

**Real Estate Regulatory Authority (RERA), Bihar, Patna**

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

**Case Nos. SM/144/2019, SM/145/2019 & SM/146/2019**

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

**Vs**

**M/s Shree Om Sai Group.....;.....Respondent**

**Present For the Authority : Mr Sumit Kumar, Advocate**  
**For the Respondent: Mr Shatrunjay Kr Singh, Adv**  
**Mr D. K. Jha, Advocate**

**09/07/2019**

**O R D E R**

1. The Real Estate Regulatory Authority (RERA), Bihar, Patna had issued three suomotu show notices against M/s Shree Om Sai Group, R.K. Puram, SagunaMor, Patna for contravening the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016 by non-registration of their ongoing real estate projects “Sai Aniket City” Pratibha Nagar, LaxmiRaiChowk, Hajipur, “Sai Shivnandan Palace”, Beur, Anisabad, Patna and “Sai Vishun Palace”, MitraMandal Colony, Anisabad, Patna, 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, Bihar. 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 31<sup>st</sup> 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 extension of the deadlines given by the State Government, the Respondent Company have failed to register their projects with the Authority though they have been advertising and taking advances against the bookings made in the project since 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. Mr Shatrunjay Kumar Singh, learned counsel for the Respondent company submitted similar response on 9<sup>th</sup> August 2018 for the three projects and stated that due to mistake of their web designer, advertisement was put up for sale and purchase of flats but till now only development agreement has been done with the owners of the land in this project. The process for obtaining the approval of the map by PMC/competent authority was still under way in these projects. However, there was no booking for sale of any flat in these projects. No transaction for sale and purchase has been done in these projects. He therefore, claimed that as soon as the respondent company came to know their mistake, they removed all advertisements from their website. Thus, whatever has happened was due to mistake which has been rectified by the respondent company.

### **Hearing:**

7. As the response of the respondent company was not considered satisfactory, the company was called for hearing on 20/12/2018. The Bench clubbed all three cases together and heard on 20/12/2018. Mr Shatrunjay Kumar Singh, MD of the respondent company was present along with his learned counsel Mr D.K. Jha. The MD informed the Bench that the Shree Om Sai Group has several companies and partnership firms. Three separate firms/ company of the group have applied for registration of three real estate projects. He was directed to register all his projects with RERA by submitting application for registration of their projects.
  
8. On the next date of hearing i.e. 21/02/2019 the Director of the respondent company was directed to submit the list of companies and the projects running under each of those companies with details of audited annual accounts for the last three years. On 25/02/2019 the respondent company filed a petition on affidavit and assured that the audited accounts of last three years would be submitted on the next date of hearing. On 27/02/2019 the respondent company submitted the annual accounts of the company for the last three years. In their affidavit the partner of the firm known as Shree Om Sai Creations, Mr Amitesh Arun claimed that their ongoing projects Sai Vishun Place, Karorichak, Phulwari Sharif, Patna was registered with RERA vide Registration No.BRERAP00947-1/636/R-449/2019. Further in their petition filed on 07/03/2019 the partner of the firm reiterated the statement made earlier and blamed the web designer of the company for the advertisement as if the firm was not aware of the advertisement being made on their website. He further stated that the petitioner was a new comer in the real estate business and was not conversant with the provisions of the Real Estate (Regulation & Development) Act, 2016. Hence, an advertisement was made on their website. He further claimed that they have been booking flats in favour of buyers only after registration of the project by the Authority and claimed that the petitioner had not booked any flat or not received any amount from

any one on the basis of earlier advertisement. They have apologized unconditionally for the mistake and stated that their show cause may be accepted and proceedings be dropped.

**Issues for Consideration:**

9. There is only one issue for consideration i.e. whether the respondent company was advertising their projects on their website without registration of these projects with the Authority on the date of issue of show cause notice issued to them. Learned Counsel of the Authority brought on the records the advertisements given on the website of the Respondent Company for making booking for the apartments in these projects.
10. Section 2B of the Real Estate (Regulation & Development) Act, 2016 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.”

11. It is therefore, proved beyond doubt that the promoter has been doing publicity of the project through different means. It is apparent from the record that the show cause was issued to them on 30/07/2018 while at least two other projects i.e. Sai Shiv Nandan Palace of Sai Om Constructions & Colonizers Pvt Ltd and Sai Vishnu Palace of Shree Sai Om Creations were submitted for registration with the Authority on 03/10/2018 and 20/12/2018 respectively. Even the application for registration of the project Sai Aniket City has not been submitted to the Authority. It was therefore established beyond any reasonable doubt that in respect of all these three cases, the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016 have been contravened.

**Order:**

12. Section-59 of the Real Estate (Regulation & Development) Act, 2016 provides that if any promoter contravenes the provision 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. The promoter in his application for registration of the project Sai Vishun Palace has estimated the cost of the project as Rs 3.51 crore whereas the promoter of Sai Shiv Nandan Palace has estimated the cost of the project as Rs 12.60 crore, The estimated cost of Sai Aniket City was not available on record.

13. Since the company has admitted their mistake and apologized for the same, the Bench feels that these cases should be treated leniently. Accordingly, the Bench orders for levy of half a percent of the estimated cost of the project i.e. Rs 8.55 lakhs (Rupees eight lakhs and fifty five thousands only) on the promoter, to be paid within sixty days of the issue of the order.

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

Sd  
**(S.K. Sinha)**  
Member