

**REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR**

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

**Suo Motu Case Nos. SM/212/2018**

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

**Vs**

**M/s Abu Construction Pvt Ltd.....Respondent**

**28/12/2019**

**O R D E R**

1. The Real Estate Regulatory Authority, Bihar, Patna issued a suo motu show cause notice under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 on 11/09/2018 to M/s Abu Construction Pvt Ltd for non-registration of their ongoing project “Abu Fakhruddin Plaza”, Langar Toli, Bari Path, Patna-800004 with the Real Estate Regulatory Authority and thereby non-compliance with the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016.
2. In the Show-cause notice, it was pointed out that under 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 the Act i.e. by 31<sup>st</sup> July, 2017 with the Real Estate Regulatory Authority except in projects where area of the land proposed to be developed does not exceed 500 sq mtrs or number of apartments proposed to be developed does not exceed 8 (eight) inclusive of all phases.
3. In the notice, it was stated that 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.

4. In the notice it was stated that in spite of several extensions of the deadline given by the State Government, the Respondent Company have failed to register or apply for registration of their real estate project Abu Fakhruddin Plaza, Patna. The Promoter was accordingly directed to give its response within two weeks of issue of the notice.

**Response of the Respondent Company:**

5. In its response, the respondent company through the Chairman-cum-MD stated that their project “Abu Fakhruddin Plaza” was duly approved and sanctioned vide Map no –S-PH-PRN/7-186/03 dated 24<sup>th</sup> January 2004 by the the then Patna Regional Deveelopment Authority ( PRDA) for construction of B+G+8 storied building. The B+G+6 Storied building was constructed partly commercial and partly residential and finally completed in the year 2008 and the allottees were in possession before 01/05/2017 i.e. the date from which the Real Estate (Regulation & Development) Act, 2016 came into force. He further submitted that after the enforcement of Act, they stopped construction of 7<sup>th</sup> and 8<sup>th</sup> Floor which were for residential purpose only and meant for personal use. He assured that he will take necessary steps for registration of the project with RERA.

**Hearing :**

6. Hearings were held on 25/02/2019, 25/03/2019, 09/04/2019, 18/06/2019, 08/07/2019, 19/08/2019, 29/08/2019, 17/09/2019 and 15/10/2019. In course of hearing, the respondent company was represented by Mr Anwar Alam, Advocate whereas the Authority was assisted by Mr Sumit Kumar, Advocate and Ms Shivi, Advocate. On 25/03/2019 notice was issued to the President and Secretary of the Allottees Association to be present on the next date. In course of hearing, learned counsel of the respondent company submitted copy of the Map no –S-PH-PRN/7-186/03 dated 24<sup>th</sup> January 2004 approved by the then Patna Regional Development Authority (PRDA) for construction of B+G+8 storied building, copy of the Development Agreement executed on 28.04.2002 by the Developer with the Land-Owners for development of one bigha of land within 42 months( including six months of grace period) and Copy of the letter no

ACPL/223/17 dated 13<sup>th</sup> December 2017 issued by Md Abu Qaiser, Chairman/MD of the Abu Construction Private Limited to the Patna Municipal Corporation, Patna informing them of continuance of construction of 7<sup>th</sup> and 8<sup>th</sup> floor in the Project Abu Fakhruddin Plaza, Patna.

7. In course of hearing, it was brought out by the learned counsel of the Authority that the building plan/Map was approved by the PRDA/PMC for a period of three years only and can be extended upto a maximum period of five years. Thereafter, the building plan/Map is required to be revalidated by the PMC. The Respondent Company was therefore directed by the Bench to get the building plan of the Project revalidated by the PMC without any further delay. The Promoter then is required to submit the application for registration of the ongoing project Abu Fakhruddin Plaza, Patna to the Authority along with revalidated Map. However the Respondent Company failed to get the Building Plan/Map of the Project Abu Fakhruddin Plaza, Patna revalidated from the PMC. They just submitted a copy of the letter dated 13<sup>th</sup> September 2019 written by the M/s Abu Construction Pvt Ltd to the Municipal Commissioner, PMC, Patna informing him that that they had submitted their earlier letter dated 13.12.2017 regarding continuance of the construction of 7<sup>th</sup> & 8<sup>th</sup> floors of the Project Abu Fakhruddin Plaza, Patna.

**Issues for consideration :**

8. There are two issues under consideration before the Bench. Firstly whether the Project Abu Fakhruddin Plaza, Patna was an ongoing project on the date of commencement of the Act i.e. 01.05.2017; Secondly whether the Promoter was entitled to continue the construction of the ongoing project without registration of the Project with the Authority on the plea that they would be using the constructed area for their personal use.
9. As regards the first issue, it is an admitted fact that the construction of the 7<sup>th</sup> & 8<sup>th</sup> floors of the Project Abu Fakhruddin Plaza, Patna was going on

after 1<sup>st</sup> May 2017 as the Respondent Company in their letter to the PMC in December 2017 had claimed that construction of the 7<sup>th</sup> & 8<sup>th</sup> floors of the Project Abu Fakhruddin Plaza, Patna was on-going and the same was reiterated in their letter dated 13<sup>th</sup> September 2019. Thus, the Project was an ongoing project and required to be registered with the Authority under Section 3 of the Act. Therefore the Respondent Company has contravened the provisions of Section 3 of the Act by not registering an ongoing residential cum commercial project.

10. So far as 2<sup>nd</sup> issue is concerned, the promoter has himself submitted that there was only one plan for B+G+8 structure in the project Abu Fakhruddin Plaza, Patna and out of which B+G+6 structure was completed before 2008 and possession was given to the allottees. The Respondent company has started construction of the remaining two floors (7<sup>th</sup> & 8<sup>th</sup> floors) in 2017 without getting the prior revalidation of the building plan/Map from the Competent Authority and extension of the development agreement from the land-owners, which is illegal. Further the project was partly residential and partly commercial. Thus there was no reason as to why the project Abu Fakhruddin Plaza, Patna being an ongoing project in 2017-19 be not registered with the Authority.

**Order :**

11. 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. Based on the information given in building plan/Map, it is estimated that the total cost of the Project being developed on one Bigha of land (twenty kathas) in prime locality of the Patna and ninety six flats would be about rupees twenty five crores and proportionate cost of the additional construction ( two floors) would atleast be in the range of 4-5 crores.

12. The Respondent company was not authorized to construct 7<sup>th</sup> and 8<sup>th</sup> floors in the building during 2017-2019 on the basis of Building plan/Map

approved in January 2004 without revalidation of the Plan/Map by the PMC and their construction was illegal. Moreover, the company has not yet applied for registration of their project with RERA in spite of directions given during the hearing. The Bench therefore, impose a token levy of Rs 10,00,000 ( rupees ten lakh) on the respondent company to be deposited within 60 (sixty) days of issue of this order. The company must get their project with RERA immediately without any further delay, after revalidation of the building plan/Map by the Competent Authority and extension of the development agreement from the land-owners.

Sd/-

(S.K. Sinha)  
Member

Sd/-

(R.B. Sinha)  
Member