

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Bench of R. B. Sinha and Dr S. K. Sinha, Members of RERA, Bihar

Case No. RERA/SM/314/2018

Authorised Representative of RERA.....Complainant

Vs

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

**Present: For the Complainant:- Mr Sumit Kumar, Advocate
Ms Shivi, Advocate
For the Respondent:- Mr RanjanPrakash, Advocate**

8/05/2019

ORDER

1. The Real Estate Regulatory Authority (RERA) issued a suo motu notice on 18/12/2018 under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 for non-compliance of the provisions of Section 3 of the Act against M/s Saeban Constructions Pvt Ltd for non-registration of their ongoing project Saeban Residency with the Authority.
2. In the notice it was stated that Section 3 of the Act 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 the State without registering the real estate project with the Real Estate Regulatory Authority. The promoter of ongoing real estate project in which all buildings as per sanctioned plan have not received Completion Certificate, shall also be required to be registered for such phase of the project which consists of buildings not having occupation or completion certificate.

3. In the first proviso of Section 3 of the Act, all ongoing commercial and residential real estate projects were required to be registered within three months of the date of commencement of Act, i.e. by 31st July, 2017 with the Real Estate Regulatory Authority except in projects where area of land proposed to be developed does not exceed 500 sqmtrs or number of apartments proposed to be developed does not exceed 8 inclusive of all phases.
4. It was stated in the notice that in spite of several extensions of the deadlines given by the State Government, the Respondent Company have failed to register their project Saeban Residency with the Authority though they have been advertising and taking advances against the bookings made in the project since launch of this project long ago.
5. Accordingly, the respondent company were 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. In their response dated 09/01/2019 to the show cause notice issued by the Authority, Director of the Respondent company M/s Saeban Construction Pvt Ltd stated that they were law abiding organization and did not do anything, which was contrary to law. They have further submitted that their Project, Saeban Residency was located at Nohsa, Phulwarisharif, Patna which falls in Gram Panchayat area and had started prior to the commencement of the Real Estate (Regulation & Development) Act, 2016. Further, the map of the said project had been sanctioned by the Mukhiya of the area on 24/01/2014 and by the Fire Department and Architect on 17.06.2014. They admitted that some minor finishing work in the project was still pending, which was likely to be finished by August 2019. The Respondent company claimed that the project was delayed because many customers didn't make installment payment timely and most of them were defaulters. They further claimed that the company had invested huge capital in

the project to complete it. The Respondent Company also claimed that they were under impression that their project was almost complete and hence, didn't get registration of the project done. They stated that they have since applied for registration of their project on 08/01/2019 and therefore, prayed that the notice issued against their company may be dropped in the interest of justice.

Hearing :

7. In course of hearing on 03/04/2019, Mr Ranjan Prakash, Advocate represented the Respondent company. Learned Counsel of the Respondent company reiterated the earlier written statement of the Director and stated that the project was commenced in January 2014, i.e. prior to the commencement of the Real estate (Regulation and Development) Act 2016 and was scheduled to be completed in 2016-17. He stated that due to delay in payments by the allottees, the project could not be completed till now. He however regretted the delay in submission of the application for registration of the project. He further informed that the Respondent Company has since submitted the application for registration of the project with the Authority on 9th January 2019.

Issues for consideration:

8. There is only one issue to be considered i.e. whether the project was an ongoing project as on 1st May 2017, the date of the commencement of the Real Estate (Regulation and Development) Act 2016. The Respondent Company have themselves admitted in their response that the project was not yet complete and was likely to be completed by August 2019. Hence, the project was an ongoing project as on 1st May 2017. Thus, the Promoter was required to register the project within three months of the commencement of the Act, i.e. by 31st July 2017. However, they had not even applied for registration with the Authority until December 2018. Therefore, the Respondent Company has contravened the section 3 of the Act 2016. They have however

applied for registration of the project with the Authority on 9th January 2019 after receipt of the show cause notice from the Authority.

Order

9. 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 10% of the estimated cost of the real estate project as determined by the Authority. In the application, the Director of the company has himself estimated the cost of the project as Rs 3.50 crore. We are inclined to accept it. Keeping in view the fact that the Respondent company has since applied for registration of their ongoing project with the Authority on 9th January 2019, We impose a token penalty of half (0.5) percent of the estimated cost i.e. Rupees one lakh and seventy five thousands on the respondent company to be paid within 60 days of issue of this order.

Sd

(R. B. Sinha)
Member

Sd

(Dr S.K. Sinha)
Member