

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

Case Nos. SM/372/2019

**Authorised Representative of RERA.....Complainant
Vs
M/s Shivam Construction Pvt Ltd.....Respondent**

**Present: For the Authority :- Mr Sumit Kumar, Advocate
Ms Shivi, Advocate
For the Respondent :- Mr Jai Ram Singh, Advocate**

04/07/2019

ORDER

1. The Real Estate Regulatory Authority, Bihar, Patna issued a suo motu show cause notice to M/s Shivam Construction Pvt Ltd, Gola Road, Patna for publication of misleading advertisement in the Times of India on 09/02/2019 and Dainik Jagran on 10/02/2019 inviting public for booking of apartments in various projects in violation of Section 3 of the Real Estate (Regulation & Development) Act, 2016.

In the notice it was pointed out that:-

- 1- Registration No.BRERAP00313-1/472/R/360/2019 as shown in their advertisement for the project "RK Tower" had not been issued to M/s Shivam Constructions Pvt Ltd rather it had been awarded to M/s JMD Services Pvt Ltd, Jalalpur Road, Patna. It is also evident that addresses of both the promoters were also different. This tantamount to misleading the prospective consumers.
- 2- Their application for project "Bhagwat Pentagon Mall" had been approved by this Office but they had mentioned only "Pentagon Mall" in the advertisement which was neither approved nor their registration number was awarded in the name of this project, still advertisement contained their picture in a very conspicuous manner for the bookings in violation of the provisions of the Act. Further the registration number of the project was not maintained.

- 3- Project "RKM Squire" had also been advertised while this project was yet to be approved under RERA on the date of advertisement. Advertising the project for sale without getting proper approval of registration with the Authority was violation of Section 3 & 11 of the Act.
2. In their response dated 20/02/2019 the respondent company apologised on behalf of their advertisers for publishing various projects in the name of Shivam Construction Pvt Ltd. They also agreed that the mistake was done by the promoter also and enclosed therewith an apology letter for their misleading advertisement. They also stated that they were in the process of getting the corrigendum for the advertisement also published in the newspapers. They requested the Authority for acceptance of the apology and hoped for closure of the issue. They assured the Authority that such misleading act will not be done in future.

Hearing:

3. The respondent company was directed to come for hearing on 14/05/2019. In course of hearing on 14/05/2019, the learned counsel of the Authority brought the attention of the Bench to the section 3 of the Real Estate (Regulation and Development) Act 2016 which stated that "no promoter can advertise, market, book, sell 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.
4. Learned counsel of the respondent company Mr Jairam Singh submitted a petition reiterating therein the submission made earlier by the company and stated that Shivam Construction Pvt Ltd was a partnership firm in which Mr Narendra Kumar Singh was Managing Partner. The same Narendra Kumar Singh was also the Managing Director of JMD Services Pvt Ltd, a company registered under the Company's Act, 2013. As both the firms/companies are run by Narendra Kumar Singh, therefore, the advertiser published the advertisement under the name of M/s Shivam Construction Pvt Ltd. The respondent also apologized for the mistake done by the advertising company.

Issues for consideration

5. There are following issues for consideration of the Bench:

- Advertisement of the project “RK Tower” by M/s Shivam Constructions Pvt Ltd though the project was registered with the Authority by M/s JMD Services Pvt Ltd, Jalalpur Road, Patna;
- Advertisement of the project “Pentagon Mall” though the registration was done with the Authority for project “Bhagwat Pentagon Mall”;
- Advertisement the project RKM Squire was published in the newspaper though the project was not yet registered with the Authority which was in violation of Section 3 of the Real Estate (Regulation & Development) Act, 2016.

6. There is no dispute on the facts of the case. The Respondent firm has admitted the facts and apologized for the mistake.

Order:

7. 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 RKM Squire as Rs 6.22 crore. We are inclined to accept it.
8. Keeping in view that the respondent company had apologized for the mistakes in advertising the project “RK Tower” in name of another firm, advertisement of the project “Bhagwat Pentagon Mall as “Pentagon Mall” and advertising the project –RKM Squire without registration with the Authority along with the fact that the promoter had submitted the application for the project –RKM Squire in January 2019, we feel that the Authority should be considerate and show leniency towards the Respondent company. However, considering the circumstances that the Respondent Company has violated the section 3 of the Act by advertising the Project RKM Squire without registering with the

Authority, we impose a penalty of half percent of the estimated cost i.e. Rs 3.11 lakh (Rupees three lakh and eleven thousands) on the Respondent company, to be paid within 60 days of issue of this order. We do not levy any penalty for mistakes in advertising other two projects. We however direct the respondent firm to be extra careful in future.

Sd

(R.B. Sinha)
Member

Sd

(S.K. Sinha)
Member