

REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

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

Case Nos. SM/363/2018

Authorised Representative of RERA.....Complainant

Vs

M/s Wings Educare /Waman Ina Enterprises Pvt Ltd.....Respondent

**Present: For the Authority :- Mr Sumit Kumar, Advocate
Ms Shivi, Advocate
For the Respondent :- Mr Chandrasekhar Anand, Adv
Mr Satish Kr Singh, Director**

09/07/2019

ORDER

1. The Real Estate Regulatory Authority, Bihar, Patna issued a suo-motu show cause notice to M/s Wings Educare Pvt Ltd /Waman Ina Enterprises Pvt Ltd for non-compliance of the provisions of Section 3 of the Real Estate (Regulation & Development) Act, 2016 due to non-registration of their ongoing projects “Nandan Heritage” and “Nandan Garden, Muzaffarpur 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 31st 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 projects “Nandan Heritage” and “Nandan Garden, Muzaffarpur 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 Respondent Company:

6. In their response the authorized representative of the Respondent company stated that Nandan Heritage was their upcoming project and the company had only development agreement with the landlords. They have not yet applied for approval of the map to the local body. They claimed that they have not advertised regarding sale of flats and not received any single rupee from anyone on account of such project. As regards Nandan Garden is concerned, the Respondent company claimed that they had applied for Completion Certificate in February, 2017 to the local authority but

received the Completion Certificate of the project only in October, 2017.

Hearing:

7. As the response of the respondent company appeared to be vague and not satisfactory, the Respondent company was directed to appear for hearing on 14/03/2019, On 14/03/2019 no one turn up on behalf of the company. The Bench ordered that the Respondent company may be directed to submit audited annual accounts of the projects of the company for the last four years and also directed the Managing Director of the company to be personally present on 08/04/2019. On 08/04/2019 Mr Satish Kumar Singh, MD along with Mr Chandra Shekhar Anand, learned counsel of the Respondent company appeared. In course of hearing, the Respondent company submitted a petition enclosing therewith the "Occupancy Certificate" issued by the Municipal Commissioner, MRDA, Muzaffarpur dated 17/10/2017 for their project Nandan Garden with built up area of 6363.79 square metres. The Respondent company in their petition stated that the project Nandan Heritage was only an upcoming project and the company was still thinking about to start or to drop the project. As regards Nandan Garden, the Respondent company submitted that they applied for Occupancy Certificate in February, 2017 to the local authority but it was issued only in October, 2017. However, the project was completed much before the Real Estate (Regulation & Development) Act, 2016 came into effect. Hence, they claimed that registration of the project Nandan Garden with RERA was not required.
8. In course of hearing, learned counsel for the Authority brought the attention of the Bench to the section 3 of the RERA Act 2016 which states 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”. He further submitted that if the project “Nandan Heritage” was only in the initial stage only and the company management had not even decided to start or drop the proposal, why they were advertising the project on the website stating therein about availability of 3BHK, 2BHK and 1BHK flats in the project. In January, 2019 also in the advertisement on website specially created by the company for the project Nandan Heritage, the Company claimed that Nandan Heritage Phase 1 was under construction with 66 flats to be completed by September 2020. It claimed that the residential complex located within rural limits of Khabra Pnchayat, lie in between the railway line and National highway. The project was stated to be promoted by M/s Waman Ina Enterprises over a land area of more than 20,000 sq ft having a 7-storied building. It was also claimed that it has twelve 1 BHK, thirty 2BHK, twelve 2.5BHK and twelve 3BHK flats having car parking facility for all 2BHK, 2.5BHK and 3BHK flats and bike parking for all 1BHK flats. The super built up area of the flats ranged between 486 sq. ft to 1611 sq. ft. The prices started at Rs16 lakhs. The Respondent Company could not answer the question satisfactorily

Issues for Consideration :

9. There is only one issue for consideration; whether the projects Nandan Heritage and Nandan Garden were ongoing projects as on 01/05/2017, the date of commencement of the Real Estate (Regulation & Development) Act, 2016.
10. As regards Nandan Garden, the respondent has already admitted that Occupancy Certificate (OC) was issued to them in October, 2017 whereas he had applied for the same in February 2017 itself and Municipal Authority should have issued it with a month. So far as Nandan Heritage is concerned, though the company has claimed that Nandan Heritage was only an upcoming project, advertisement given by the company on their website confirmed the ongoing

construction in the Phase 1 of the Project and thereby contravenes the provisions of the Section 3 of the Act.

11. The Respondent company has not submitted the audited annual accounts of the company for the last four years in spite of direction from the Bench.

Order:

12. 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.
13. Based on the data furnished advertisement of Phase 1 of the project Nandan Heritage, the total estimated cost of project, on a very conservative basis, is determined to be Rs 06.00 crore. Considering the fact that the MD of the Company is an young professional and should be given another oppourtunity, the Bench levies a token penalty of one percent of the estimated cost of project i.e. Rs 06 lakhs (Rupees six lakhs only) to be paid within sixty days of the issue of the order.
14. The Respondent company is also directed to get their projects registered with the Authority without any further delay.

Sd
(R.B. Sinha)
Member

Sd
(S.K. Sinha)
Member