

Real Estate Regulatory Authority, Bihar, Patna
Before the Bench of Mr. R B Sinha & Mr. S K Sinha, Members of the
Authority

Case No. SM/346/2019

Authorised Representative of RERA Complainant

Vs

M/s White Tiger Houses Pvt Ltd.....Respondent

Present: For the Complainant: Mr. Sumit Kumar, Advocate
Ms. Shivi, Advocate

For the Respondent: Mr. Ankit Kumar, Advocate
Mr. Mohit Raj, Advocate
Late Durga Narayan, Advocate

31.12.2020

ORDER

1. The Real Estate Regulatory Authority (RERA), Bihar, Patna had issued suo motu show cause notices under Sections 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 against M/s White Tigers Homes Pvt Ltd for violation of Section 3 of the Real Estate (Regulation & Development) Act, 2016 by not registering its ongoing projects 'Golden City', Bihta, Patna and 'Gokuldham Phase I & II', Bihta, Patna with the Authority.

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 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, the Respondent Company had failed to register or apply for registration of its real estate projects - 'Golden City', Bihta, Patna and 'Gokuldham Phase I & II', Bihta, Patna - with the Authority. Accordingly, a notice had been issued to the respondent company on January 29, 2019 to show cause, as to why proceedings under Sections 35 & 59 of the Real Estate (Regulation & Development) Act, 2016 be not initiated against the Respondent Company for contravening the provisions of Section 3 of the Act, within two weeks of issue of the notice.

Response of the Respondent Company:

5. The Respondent Company did not furnish any reply to the show cause notice within stipulated period. Therefore, the matter was fixed for hearing on July 5, 2019 and accordingly directors of the Respondent Company were directed to be present or send their authorized representative to attend the hearing failing which the matter would be heard and determined in their absence.

Hearing:

6. The matter was heard on 05/07/2019, 22/08/2019, 02/09/2019, 18/10/2019, 12/12/2019 and 17/01/2020. In the course of hearing, the Respondent Company was represented by its learned Counsels Mr. Ankit Kumar, Advocate and Late Durga Narayan, Advocate. Before the first date hearing of the case i.e. on July 5, 2019, the company applied for registration of its 'Gokuldham' project with the Authority on February 28, 2019. The Company, however, didn't furnish all the requisite documents with the Authority while submitting the application for registration following which a letter was sent to the company on April 8, 2019 by the Authority, narrating the details of the documents which needed to be submitted for scrutiny of the registration application. On the first date of hearing i.e. on July 5, 2019, when Respondent

Company's counsels Late Durga Narayan and Mr. Ankit Kumar along with managing director Priyatesh Anand were present, a directive was issued by the Bench for filing of counter affidavit and also provide other details including annual accounts of the company since its inception till the year 2018-19. On the second date of hearing i.e. on August 22, 2019, Respondent Company's counsel Mr. Ankit Kumar sought time from the bench which fixed September 2, 2019 as the next date of the hearing but the same could not take place on the stipulated date as Mr. R B Sinha, member, was indisposed on the said date.

October 18, 2019 was fixed as the next date of hearing of the case. On this date (18/10/2019), Company's learned Counsel Mr. Ankit Kumar submitted a reply in which it had been stated that the Company was executing just one project named 'Gokuldham' and the project 'Golden City' had yet not been launched and hence proceedings regarding this project should be stopped. He, however, accepted that 'Gokuldham' was an ongoing project. The learned Counsel of the Authority Ms. Shivi, however, challenged the stand taken by the Respondent vis-à-vis 'Golden City' project and she contended that advertisements had been issued for both the projects i.e. 'Gokuldham' and 'Golden City'.

Ms. Shivi also drew attention of the Bench towards definition of advertisement given in Section 2 (b) of the Act in which defines 'advertisement' as under:

"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."

7. In view of the very wide ambit of the definition of 'Advertisement', the learned Counsel of the Authority claimed that the Respondent Company had violated Section 3 of the Act by advertising the Projects without registering them with the Authority.

8. After hearing both the Counsels, the Authority directed the Counsel of the Respondent Company to provide the bank account details and audited annual accounts of the past three years before the next date of hearing i.e. December 12, 2019. When the bench took up the matter for hearing on this date (12/12/2019), learned Counsel of the Respondent

Company Mr. Mohit Raj sought some more time after which the Bench fixed January 17, 2020 as the next date of hearing.

9. When the case was again taken up for hearing on January 17, 2020, Respondent Company's learned counsel Ankit Kumar submitted a written reply in which he again took stand that while 'Gokuldham' project was an ongoing project and its registration process had been started, the 'Golden City' project had never been launched and hence the Sua Moto notice issued for this project (Golden City) should be withdrawn. Authority's learned counsel Sumit Kumar, however, challenged the stand taken by the Respondent Company and once again drew the attention of the Bench towards advertisements issued related to both the projects and also a newspaper report in which Company's director Priyatesh Anand had spoken about the 'Golden City' project.

Issues for consideration:

10. There is only one issue for consideration in this case that whether the promoter has violated Section 3 of the Act by advertising, selling, booking or inviting persons to purchase in any manner plots or apartments in these real estate projects without registering the project with this Authority. In course of hearing the learned Counsel of the Respondent Company admitted that 'Gokuldham' project was an ongoing project and application for its registration had been filed with the Authority during course of hearing of this case. He, however, claimed that the 'Golden City' project had never been launched and hence the Sua Moto notice with regard to this case should be withdrawn. He also took stand that since the registration process for 'Gokuldham' project had been initiated and hence the Sua Moto case in this case also be withdrawn.

Order:

11. 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 per cent of the estimated cost of the project as determined by the Authority.

12. The Respondent Company has itself stated that the estimated cost of its 'Gokuldham' project is Rs 3.75 crore (Rs. Three crores and seventy-five lakhs only). The Authority is inclined to accept this value. Keeping the fact in mind that the company has initiated the process of

registration of the project, the Authority orders that a token penalty of Rs 1.75 lakh (Rs. one lakh and seventy-five thousand only) be levied on the respondent company for its 'Gokuldham' project which is just half a per cent of the estimated project cost. The penalty should be paid within sixty days of the issue of this order.

13. Even though the Respondent Company has taken the stand that it never launched its 'Golden City' project, it cannot be denied that advertisements were issued and are still being issued on web-portals like 99acres.com with regard to this project and people were encouraged to make bookings under this project, which amounted to misrepresentation of the facts. Issue of advertisement for the Golden City project itself without registration of the project with the Authority is contravention of the Section 3 of the Act. This confirms that the company had violated the provisions of the Act and hence a token penalty of Rs 1.00 lakh be levied on the respondent Company for its 'Golden City' project.

Sd/-
(R B Sinha)
Member

Sd/-
(S K Sinha)
Member