



Real Estate Regulatory Authority, Bihar

6th Floor, Bihar State Construction Corporation Building, Shastri Nagar, Patna-800023

Date 17th December 2018

Bench of R B Sinha and Dr S. K. Sinha, Members of the Authority

Suo Motu Show- Cause Notices No 390 & 391 of 2018

Authorised Representative, Real Estate Regulatory Authority, Bihar-
Complainant

Vs

M/s Creastate Infrahomes Private Limited, Anisabad, Patna- Respondent

Present



For Authority : Mr Sumit Kumar, Advocate
Ms Shivi, Advocate

For Respondent: Mr Suryakant Kumar, Company Secretary
Mr Manoranjan Kumar, Advocate

17th December 2018

Order

1. The Real Estate Regulatory Authority (RERA), Bihar issued two suo motu show cause notices to M/s Creastate Infrahomes Private Limited (CHPL) in July, 2018 under Sections 35 & 59 of the Real Estate (Regulation and Development) Act, 2016 for non-compliance with Section 3 of the Act by non-registration of their ongoing Real Estate Projects- Creastate Green City and Creastate Silicon City with the Authority while continuing to advertise and making booking in these projects. The Authority also informed the promoters that under first proviso of Section 3 of the Act, all ongoing residential/commercial real estate projects, where completion certificate had not been issued, were required to be registered with RERA by 31st July, 2017

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except where the area of land proposed to be developed does not exceed 500 sq mtr or number of apartments proposed to be developed does not exceed eight inclusive of all phases. It was further informed in the notice that Section 3 of the Act stipulated that no promoter can advertise, market, book, sale 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 their real estate project with the Authority.

2. In the notice, it was pointed out that though several extensions of deadlines were given by the State Government, the Company has not registered or applied for registration of these ongoing projects with the Authority while continuing to advertise and make bookings in the projects, in violation of Section 3 of the Act.



Response of the Promoter :

3. In their response dated 14/08/2018, the Director of the Company claimed that Creastate Green City was not their project while in case of Creastate Silicon City, it was stated that the project was still under documentation process. The Director claimed that the agreement with land owners was still under process, so the company has not yet sought for registration under RERA. He further assured that the company shall obtain the registration, once all agreement-related formalities are completed. He further elaborated that registration of the project at that stage was not feasible as the company would suffer loss if after registration, any land owner refused to comply with the agreement related formalities or refuse to give its land to the company. The Director of the Company assured the Authority that they shall fulfill all formalities related to the registration, once the terms with land owners are finalized. The Company also requested for an opportunity of personal hearing to present their case.



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4. As the reply of the respondent company was prima-facie not found satisfactory and convincing, the director of the respondent Company was called for personal hearing either in person or through their authorized representative at 11:00 AM on 24th October 2018 in respect of Creastate Green City.

Hearing on 24th/ 29th October/2nd November/29th November 2018

5. On the date of first hearing (24th October 2018), the respondent company was represented by Mr Vikash Kumar, Director. In the hearing, the Director claimed that they were not constructing any apartments as stated in the notice. When he was informed that the sale of plots of land was also covered under the provisions of the Real Estate (Regulation and Development) Act 2016, he admitted that the company was in the business of the sale of plotted land. He however claimed that he wasn't doing any business of developer/promoter but of only as an agent/Broker. But when confronted with the fact that their advertisement claims that they would be developing the land before selling it and the very fact that the names of the Project include "City" so as to give an impression that it was not only a sale of land but that of fully developed plots with various amenities like roads, parks etc, the Director didn't have any cogent response. He however reiterated his written response in the hearing that Creastate Green City was not their project. Since the Company's response was not found convincing as the Authority had proof of advertisement on their website and facebook account in which even the location of the Creastate Green City was shown near chirora, the Director of the Company was directed to submit the Company's incorporation certificate, Audited annual accounts for the last three years including that of the financial year 2017-18, Director's report, and the bank accounts statements for the last three years to conclusively proof whether the Company had any ongoing project namely Creastate Green City and whether they were booking the plots of land/apartments in the project. The

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Director agreed to provide the documents after 31st October. Accordingly the next date of hearing was fixed on 2nd November 2018.

6. In the hearing on 29th October 2018 in respect of Creastate Silicon City, the Director of the company Mr Vikash kumar stated that the company was still making initial efforts like signing agreements with land owners etc for the project Creastate Silicon City. He further stated that the company was advertising on their website in 2016 prior to enforcement of RERA Act and since then, they had stopped their advertisements on the website. When he was confronted with photographs of the website showing the advertisement till the month of July, 2018 he could not give any cogent response. The representative of the Company was directed to submit the audited annual accounts of the company for the financial years 2015-16, 2016-17 & 2017-18 and the bank accounts statements for the last three years on the next date of hearing to which he agreed. Since show cause notices were similar in nature for both projects, it was decided to club the cases and have a common hearing on next date.

Accordingly, next date for this case was also fixed for 2nd November 2018.



On the date of next hearing (2nd November 2018), none of the representative of the Company appeared. Accordingly, the hearing was postponed to 29th November 2018. On 29th November 2018, the company was represented by Mr Suryakant Kumar, Company secretary and Mr Manoranjan Kumar, advocate. When they were asked as to why they have not submitted the requisite documents till date when they had agreed to submit them on 2nd November, they stated that they would submit the documents soon. When they were asked as to why they have not registered the project Creastate Silicon City atleast with the Authority, they claimed that since it was a new project, they would get it registered as soon as it is started. When the Bench told them that their website still showed the advertisement of the Projects, the representatives of the Company could not give any convincing response. The Bench directed the

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representatives of the company to submit all documents within a week. The Company submitted the audited annual accounts of the company for the financial years 2015-16, 2016-17 & 2017-18 along with the Bank account statements of the Company.

8. In this connection, it is worthwhile to note that the Real Estate (Regulation and Development) Act 2016 was passed by the Parliament in March 2016 and many sections of the Act became operational on 1st May 2016. All sections of the Act 2016 became operational with effect from 1st May 2017. Section 3 (1) proviso 1 of the Act enjoined upon the promoters of all ongoing real estate projects to register their projects with the Authority within a period of three months i.e. 31st July 2017. Government of Bihar extended repeatedly the period of registration of the ongoing projects firstly upto 30th November, then to 31st January 2018, again to 31st March and finally to 30th April 2018. The Real Estate Regulatory Authority (RERA) Bihar have also extended the period of registration of the ongoing projects several times, presently up to 31st December 2018 with appropriate late fee charges at prescribed rates. Late fee charges are, of course, not levied on applications for registration of new real estate projects.

9. In this connection, it may be stated that Creastate Infrahomes Private Limited (CHPL) was incorporated as a company with an equity capital of Rs one lakh on 11 December 2015.

Issues for consideration:

10. There are two issues for consideration before the bench:

1. Firstly whether the respondent company CHPL has any ongoing Real Estate Projects namely - Creastate Green City and Creastate Silicon City during the period 1st May 2017 till date, which were not registered with the Authority

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2. Secondly whether the respondent company has violated the section 3 of the Act by advertising the projects and making bookings against apartments/plots of land in the aforesaid mentioned projects without registering the projects with the Authority;

11. In response to the show cause notices issued to the CHPL, the Director of the company denied existence of the project Creastate Green City both in written response as well as during personal hearing whereas in case of Creastate Silicon City, he claimed that this project was still in initial stage and registration with the Authority would be done after all agreements with land owners are finalized. Meanwhile, during the course of hearing, the respondent Company applied to the Authority for registration as a real estate Agent in October 2018.



12. It is evident from the photographs on the website/facebook account of the respondent Company, presented by the Authority to the Bench that the respondent company had themselves been displaying their real estate projects – Creastate Silicon City and Creastate Green City on their website. Further, when they received the show-cause notice from the Authority in July 2018, they removed them from the heading “Projects” but continue to display under “downloads” on their websites. Further, the advertisements continued to be displayed on the real estates websites like 99acres.com, makan.com etc. The Authority was shown several photographs/advertisements being displayed on the website and face-book account of the Respondent company with the signage “Booking Open”, payment plan, location plan etc of the project- Creastate Silicon City. The Company’s website also classified the project- Creastate Silicon City as “ongoing Project”. Moreover, the location map uploaded on the website shows the location of the both projects - Creastate Silicon City and Creastate Green City at different places. It is therefore not possible to accept the contention of the Company that Creastate Green City was not their project.



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Further, the company also didn't submit any documents to support their claim that they were acting as a agent of a promoter of any RERA registered Project.

13. As regards the second issue, besides the advertisements being displayed on their website and face-book account of the Respondent company, the audited annual accounts of the Respondent Company for financial years 2016-17 & 2017-18 conclusively confirms that the company had been booking and taking advances against the plots of land since 2016-17. This is also corroborated from statement of bank accounts of the Company in the State Bank of India, HDFC Bank and Corporation Bank submitted by the respondent company to the Bench. The books of accounts also confirm expenses of the company on "Site Development", "Advertisement", "Business Promotion", "incentive" etc during FY 2016-17 & 2017-18 which is further corroborated by the Payments made to real estates websites like Magic Bricks, 99 acres etc as evident from the Bank accounts statements for the period 2016-17 & 2017-18. The Company also did not submit any documentary proof to contradict bookings made or advertisement given or to claim that the said project was of any other developer. It is therefore proved beyond any reasonable doubt that the company has been advertising and booking the plots of land in their projects without registering the projects with the Authority in violation of section 3 of the Act. It was also apparent that the company has given false and misleading information to the Authority, both in written response and oral replies in course of hearing.

14. It was therefore conclusively proved that the respondent company has violated the section 3 of the Act by advertising the projects and making bookings against plots of land in the real estate projects without registering the projects with the Authority.



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Order



15. As the charges against the respondent company were serious and grave in nature and have been proved beyond any reasonable doubt, the equity would demand that the Company along with their directors should be black-listed and barred from any dealings in the real estate sector in the state. However, considering the fact that the respondent company has already made large number of bookings and received crores of rupees in instalments from consumers, black-listing of the respondent company would lead to premature closure of the project, resulting into untold sufferings to the existing consumers. Thus in order to protect the interests of the Consumers, we issue directions to the directors of the company for registration of their project – Creastate Silicon City as an ongoing project with immediate effect with the Authority. However, in order to prevent recurrence of such incidence, we feel that the respondent company should be penalized also so as to prevent recurrence of such incidence.



16. Section 59 (1) of the Act states that if any promoter contravenes the provisions of section 3 of the Act, s/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 total estimated cost of the project – Creastate Silicon City is not known. What is known however is that it is being built on 5 acres of land. Considering the market rate of land in surrounding areas, the estimated project cost would be around 10-12 crores. The total estimated cost of other project- Creastate Green City is not known to us. Considering the fact that the CHPL is a new company and main promoter is a young person (29 years old) and appears to be new in the real estate sector, we feel that an opportunity should be given to him to reform himself and mend his ways. Accordingly, we impose a penalty of 1 percent only of the estimated cost of only one Project i.e.– Creastate Silicon City i.e. Rs 10,00,000 (Rupees ten lakhs only) on the respondent company to be payable within sixty days of the issue of the order.

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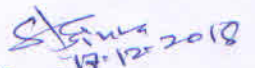


We are not levying any penalty for non-compliance with the Section 3 of the Act in respect of the other projects with the hope that the promoters of the respondent Company will follow the provisions of the Act meticulously in future. However, we also direct the Managing director of the respondent company to file their applications for registration of other ongoing projects with the Authority without any further delay but not later than 30 days of issue of this order.




Member




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