

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

Case No. SM/460/2020

Authorised Representative of RERA.....Complainant

Vs

M/s Krishabhay Developers Pvt Ltd.....Respondent

Projects: Metro Heights, Danapur

**Present: For Complainant : Mr Jainendra Kumar, Adv
For the Respondent: Mr Sharad Shekhar, Advocate
Mr DK Roy, Advocate (land owner)**

09/12/2021

O R D E R

1. Real Estate Regulatory Authority, Bihar issued a suo motu show- cause notice on 10/11/2020 to the Directors, M/s Krishabhay Developers Pvt Ltd for contravention of section 3 of the Real Estate (Regulation & Development) Act 2016 by advertising the project "Metro Heights" situated at Sandalpur, Danapur, Patna through the brochures on their website without registering the project with the RERA, Bihar. The promoters were directed to show cause as to why proceedings under Section 35 and 59 of the Real Estate (Regulation & Development) Act 2016 may not be initiated 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 the project.
2. 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 was constituted by the Government of Bihar in April, 2018.
3. 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.

4. 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.
5. 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.

Response of the Promoter

6. The respondent company in its reply dated 09/03/2021 has submitted that after execution of the development agreement, the promoter M/s Krishabhay Developers Pvt Ltd, started construction of the project "Metro Heights" on a total measuring area of 95.97 dec. of land with share distribution of 50:50 between both the parties. They applied for approval of the building map before Patna Metropolitan Area Authority (PMAA) on 21/01/2020 which was under process and have also got height Clearance from the Airport Authority of India on 11/02/2020, Fire Safety Clearance from the Fire Department of the Government of Bihar on 28/02/2020. They have further mentioned that they have not made any advertisement and have not booked/invited booking of flat but only put up a signboard of the company which was immediately removed after the notice was issued against them.
7. The respondent company further submitted that the land owner had filed an Arbitration Case before the Additional Judge (Retd) as a Sole Arbitrator in Arbitration Case No. K-01/2020 which was taken up for hearing on 30/06/2020 and the final award was passed in favour of the land owner as ex-parte on 2/09/2020 which was challenged by them in the Civil Court, Patna. They further mentioned that the development agreement was under challenge and the matter is sub judice before the Civil Court, Patna and that the land owner has installed his own signboard at the site.

8. The land owner Mr Kumar Prashant vide his petition dated 09/06/2021 stated that there are several shortcomings in the development agreement and therefore, requested the Authority not to grant registration to the proposed project.

Hearing

9. Hearings were held on 15/01/2021, 01/03/2021, 19/02/2021, 19/03/2021 and 29/09/2021.
10. In course of hearing, the Bench directed the respondents to get the project registered with RERA within two weeks and file reply. The respondents assured that they will not start any type of construction work or advertise or book any flat before obtaining registration with RERA. They admitted on 01/03/2021 that the map has not yet been sanctioned.
11. On 05/03/2021 learned counsel submitted that no advertisement was made by the respondent but only signboard of the company was installed. The Bench observed that during the course of hearing, a brochure was shared in the public platform which is violation of Section 3 of RERA Act. The Bench directed that details of all the bank account, balance sheet and bank statement from the date of establishment of the company.
12. Learned counsel of the respondent company vehemently submitted that no invitation/sale was offered/sold and the sign board was also removed and that the map was still under consideration of the PMA. Learned counsel of the respondent company further submitted that the ex-parte award against the respondent company has been challenged in the Civil Court, Patna and the decision was still awaited.
13. Learned counsel of the land owner submitted that the map of the project has been rejected on 11/09/2021 due to which RERA registration should not be allowed. He further stated that the development agreement has been cancelled/dissolved by the Arbitrator. The Bench directed the respondent company to submit financial statement of the company for the last three years and bank account details within a week.

Issues for Consideration:

14. Even though the respondent company is claiming that they have not booked any flat or made any advertisement of the project and have not started any construction before registration of the project with RERA, they have violated the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016 for the admitted fact that they have installed a sign board on the construction site which was removed after issuance of

notice by the Authority and a brochure was shared in the public platform and distributed amongst the members of the Public. The Counsel of the Authority pointed out that the term Advertisement has been defined in the section 2 (b) of the Act as follows :

“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.”

Thus, it is established that the respondent company has advertised their project without registering the project with the Authority and thereby contravened the provisions of section 3 of the Act.

15. Further, the map of the project was rejected by the competent authority (PMAA) on 11/09/2021. The development agreement executed between the landowner and developer has been dissolved by the Arbitrator. The Respondent Company have themselves claimed that they have challenged the orders of the arbitrator in civil court. Hence, the Developer has no valid legal title of the land on which the project was proposed to be developed.

Therefore, there is no way, the project Metro Heights of the Promoter can be registered under the Act.

Order

16. The Bench holds that the respondent company have contravened the provisions of section 3 of the Real Estate (Regulation and Development) Act, 2016 by advertising their project Metro Heights through the brochure on the website and booking the flats without registering the project with the Real Estate Regulatory Authority, Bihar.

17. 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.

18. The respondent company have admitted that the project “Metro Heights” was proposed to be developed on 95.97 decimal of land, valued at Rs 2.97 crores in the development agreement. Further the project was proposed to have two blocks with Block A of B + G + 5 structure and Block B of B + G + 9 structure as stated in the PMAA’s letter. Based on the information available, the estimated cost of the project would be around Rs 10 crores. However, keeping in view of the fact that the building plan has been rejected and the development agreement is in dispute, the Bench

decides to levy a minimal penalty of Rs 2.50 lakhs on the respondent company to be paid within sixty days of the issue of the order.

19. The Bench also directs respondent company to refund the booking amounts to all allottees along with the interest at the rate of MCLR of the State Bank of India as applicable for one year plus two percent from the date deposit to the date of refund within sixty days of issue of the order.

Sd/-

(R.B. Sinha)
Member