

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Case No. SM/265/2018, SM/266/2018 & SM/267/2018

Authorised Representative of RERA.....Complainant

Vs

M/s Shalimar Milestone Estate Pvt Ltd.....Respondent

**Projects: Lady Imam, Ali Nagar, Anisabad, Patna/Shalimar Rainbow Heights,
Bailey Road, Patna/Ribhya Residency, Bailey Road, Patna.**

**Present: For Complainant: Mr Jainendra Pradhan, Advocate
For Respondent: Mr Ali Murtuza Ghazali, Director
Mr Sharad Shekhar, Advocate**

03/12/2021

O R D E R

1. Real Estate Regulatory Authority (RERA), Bihar have issued separate suo motu show-cause notices on 02/11/2018 to the Directors, M/s Shalimar Milestone Estate Pvt Ltd for contravention of section 3 of the Real Estate (Regulation & Development) Act 2016 due to advertising the projects (1) Lady Imam, Ali Nagar, Anisabad, Patna (2) Shalimar Rainbow Heights, Bailey Road, Patna and (3) Ribhya Residency, Bailey Road, Patna , offering for sale and taking advances against the bookings made in these projects without getting them registered with the RERA, Bihar as mandated under section 3 of the Act..
2. The promoter was directed to show cause as to why proceedings under Section 35 and 59 of the Real Estate (Regulation & Development) Act 2016 may not be initiation against them. It was brought to the notice of the Authority that the respondents have been advertising and taking advances against the bookings made in these projects.
3. In the Notice, it was stated that the Government of India has enacted the Real Estate (Regulation & Development) Act, 2016 to protect the interests of the consumers and regulate and promote the real estate sectors in the country. All the sections of the Act have come into force with effect from 1st May, 2017 in the entire country except the State of Jammu & Kashmir. Real Estate Regulatory Authority for the State of Bihar has been constituted by the Government of Bihar and the Chairperson along with two Members have assumed their duties on 2nd April, 2018.

4. Under the first proviso of Section 3 of the Act, all the ongoing real estate projects were required to register by 31st July, 2017 with the Real Estate Regulatory Authority, Bihar except in projects where area of the land proposed to be developed does not exceed five hundred square meters or number of apartments proposed to be developed does not exceed eight inclusive of all phases.
5. 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 a State, without registering the real estate project with the Real Estate Regulatory Authority (RERA) established under this Act. Promoter of ongoing real estate projects 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.
6. If any promoter fails to register the project as per the Act, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project. On continued violation, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both. Apart from registration, the promoter shall be required to provide quarterly updates on the status of the project to the Authority.
7. The respondent company in its reply dated 11/03/2019 submitted that two projects viz; (1) Lady Imam, Ali Nagar, Anisabad, Patna and (2) Ribhya Residency, Bailey Road, Patna have been completed and handed over to the allottees before the RERA Act was implemented and so there was no need to get these projects registered with RERA. So far as the project Shalimar Rainbow Heights, Bailey Road, Patna is concerned, they submitted that this was not their project and requested to drop this case.
8. The response of the respondent company was not considered satisfactory and the case was fixed for hearing on 29/03/2019.

Hearing

9. Hearings were held on 29/03/2019, 21/06/2019, 06/08/2019, 22/08/2019, 14/10/2019, 31/10/2019, 11/11/2019, 13/12/2019, 23/12/2019, 01/02/2020, 20/02/2020, 09/09/2020, 24/09/2020, 15/10/2020, 28/01/2021, 18/02/2021, 23/02/2021, 10/09/2021 and 21/09/2021.

10. In course of hearing, the Director of the respondent company reiterated that two projects viz; (1) Lady Imam, Ali Nagar, Anisabad, Patna and (2) Ribhya Residency, Bailey Road, Patna have been completed and handed over to the allottees in 2015, well before the commencement of the RERA Act and hence, there was no need to get these projects registered with RERA. So far as the project Shalimar Rainbow Heights, Bailey Road, Patna is concerned, they submitted that this was a private project of one of the directors Mr Anutalha and the respondent company has no connection with it. Therefore, the respondent was directed to file the required annual accounts of the respondent company with all other relevant papers.
11. The Director of the respondent company in his reply dated 23/09/2020 submitted that they have executed the sale deeds to the customers in Lady Imam project in 2014-15 which was completed in 2015 itself. He further submitted that Rainbow Heights project is not their project. Rather, it is being promoted in individual capacity by one of its Directors Mr Abu Talha. As regards Ribhya Residency is concerned, he submitted that all the flats in this project were registered in 2013-14 itself.
12. On 24/09/2020 the Bench directed the respondent to produce evidence with regard to his submission that 80% allottees have been given their registry in two of the projects viz; Lady Imam and Ribhya Residency. The respondent was also directed to specify the circumstances under which the project Rainbow Heights was being advertised as a project of the company whereas it was claimed to be a private project of one of the Directors. On 18/02/2021 the Bench directed the promoter's counsel to file affidavit regarding status of the work, completion certificate and also inspect the sites and submit his report.
13. On 10/09/2021 learned counsel of the respondent company submitted that they have obtained registration of the project Rainbow Heights.

Issues for Consideration

14. The Respondent company have been advertising these projects on their website. Though the promoters claimed that two projects (1) Lady Imam, Ali Nagar, Anisabad, Patna and (2) Ribhya Residency, Bailey Road, Patna were completed in 2015, they did not submit the completion certificates of these two project. The Respondent company however admitted that the project Rainbow Heights was an ongoing project. As per the application filed for registration, the Project Rainbow Heights has LG+UG+10 structure with 50 flats. However, they stated that the project Rainbow Heights did not belong to the Respondent company and was being developed by one of the directors Mr Anutalha in his individual capacity.

15. The respondent company however did not clarify as to why they were advertising the project Rainbow Heights on their website. It was therefore apparent that there was tacit understanding between the different directors of the company in advertising the project, though it was not developed by them. Therefore, all directors of the respondent company are equally collectively responsible for advertising the ongoing project Rainbow Heights on the website of the company without getting it registered with the RERA as mandated under section 3 of the Act. It is therefore established that the respondent company and their directors have contravened the section 3 of the Act.

Order:

16. Section 59 of the Real Estate (Regulation and Development) Act, 2016 states that if any promoter contravenes the provisions of Section 3, he shall be liable to a penalty, which may extend upto ten percent of the estimated cost of real estate project, as determined by the Authority.

17. The Bench holds that the project Rainbow Heights, though claimed to be a private project of one of the Directors Mr Anu Talha in his individual capacity was advertised on the website of the Respondent company M/s Shalimar Milestone Estate Pvt Ltd without getting the project registered with the RERA, Bihar. Therefore, the respondent company have collectively and Mr Anu Talha in his individual capacity have contravened the provisions of Section 3 of the Act.

18. The Promoter Mr Anu Talha has estimated the cost of the project Rainbow Heights in their application for registration as Rs 13 crores. The Bench is inclined to accept it. However, as the promoter has submitted the application for registration of the project and a provisional certificate was granted for a period of three months in April 2021, the Bench feels that leniency should be shown to them. The Bench therefore imposes a token penalty of Rs 1.30 lakhs each on the respondent company and the promoter Mr Anu Talha to be paid within sixty days of issue of the order.

Sd/-

(R.B. Sinha)
Member