Bihar Municipal Act 2007, stay order dated 9<sup>th</sup> July 2019 of Bihar Building Tribunal in Appeal Number -12(N)/2019, copies of the orders passed by the Hon'ble Patna High court in CWJC No-4053/2019 and CWJC No-1216/2019, letter dated 20<sup>th</sup> March 2017 of PMC addressed to the Secretary, Patliputra Cooperative Housing Constructions Society Ltd etc.

10. In course of hearing, the Bench invited the attention of the learned counsel of the Respondent Company to sections 2 (d), 2 (zm) and 2 (zp) of the RERA Act 2016 and also requested the Learned Counsel of the Respondent to submit any relevant orders/judgements in support of his contention that long term leases were not to be treated as sale, particularly keeping in view the Transfer of Property Act 1882 and income Tax Act. The Bench also directed the Learned Counsel of the Respondent to furnish all long term leases entered by the respondent with the private parties. In pursuance to the direction of the Bench, Learned Counsel of the Respondent submitted copies of four long term renewable leases ranging for the period 9 years to 15 and half years, entered into by the Respondent with various private firms for commercial uses of the properties.

11. An examination of the lease agreements submitted by the learned counsel indicated that two lease agreements were for a period

exceeding 15 years while one agreement was for twelve years. The fourth lease agreement was for nine years. The **first lease agreement** with **Eface Retail** was executed on 5<sup>th</sup> June 2018 for a period of 15 years and two months effective from 1 October 2018 at the rent of Rs.8,25,000 per month for commercial use of 12500 Sqft super built up area (GF-6000 sqft + FF-6500 sqft). The **second lease agreement** with **Brands Mantra** was executed on 12<sup>th</sup> October 2018 for a period of 15 years and six months effective from 1<sup>st</sup> January 2019 at the rent of Rs.5,00,000 per month for commercial use of 9000 Sqft super built up area (FF-4500 sqft + SF-4500 sqft). The **third lease agreement** with **Krishnashree Foods** was executed on 22<sup>th</sup> October 2018 for a period of 9 years and effective from 1<sup>st</sup> January 2019 at the rent of Rs.3,71,000 per month for commercial use of 4500 Sqft super built up area on Ground floor. The **fourth lease agreement** with **Fils Hospitality** was executed on 6<sup>th</sup> March 2019 for a period of 12 years, effective from 1<sup>st</sup> April 2019 at the rent of Rs.2,70,000 per month for commercial use of 4500 Sqft super built up area on third floor. All lease agreements have 15% escalation every three years on the rent or lease amount.

12. In all lease agreements, it was provided that lease can be renewed on mutually agreed terms by executing a fresh lease deed. Further, **Lessor/Lessee will not be entitled to terminate the lease for the entire period of lease** except in the case Lessee fails to perform its financial obligation i.e. Rental or the event of the breach of terms and conditions as stated in the agreement. In the event Lessee breaches any of the terms of agreement, the Lessor shall issue minimum after six months/three months notice for the same period to the Lessee to rectify the said breach. On the Lessee rectifying the said breach, if any, the

notice issued by the Lessor in that regard shall be deemed to be withdrawn by the Lessee.

13. Further, the legal agreements also gave the Lessee right to give sublease rights to anyone to run and operate retail at retail outlets/shops/services/offices either by the company or through its franchisees.

14. All lease agreements also have following conditions in case of sale of the lease property without expiring of the lease terms : if Lessor shall sell the said leased premises to any third-party, **then such sale shall not affect leasehold or sublease rights of the Lessee, the Lessee will be the first party to be approached for such sale proceed** and in case of refusal to purchase by the Lessee, then the Lessor is bound to preserve all the interest of the Lessee i.e. lease agreement will be continued even after such sale if any to the rights of Lessee under this agreement.

15. Learned counsel for the respondent also stated that the order of the PMC Commissioner dated 10<sup>th</sup> May 2019, after hearing/listening both parties as per orders of the Patna High Court in CWJC No 1216/2019, holding approval of plan by Patliputra Housing Society beyond their authority and construction of B+G+4 commercial building without getting approval of the MAP by the competent Authority is illegal, has since been stayed. In his order, the PMC commissioner has also held that the promoter was constructing a B+G+4 commercial building on a plot land meant for residential use and hence directed the promoter to submit for approval of MAP for residential use by the PMC. It also found many other irregularities. Learned Counsel of the Respondent however claimed that the order of the PMC Commissioner was stayed in appeal by the Municipal Building Tribunal on 09.07.2019.

16. Learned Counsel of the Authority pointed out that the stay order passed by Hon'ble Building Tribunal has lapsed as six months have passed without any further extension given by the Tribunal citing detailed reasons in view of the Orders of the Hon'ble Supreme Court of India. A three-Judge Bench headed by Justice Rohinton F Nariman of Hon'ble Supreme Court has since reiterated its earlier orders in October 2020 to the effect that "Whatever stay has been granted by any court, including the high court, automatically expires within a period of six months, and unless extension is granted for good reason". In 2013, the Supreme Court had said that "in cases where the stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order." Learned Counsel of the Respondent has not produced any order of extension of the stay order granted by the Building Tribunal.

17. In course of hearing the bench also directed a RERA legal team to visit the site of construction and submit a status report regarding construction work presently going on site. RERA Legal team submitted a report after an inspection of the site along with learned counsel of the Respondent and director of the Respondent company. In his report, the RERA team found that the building was already in use by several commercial institutions, though some construction work like flooring etc was still going on, without obtaining the CC/OC from the competent Authority as required under Section 11 (4)(b) of the Real Estate (Regulation and development) Act 2016..

### **Issues under Consideration**

18. There are following issues under consideration:

- A. The Real Estate Regulatory Authority has been established for regulation and promotion of the Real Estate Sector. One of the

functions enshrined in Section 34 (f) is ensure compliance of the obligations cast upon the promoters, real estate agents and allottees under this Act/Rules/Regulations. The term promoters, real estate agents and allottees have been defined in section 2 (zk), 2 (zm) and 2 (d) respectively.

The term promoter has been defined in Section 2 (zk) as (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, **for the purpose of selling all or some of the apartments** to other persons and includes his assignees;

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, **for the purpose of selling to other persons all or some of the plots** in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, **for the purpose of selling all or some of the apartments or plots**; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings **for its Members or in respect of the allottees of such apartments or buildings**; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is **developed for sale**; or

(vi) such other person who constructs any building or apartment **for sale to the general public**.

19. It would be evident from the definition of the term Promoter that the purpose of the construction/development of apartments/buildings/plots ought to be sell to other persons all or some of the apartments/plots. The



Respondent in its reply dated 19<sup>th</sup> January 2019 had claimed that **the building he was constructing was not meant for sale either now or in future.** However, Learned Counsel of the Authority pointed out that all long term leases executed by the developer had the provision for possibility of sell of the leased commercial space. Hence, the claim of the respondent was not backed by his actions. He further pointed out that the Bench may have a look at the definition of Real Estate agents and allottees and provisions of Transfer of Property Act and Income tax Act relating to transfer of property and long term leases.

**Section 2 (zm)** "real estate agent" means any person, who negotiates or acts on behalf of one person **in a transaction of transfer of his plot, apartment or building**, as the case may be, in a real estate project, **by way of sale, with another person or transfer of plot, apartment or building**, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

**Section 2 (d) "allottee"** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been **allotted, sold (whether as freehold or leasehold) or otherwise transferred** by the promoter, and includes the person who subsequently acquires the said allotment **through sale, transfer or otherwise** but **does not include** a person to whom such plot, apartment or building, as the case may be, is given **on rent**;

The Transfer of Property Act contemplates the following kinds of transfers: (1) Sale, (2) Mortgage, (3) Lease (4) Exchange, and (5) Gift. Sale is an out-and-out transfer of property. In mortgage, there is a transfer of limited interest in property. A lease is a transfer of a right to enjoy immovable property for a certain time or in perpetuity. Exchange is

like a sale, but differs from it as regards the consideration. In sale, the consideration is money, while in exchange, the consideration is another thing. In a gift, there is no consideration.

### **Section 269UA(f) in The Income- Tax Act, 1995**

(f) " transfer",-

(i) in, relation to any immovable property referred to in sub- clause (i) of clause (d), means **transfer of such property by way of sale or exchange or lease for a term of not less than twelve years**, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 3 (4 of 1882 ). Explanation.- For the purposes of this sub- clause, a lease which provides for the extension of the term thereof by a further term or terms shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the terms for which such lease is to be granted and the further term or terms for which it can be so extended is not less than twelve years;

20.It would therefore be evident that the promoter by having the provision of sale in all long term renewable leases, three out of them for a period of 12 years or more, has himself acted against the commitment given in his reply that the property was not meant for sale either now or in future. Therefore the Promoter has violated the section 3 of the Act by not registering his project with the Authority.

### **B. Whether the project was an ongoing on 01.05. 2017 or constructed after the commencement of the Real Estate (Regulation and Development) Act 2016 :**

21. In his response, the Promoter had claimed that his company had purchased the plot number 168 Patliputra colony vide registration number 1338 dated 25 May 2011. The MAP of the building was sanctioned on 13.05.2016 by the Patliputra Cooperative Housing Construction society Ltd, Patna and the construction was started and completed in the year 2018. Further, the copy of registered lease

agreement (Token Number-7099, Serial No-6951 and Deed No-6192) executed between the promoter's company and EFACE RETAIL on 5<sup>th</sup> June 2018 submitted to the Authority along with the photo graphs of the building shows in an unambiguous terms that the project/building was still under construction and incomplete. The photographs shows that 3<sup>rd</sup> floor roof casting was still going on and brick work on first and second floor had still not yet been done. Further, other lease agreements signed in October 2018 & January 2019 also refer to incomplete nature of the building. This was also confirmed by the report of RERA Legal team which indicated that the flooring work on 3<sup>rd</sup> floor and basement was still going on in August 2019. Further, the promoter did not have the CC/OC of the project from the competent Authority as on the date of inspection It was therefore well established that the Project was an ongoing project as on 1<sup>st</sup> May 2017, the date on which the Real Estate (Regulation and Development) Act 2016 came into operation in the state of Bihar.

**C. Who is the competent Authority to approve building plans of a real estate project and to issue CC/OC on completion of the Project ? :**

22. Section 4 (2) © & (d) of the Real estate (Regulation and Development) Act 2016 state that the promoters shall enclose the following document along with their application for registration of the Projects with the Authority :

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;

Further Section 11 (4) (b) enjoins upon the promoters to :

b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

The term Competent authority is defined under section 2 (p) :

"competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

Further the Term Local Authority has been defined in Section 2 (zc) :

"local authority" means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

23. It would therefore be apparent that the promoter is required to submit the building plan duly approved by the Patna Municipal Corporation as the provisions of Bihar Municipal Act 2007 supercedes all other rules/orders regarding approval of the MAP of any residential/commercial projects/Buildings from the date of enactment of the Act. Further, a land earmarked for residential use in Master Plan 2031 can not be used for commercial or any other purpose without approval of the competent Authority or the Authority which approved the Master Plan.

### **Order**

24. The Bench holds that the promoter has violated the provisions of section 3 of the Real Estate (Regulation and Development) Act 2016. It has also not followed other sections (4 & 11 ) of the Act.

25. The Promoter and his company are therefore directed to submit the application for registration of the project UNO Business Centre at Plot

No-168, Patliputra colony Main Road, Patna along with sanctioned map/plan lay out plan etc as sanctioned by the competent Authority within sixty days of the issue of the order.

26. Section 59 of the Real Estate (Regulation & Development) Act, 2016 provides that if any promoter contravenes the provisions of Section 3 of the Act, he shall be liable to a penalty, which may extend up to ten percent of the estimated cost of the project as determined by the Authority.

27. Keeping in view of the fact that the project was developed and operation commenced in the heart of the capital city of Patna without registration of the project with the Authority, without approval of the plan by the competent Authority and without obtaining the CC/OC from the competent Authority, the Bench imposes a penalty of ten percent of the cost of the project. The cost of the project would be determined by the legal counsel of the respondent Mr Jai Ram Singh Advocate and Legal Counsel of the Authority Mr Jainandra Pradhan, Advocate, together based on the inputs/information of cost of land, construction, development, taxes, fees etc provided by the promoter along with documentary evidence within thirty days of the issue of the order.

**Sd**  
**R B Sinha**  
**Member**

**Sd**  
**S K Sinha**  
**Member**

