

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

Suo motu Case No. SM/320/2018

Authorised Representative of RERA.....Complainant

Vs

M/s Star India Construction Pvt Ltd.....Respondent

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

03/05/2019

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 Star India Constructions Pvt Ltd for non-registration of their ongoing project Tech Towne, Bihta 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 31st July, 2017 with the Real Estate Regulatory Authority except in projects where area of land proposed to be developed does not exceed 500 sq mtrs 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 project Tech Towne, Bihta 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 05/01/2019 to the show cause notice issued by the Authority, Mr Basant Kumar, Director of the Respondent company stated that they were law abiding organization and did not do anything which was contrary to law. They have further submitted that their Tech Towne Project, Bihta was in rural area and had started prior to the commencement of the Real Estate (Regulation & Development) Act, 2016 and the map of the said project had been

sanctioned by the Mukhiya of the area on 25/08/2016 itself. They stated that after commencement of the Act, they have applied afresh before Patna Metropolitan Authority (PMA) for approval of the plan. They stated that they were waiting for approval of the map from the PMA so that they could apply before the Authority. They stated that they have since applied for registration of their project on 04/01/2019 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 12/03/2019 in which Mr Basant Kumar, Director of the company was present, the Bench wanted to know as to why the total area of the land in the application was shown as 3914 sq mtrs only whereas in the advertisement they have claimed that the Tech Towne Project would be spanning over an area of 45 acres. It was further stated that since the project was ongoing since 2016, why did the company not submit the application for registration earlier in the same way in which other promoters had been filing their applications, to which the MD reiterated his earlier statement that they were waiting for approval of the plan by the PMA. He regretted the delay in submission of the application for registration of the project. However, he didn't give any cogent reason for the difference in total area of the plotted development of the Project in the application.

Issues for consideration:

8. The Respondent Company have admitted the delay in submission of the application and have also given the reasons for the delay. It is however not clear from the reasons adduced by the company that the entire period of delay of one and half year was attributable to the approval of the plan from PMA only. Learned Advocate of the

Authority made available to the Bench the file pertaining to the application of the Respondent Company for registration of the Project submitted in the Authority.

- 9.** A careful examination of the Application revealed that the company had stated in their application filed online on 4th January 2019 that the total area of land of the project was 3914 square metres only and paid fee accordingly whereas the total plot area in the sanctioned plan approved by Architect Amit Kumar (Empal no AR/08/15) and Mukhia on 25.08.2016, attached with the application, was shown as 39144.42 square metres. Further, there were 85 plot numbers mentioned in the approved plan of Mukhia while 16 plots only were depicted in the application. The audited financial statement for 2016-17 also indicated that the Respondent company had Rs 1.85 crores as advances from the customers as on 31.03.2016 and Rs 1.37 crores as advances from the customers as on 31.03.2017 under the Tech Towne project. Also, details of plots and areas of land of the project Tech-Towne in the audited financial statements of the Respondent company for the financial years 2015-16 & 2016-17 were in line with the total plot area mentioned the sanctioned plan of the Project.
- 10.** In addition, the Respondent Company have not registered atleast two other ongoing projects Uma Regency and Sahaj Enclave, depicted in the audited financial statements of the Respondent company for 2016-17 & 2017-18, as ongoing projects during 2016-17 & 2017-18. The audited financial statements of the respondent Company for the financial year 2017-18 showed that in Uma Regency project 67.64 percent of construction cost has been incurred as on 31st March 2018 while in project Sahaj Enclave, 96.10 percent of construction cost has been incurred as on 31st March 2018
- 11.** Thus the Respondent Company had not only delayed the filing of application for registration of the Project Tech Towne, Bihta and understated the area of the plotted development of the Project

considerably, they have also not applied for registration of atleast two other ongoing projects Uma Regency and Sahaj Enclave, which were ongoing as on 1st May 2017, the date of commencement of the Act. We therefore hold that the Respondent company has contravened the provisions of the Section 3 of the Act with impunity.

Order

12.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 his application, the MD of the company has himself estimated the cost of the project as Rs 8.00 crore. We are inclined to accept it. We feel that there has been a distinct trend in the behavior of the Respondent company and therefore, there was a need for levy of deterrent penalty on the respondent company to prevent recurrence of such incidence in future. We thus impose a penalty of three percent of the estimated cost i.e. Rupees twenty four lakhs on the Respondent company to be paid within 60 days of issue of this order. We also direct the Respondent Company to apply for registration of the ongoing projects without any further delay.

Sd
(R. B. Sinha)
Member

Sd
(Dr S.K. Sinha)
Member