

**Real Estate Regulatory Authority (RERA), Bihar, Patna**

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

**Case Nos. SM/280/2019**

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

**Vs**

**M/s Swapn Ashiana Home Developers Pvt Ltd.....Respondent**

**Present For the Authority : Mr Sumit Kumar, Advocate**

**Ms Shivi, Advocate**

**For the Respondent : Mr Sanjay Kumar Sinha, Advocate**

**09/07/2019**

**ORDER**

1. The Real Estate Regulatory Authority, Bihar, Patna issued a suomotu show cause notice on 11<sup>th</sup> December 2018 to M/s Swapn Ashiyana Home Developers Pvt Ltd, Purnea for non-compliance of the provisions of Section-3 of the Real Estate (Regulation & Development) Act, 2016 by non-registering their ongoing project “Matrichhaya”, Power Grid Chowk, Purnea with 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 Certification, 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 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.

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 project “Matrichhaya”, Power Grid Chowk, Purnea with the Authority though they have been advertising and taking advances against the booking made in the project since long ago.
5. Accordingly, the respondent company was 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 Company:**

6. In their response the Director of the respondent company stated that they have not yet got approval of their map from Nagar Nigam, Purnea. Accordingly, they were not able to apply for registration of the project with the Authority. He stated that the company never intends to do anything illegal. However, due to lack of knowledge they might have committed some mistakes. He further admitted that they only put a sign board by the name “Krityanand Matrichhaya Complex” near Power Grid Chowk, Purnea. They have however promised to follow the rules.

**Hearing:**

7. As the response of the company was found to be evasive, they were called for hearing on 07/02/2019. In course of hearing, the respondent company was represented by their learned counsel Mr Sanjay Kumar Sinha. He filed a petition in response to the show cause notice issued by the Authority. In his petition he stated that they have neither violated nor would violate any provision of the Real Estate (Regulation & Development) Act, 2019 in any manner. They further claimed that the company has neither advertised, booked, sold or offered to sell or

invited person(s) to purchase in any manner any flat, apartment or building in the project “Matrichhaya” and the claimed that the sign board was placed on the site for the purpose of office address and nothing more. He further enclosed a copy of the receipt of application submitted before the Nagar Nigam, Purnea by the respondent company on 02/01/2019, He also submitted that the company has applied for “NoC” in the office of Fire Safety Deptt, Purnea. He further claimed that no advance has been taken from any buyer for booking or any booking has been made. They further committed that they would get approval of the Authority once they obtain approval of their map from Nagar Nigam, Purnea.

8. On the next date of hearing (12/03/2019), Learned counsel for the Authority displayed a leaflet which shows that the respondent company had invited members of public for booking of 3 BHK, 2 BHK and one BHK studio apartment in their project Matrichhaya located at Power Grid Chowk, Purnea. In the leaflet the respondent company had claimed that the project would have various amenities like swimming pool, 24x7 water supply, 24x7 power backing, 24x7 security guard, CCTV etc at important locations. Fire fighting arrangement, intercom facility, club and gym, eco-friendly campus, children play area, well spaced lobby at entrance, car parking, lift and solar war light would also be provided. Learned counsel for the respondent company informed the Bench that they have filed an application for registration with the Authority on 04/03/2019. The Bench directed them to submit copy of the receipt of the application and any other statement they want to submit to the Bench.
9. On 29<sup>th</sup> March 2019, Learned Counsel of Respondent company filed a supplementary petition reiterating the statements made earlier and stated that the promoters were from diverse field and they were new in the real estate sector .

**Issues for Consideration :**

10. 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 apartments in the said

residential project without registering the project with this Authority. In course of hearing, the respondent company has vehemently claimed that they have not done any booking in the said project till date. However, copy of the leaflet shown by the counsel of the Authority clearly indicates that they have been seeking booking for 3 BHK, 2 BHK and one BHK studio apartment in the said project with attractive photograph of their project.

11. 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.”

12. It is therefore, proved beyond doubt that the promoter has been doing publicity of the project through different means viz leaflets etc informing general public about their real estate project “Matrichhaya” and seeking bookings for apartments in the said project when the building plan/map of the project had not even been approved..

**Order:**

13. 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 in their application for registration of the project has estimated the cost of the project as Rs 10.50 crores. We are inclined to accept it.

14. As the Respondent company has already filed their application for registration with the Authority, the Bench feels that leniency be shown to them. Accordingly it is ordered that a token penalty of Rs 2.5 lakh be

levied on the Respondent company. The penalty should be paid within sixty days of the issue of this order.

**Sd**  
**(R.B. Sinha)**  
**Member**

**Sd**  
**(S.K. Sinha)**  
**Member**