

Real Estate Regulatory Authority (RERA), Bihar, Patna

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

RERA Suo motu case no- RERA/SM/350-~~352~~/20189

Authorised Representative of RERA.....Complainant

Vs

M/s Lavanya Estates Pvt Ltd.....Respondent

Present: For the Complainant:- Mr Sumit Kumar, Advocate
Ms Shivi, Advocate
For the Respondent:- Mr Amit Singh, Advocate
Mr Arif Pervej, MD

10/07/2019

ORDER

1. The Real Estate Regulatory Authority (RERA) issued a suomotu notice on 29th January 2019 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 **Lavanya Estates Pvt Ltd** due to non-registration of their ongoing projects **Lavanya Sunder City**, Maner, Patna, **Abdullah Nagar**, Maner, Patna and **Smart City**, Rukunpur, Bakhtiarpur, Patnawith 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 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 **Lavanya Sunder City**, Maner, Patna, **Abdullah Nagar**, Maner, Patna and **Smart City** Rukunpur, Bakhtiarpur, Patna 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:

In their response, the Respondent Company stated on 9th February that they had already registered as real estate agents with the Authority and were in the process of filing applications for registration of their projects with the Authority. They stated that they were not aware that aforesaid registration would not be valid for development of land as projects. They also stated that they have acquired about 17 katha of land vide Deed no 1968 dated 25.02.2019 for **Smart city project**, five bigha and fourteen katha of land vide numerous deeds ending with Deed no 8984 dated 30.06.2018 for the Project

Abdullah nagar and thirty katha of land vide numerous deeds ending with Deed no 12148 dated 27.08.2018 for the Project **Sunder City**.

They claimed that they had been trying to file application for registration on and from 5th January 2019 but had been delayed on one ground or the other like technical issues, opening of bank accounts due to spelling mistakes in PAN Card, Voter ID and Aadhar Card etc. They informed that they have since filed applications for registration of projects with the Authority. They further requested that their bonafide mistake may be condoned.

As the response of the Respondent Company was not considered satisfactory, they were called for hearing on 14th March 2019.

Hearing

Hearing was held on 14th March 2019. In course of hearing, the Respondent Company was represented by Mr Arif Pervej Managing Director and Mr Amit Singh, Advocate. Mr Pervej stated that they were not aware of the provisions of the Real Estate (Regulation and Development) Act 2016 and Bihar Real Estate (Regulation and Development) Rules 2017 and hence they did not get their projects registered with the Authority. The MD stated that he was not highly qualified and hence he didn't go through the legal provisions himself. However, he stated that he had visited RERA office earlier when he was advised that he should get his company registered as Real Estate Agent with the Authority. Accordingly, he got his company registered as the Real Estate Agent with the Authority. Thereafter, he came to know that his company was required to register these projects with the Authority. Then he started his efforts to collect all requisite documents to file the applications for registration with the Authority.

When the MD of the Respondent Company was specifically asked to name the officials who apparently misled him as there were very few persons working in the Authority, he fumbled and then said that different official told him so and that he couldn't identify them. When he was informed that suo motu notices were issued by the Authority only when they have documentary evidence to show that the promoters were either

advertising these real estate projects or booking the plots of land/apartments, he claimed that they had not advertised their projects in the newspapers. At this stage, the Learned Counsel of the Authority brought to the attention of the Bench, definition of advertisement given in the Act 2016. 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."

In view of the very wide ambit of the definition of "Advertisement", when MD of the Respondent Company was informed that display of projects, phone numbers/contact persons for booking the plots/apartments on the website/facebook account would also amount to advertisement, he fumbled for words and expressed his ignorance about such activities. He was therefore directed to submit all relevant documents viz affidavit regarding his specific experience in RERA in the last few months, details of consultation he had with officials, audited annual accounts of the Respondent company for the last three years 2015-16, 2016-2017 & 2017-18 and bank account statement for the last three years within a fortnight.

On 26th March 2019, the MD of the Respondent Company submitted a petition. In his petition, he stated that his company was incorporated on 26th February 2016. He reiterated that immediately after he came to know of operation of RERA Act in 2017, he came to the RERA office to find out the modalities of getting the registration of his projects but he was not given much assistance except that the suggestion that I should contact a lawyer. When I contacted a lawyer, he advised me to get the registration done as a Real Estate Agent. Accordingly, I applied for registration of my company as Real Estate Agent and got it done after a period of four months. In course of

these four months, no one from RERA told me that I should get the registration of the projects done with the Authority. Thus it was evident that MD of the Respondent Company shifted his stance in the affidavit from what he had stated in course of hearing. In the hearing he had blamed RERA officials for misguiding him whereas in affidavit he claimed that his lawyer advised him so.

The Respondent Company however didn't submit audited annual accounts of the Respondent company for the last three years 2015-16, 2016-2017 & 2017-18 and bank account statement for the last three years as directed by the Bench.

However, the Learned Counsel of the Authority made available audited annual accounts of the Respondent company for the last two years 2016-2017 & 2017-18 which clearly corroborated the advertisements given in the newspapers/the websites, web-portals /facebook account etc during 2016-17, 2017-18 and 2018-19. The audited annual accounts figures for 2016-17 showed that the Respondent Company had Rs 1,00,60, 000.00 as advances from the customers as on 31st March 2017 and annual accounts for 2017-18 had Rs 75,76,000.00 as advances from the customers as on 31st March 2018. Thus it was evident that all three projects were being advertised and bookings done since earlier years but the respondent Company misrepresented the facts before Authority and the Bench.

Issues for consideration

There is only one issue for consideration i.e. whether the promoter has violated Section 3 of the Act, 2016 by advertising, selling, booking or inviting persons to purchase in any manner plots of land/ apartments in these real estate projects without registering the project with this Authority. In course of hearing, the respondent company had vehemently claimed that they have not done any booking in the said project till date which was factually incorrect as the the annual accounts for the financial year 2017-18 indicated advances from the customers as on 31st March 2017 as well as 31st March 2018. Further, advertisements published in Urdu newspapers, websites/ facebook accounts etc shown by the counsel of the Authority clearly indicated that they have been seeking bookings for plots of land under these projects for several months/years.

It is therefore, proved beyond doubt that the promoter has been doing publicity of the projects through different means viz advertisements in the newspapers, websites/facebook accounts etc informing general public about their real estate projects "and bookings for plots of land in these projects and taking advances from the customers without registering these projects with the Authority, thereby contravening the provisions of the Section 3 of the Real estate (Regulation and Development) Act 2016.

Order:

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 Respondent company has submitted their application for registration of the two projects Sunder city and Smart City in March 2019 but have not submitted the hard-copies of the application till date. They have also not indicated any previously completed/ongoing projects during the last five years. The cost of three projects (Abdullah nagar-22 acres, Sunder city-15 acres and Smart city -NA) based on the data available in public domain as per advertisements published by the Respondent Company on real estate web-portals/ newspapers, websites/facebook accounts, on a very conservative basis, is estimated to be about Rs 20 crores.

As the respondent company is a new company with barely three years of experience and their MD Mr Arif Pervej is an young professional, the Bench feels that the another opportunity should be given to them and leniency be shown to them. Accordingly it is ordered that a token penalty of one and half percent of the estimated cost of Rs 20 crore i.e. Rs 30 lakhs (Rs thirty lakhs only) be levied on the respondent company. The penalty should be paid within sixty days of the issue of this order.

The Bench further orders the Respondent Company to get all their ongoing projects registered with the Authority within thirty days of issue of this order. Till then, the Bench requests the Inspector General of Registration to direct

the registering authorities (DSR, Patna, SR Danapur etc) to stop registration of all plots of land in any project promoted by the Respondent Company.

Sd/-
(R. B. Sinha)
Member

Sd/-
(Dr S.K. Sinha)
Member