

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Mr. Ved Prakash,

Special Presiding Officer

Case No: RERA/SM/242/2018

Authorised Representative of RERA

...Complainant

Versus

M/s. Housing.com

.... Respondent

Project: Plots

Present: For Authority: Shri Ankit Kumar & Ms. Ojaswi Ishani, Advocate.

For Respondent: Shri Manoj Kumar, Advocate.

26.06.2025

ORDER

1. The Real Estate Regulatory Authority, Bihar, issued a *suo motu* show-cause notice on 13.04.2018 to the Director of the respondent company for contravening Sections 9 and 10 of the Real Estate (Regulation and Development) Act, 2016. The contraventions pertain to various plots, projects, apartments, and buildings displayed or advertised on the respondent's website/portal, which were not registered with the Authority as required for agents. Furthermore, while advertising both unregistered and registered projects, the respondent failed to display the RERA registration number of such projects, as

mandated under Section 11(2) of the Act. The respondent was directed to show cause as to why proceedings under Section 62 of the Real Estate (Regulation and Development) Act, 2016, should not be initiated against them.

2. Learned Counsel for the Authority submits that the respondent has advertised many unregistered projects on their website and portal which is in contravention of section 9 as well as while advertising the registered projects have failed to display the RERA registration number of such project as mandated in section 11(2) of Real Estate (Regulation & Development) Act, 2016. In support of this submission, they placed reliance on the advertisements done by the respondent, the same are filed by them as evidence on record.
3. The learned counsel for the respondent filed a reply dated 01.05.2018, and he submits that the website provides information about the real estate sector and market based on research by their in-house team and information available in the public domain and purely for informative purposes to help buyers connect their research. Further they do not offer any services or activities as described in the definition of 'Real Estate Agent under the RERA Act. Neither they indulge in negotiations nor act on behalf of owners, developers and brokers; and they

also do not facilitate / participate in any manner in the process of buying or selling of properties further they do not charge any consultancy fee/commission on transactions between seller and buyer and their fee is purely based in posting advertisements on website.

4. Perused the record. The term Real Estate Agent has been defined in section 2(zm) as follows: “real estate agent” means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called.

5. The respondent, namely Housing.com, is an online portal/website which is involved and primarily focused in the real estate industry. It connects buyers, sellers, and renters to various properties, including apartments, homes, and

commercial spaces. The respondent has actively acted as a real estate agent and has advertised various properties, including plots and buildings on their website, facilitating and enabling the prospective buyer to purchase properties from the seller/promoter.

6. Further, in the case of M/s Prem Steels Pvt. Ltd., Vs. CCE, Meerut - 2006 (10) LCX - 0129, it was held that receiving an amount in respect of the introduction of two clients for sale of real estate is liable to Service Tax under Real Estate Agent service head. This demonstrates that any amount in any form taken in any stage of the transaction which took place in respect of the promoter introducing the buyer to the seller is a service amount as mentioned in section 2(zm) of the Real Estate (Regulation & Development) Act, 2016.
7. The functioning of online property portals and a traditional agent or broker is more or less similar. Portals use information technology for reaching the buyers for clients, namely the promoters, and they facilitate the transaction of sale by introducing and acting through digital mediums, as when these portals advertise real estate projects, they enable buyers to engage in negotiations for the sale or purchase of said properties. In many cases, the promoter is charged a fee to advertise their

project on the website, and the buyer has to reach out to the website for the seller's contact details.

8. Hence, by adopting purposive rule of interpretation and keeping in mind the functioning of web portals, these web portals come under the purview of the definition of real estate agent defined under RERA Act 2016.
9. Moreover, despite being classified as an intermediary as per Section 2(1)(w) of the IT Act 2000, which states that “any person who receives, stores, or transmits electronic records on behalf of another person, or provides services related to such records. This definition includes various entities like telecom service providers, internet service providers, web hosting services, search engines, online payment sites, online auction sites, online marketplaces” and cyber cafes, Section 79 of the IT Act which provide intermediaries with a "safe harbor" provision, granting them immunity from liability for third-party content is not applicable in this instance case of respondent.
10. Further, the respondent does not enjoy the protection of good harbour provided to an intermediary under section 79 of the IT Act 2000 since the immunity is limited by section 79(2) and (3) of the IT Act, which states that such immunity applies only when the intermediary's role is passive and technical. Moreover,

intermediaries cannot claim immunity if they have been involved in any form of unlawful activity.

11. Section 79(2) of Information Technology Act 2000 reads as follows

(2) The provisions of sub-section (1) shall apply if –

(b) the intermediary does not –

1. initiate the transmission,
2. select the receiver of the transmission, and
3. select or modify the information contained in the transmission

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

12. The Respondent, in its reply dated May 1, 2018, expressly admits that its website disseminates information regarding the real estate sector and market trends, drawing upon research conducted by their in-house team as well as from publicly available sources. Such conduct amounts to clear and direct involvement in the propagation of advertisements for

unregistered projects via its platform. The Respondent is the primary initiator of such unlawful promotional activities.

13. Consequently, the Respondent cannot claim the benefit of “safe harbour” under Section 79 of the Information Technology Act, 2000. The said provision safeguards only those intermediaries whose role is strictly confined to facilitating the transmission of third-party content, without participating in the creation or alteration of data or information given the admitted editorial and curatorial role of the Respondent in originating these advertisements, they fall outside the statutory parameters of passive facilitation and thus cannot avail themselves of the statutory immunity.

14. Further, an advertiser or intermediary governed by IT Act 2000 must observe due care while conducting business to ensure it does not disseminate or advertise content that it knows to be contrary to any applicable law or has been so intimated by the court or appropriate government or its authority. In the instant case, despite various notices and opportunities given to the respondent, they failed to adhere to the intimation of the authority.

15. Additionally, Rule 3 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 requires

intermediaries to observe due diligence. This due diligence includes the publication of rules and regulations, such as user agreements and privacy policies, warning users against uploading misleading or fake information, as well as content that violates intellectual property rights. Not only did the respondent fail to exercise due diligence when disseminating information about projects on their website and portal, but they also failed to comply with the other requirements of Rule 3 of the IT Rules.

16. Furthermore, Section 9 of RERA Act 2016 states that (1) No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.

17. Likewise, Section 10 of RERA Act 2016 mandates that every real estate agent registered under section 9 shall (a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority.

18. The Bench observes that it is evident from the advertisements placed on the record that the respondent has advertised various unregistered projects on their website and have advertised the registered projects without displaying the RERA registration number of such project and the same are in contravention of sections 9, and 11(2) of the Real Estate (Regulation & Development) Act, 2016.

19. The primary purpose of the Real Estate (Regulation and Development) Act, 2016, is to safeguard the interests of homebuyers. If online portals functioning as real estate agents are not properly regulated, allowing them to advertise unregistered projects, it poses a significant risk to homebuyers. Such unregulated projects increase the likelihood of fraud and the potential for developers to abscond with the funds, and it might eventually defeat the purpose of the Act alone, since the reach of online sites is much wider than the traditional agents.

20. Hence, in the light of observations made above, it is established that respondent company has advertised various unregistered projects on their website and have also advertised the registered projects without displaying the Rera registration number of such projects, thereby contravened the provisions of Section 9 and 11(2) of the Real Estate (Regulation and Development) Act,

2016. Therefore, the Bench imposes a penalty of Rs.5,00,000/-, (five Lakh) under the provisions of Section 62(1) of the RERA Act, 2016 against the respondent. This amount has to be paid by the respondent company within sixty days of the order. Non-compliance with this directive will result in an action under Section 40(1) of the RERA Act, 2016.

With these observations and directions, the matter is disposed of.

Sd/-
(Ved Prakash)
Special Presiding Officer
RERA, Bihar