



REAL ESTATE REGULATORY AUTHORITY, BIHAR

Before the Single Bench of Senior Land Revenue, RERA, Bihar.

RERA/SM/757/2025

Authorised Representative of RERA Complainant

Vs

M/s Arya Construction and suppliers Respondent

Project: Arya City Phase 5

Present: For Complainant: Shiv Sang Thakur, Adv

For Respondents: Sumit Kumar, Adv

30.07.2025

ORDER

1. Hearing taken up. Learned legal representative Mr. Shiv Sang Thakur appears on behalf of the RERA. Learned Counsel Mr. Sumit Kumar appears on behalf of the respondents
2. A Suo Motu proceeding has been initiated against the promoter in respect of the project "Arya City Phase 5" situated in the "Bisunpura" planning area on the basis of advertisement found of the project which is not registered with the Real Estate Regulatory Authority, Bihar as required under the provisions of the Real Estate (Regulation and Development) Act, 2016. It is submitted by the Learned Counsel for Authority that a show cause notice dated 12.06.2025 has already been served upon the

promoter. It has been further brought to the Authority's attention that the promoter is engaged in the development, advertisement, marketing, offering for sale, and selling of plots in the said project without registration, thereby acting in contravention of Section 3 of the Act.

3. In reply to the above show cause issued to the respondents, the measure thrust of the respondents was submitted to the bench through the mode of reply and supplementary reply. The respondent initially through its reply submitted that the respondent has not advertised the project and the facebook post cannot be called as advertisement in absence of offer to sale. The respondent further submitted that the respondent cannot be called as promoter as the respondent only purchase land on cheap price and sell it at higher prices.
4. The respondent further submits that the respondent is engaged in the business of selling land without any development or utility services etc. The respondent submitted that the structures situated at the site was done by the purchaser of the land. The respondent further submits that there exists no map, sale deed, brochure and prospectus of the project. The respondent through supplementary reply submits that the project in question is out of purview of RERA Act, 2016 as the alleged area of the project is below 500 sq mt and that the respondent is therefore not barred from posting on facebook.
5. The legal representative of RERA to corroborate the contention levied against the promoter submits that the promoter has willfully failed to

comply with the mandatory provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016, despite being fully aware of the statutory requirement of prior registration of the project "Arya City Phase 5" with the Authority before undertaking any development, marketing, or sale activities.

6. The legal representative of RERA submits that there exists vivid advertisement on the facebook page of the respondent wherein the respondent has categorically stated “to deliver as committed” the Aarya City Phase 5 and have posted advertisement showing people who have executed sale deed and a copy of brochure. The complainant further submits that the respondent has constantly taken contradictory approach in order to mislead the court. The counsel submits that the respondent has accepted in paragraph 6 of the reply dated 08/07/2025 that they have indulged in selling and purchase with respect to the project in question but denies existence of any agreement for sale, sale deed etc in paragraph 9 of the same reply. The counsel further submits that the respondent in its supplementary reply has claimed the exception of Section 3 but did not do so at the initial stage of the suo-moto proceedings and that the respondent has also failed to prove the exception. The respondent on the other hand contented that the onus to prove the exception is on the complainant.
7. It is further submitted that the promoter’s actions not only undermine the intent and purpose of the Act, which is to bring transparency, accountability, and consumer protection in the real estate sector, but also

prejudice the interests of allottees who may be induced into transactions without the safeguards offered by a registered project.

8. The non-compliance demonstrates a deliberate disregard for regulatory norms and warrants the initiation of proceedings under Section 59 for penal consequences, and if required, further investigation under Section 35.
9. Heard the parties and the Authority has perused the materials placed on record and taken note of the submissions made by the parties.
10. The case in hand stipulates the violation of Section 3 of the RERA Act, 2016 by the respondent for the project in question namely “Aarya City Phase-5” through advertisement made via Facebook post. It is important to first understand the definition of the term Advertisement which has defined under Section 2(b) of the Real Estate (Regulation and Development) Act, 2016 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.”

11. Thus, the definition of advertisement under Section 2(b) of RERA Act, 2016 clearly includes advertisement as any document described or issued through any medium including any notice, circular or other documents or publicity in any form that tantamount to informing any person regarding such project. It is evident that the respondent has posted on facebook with pictures of the site with remarks stating “*we delivered what we committed*”. Another facebook post by the respondent regarding the project shows the handing over of a brochure like document which shows an allottee who have purchased and executed registry of the land purchased in the Aarya City Phase 5.
12. The contention of the respondent that the post on facebook will not amount to advertisement in absence of offer to sale is void of any merit and baseless. It has been rightfully submitted by the complainant that the definition of the advertisement under RERA Act, 2016 brings under its ambit all kind of publicity that informs and attracts prospective buyers about the project even in the absence of sale to offer. The post provides the information of respondent indulging in selling of plot in the name of the project and therefore publicizing the same.
13. Thus, it is evident that the respondent has made public post dealing in the project which publicizes and informs the potential buyers regarding such promoter and the project. The same act will amount to advertisement even in absence of offer to sale as such act will constitute an act of informing and publicizing about the promoter and

project which attracts potential customers. Consequently, the advertisement in question squarely falls within the definition provided under Section 2(b) of the Act.

14. The advertisement thus establishes the fact that the respondent has violated Section 3 of the RERA Act, 2016. Section 3 of the RERA Act, 2016 prohibits promoter to advertise, market, book, sell or offer for sale or invite persons to purchase in any matter any plot, apartment or building as the case may be in any real estate project in any planning area without registering the real estate project with the Real Estate Regulatory Authority unless the project falls under the ambit of exception as provided under Section 3(2) of the Act.
15. The materials submitted on record in the form of an advertisement, clearly establishes that the respondent actively developed and promoted its project, Arya City Phase 5 under the mauza “Bisunpura” that comes under the planning area. The respondent company is continuously engaged in construction work of large-scale project which is evident from various projects it has initiated namely Aarya City Phase 1, Aarya City Phase 2 and Aarya City Phase 3 out of Phase 2 is registered with the Authority and Phase 1 and Phase 3 is sub judice before the Authority for violation of Section 3 of the RERA Act, 2016.
16. The above paragraph is also substantiated by the fact that the respondent in their first reply has also categorically admitted the fact of purchasing land in lower price and then selling the same at higher

price for the project in question. Accordingly, the advertisement not only proves the act and intention of the respondent in offering and selling units of plots but through such promotional activity without prior registration as required, the respondent has violated the Section 3 of the Real Estate (Regulation and Development) Act, 2016.

17. As asserted in their defense, the respondents have failed to produce any credible or substantive evidence to rebut the materials available against them rather in their reply have admitted in selling and purchasing for the project in question. The promoter through subsequent supplementary reply in the final hearing took the plea that the project falls under the exemption as given under Section 3(2) of the RERA Act, 2016 but has not produced any evidence for the same.
18. It is a settled principle of law that party claiming or asserting any exception to a statutory obligation bears the legal burden of proof to prove the exception. The legal reason being that the fact constituting such exception lies in the exclusive knowledge of the party claiming it and accordingly the party must prove the existence of such facts. In RERA Act, 2016, the onus to prove that the project does not fall under the ambit of Section 3 of the Act by virtue of application of any exception as given under Section 3(2) rests on the promoter who is claiming the same. Thus, the onus to prove the exception under Section 3(2) falls on the respondent and not complainant.

19. In the instant case, the respondent/promoter in the final argument has raised the contention of exception under Section 3(2) stating that the project's total land area does not exceed 500 sq. mt but has failed to prove the same with the help of any substantiating document. On the other hand, the complainant has produced sufficient material on record which prima facie proves the violation of Section 3 by the respondent through advertisement.
20. The report placed on record containing the advertisement and the contradictory statement taken by the respondent in absence of any substantiating document by the respondent clearly establishes that the project was being marketed and promoted in a structured and commercial manner. This directly attracts the applicability of Section 3 of the Real Estate (Regulation and Development) Act, 2016. The respondent's plea is devoid of any substantive averments or credible evidence to demonstrate that the advertisement has not been made by them.
21. The Authority is of the considered view that the actions of the respondent amount to clear violation of the mandatory requirement of prior registration of the project under Section 3 of the Real Estate (Regulation and Development) Act, 2016. Such conduct not only undermines the intent of the statute, defeats the interest of the allottees but also attracts penal consequences as provided under Section 59.

22. In view of the above findings, it is established that the respondent company has contravened the provisions of Sections 3 of the Real Estate (Regulation and Development) Act, 2016. Accordingly, for contravening the said provisions and in consideration of safeguarding the interests of genuine homebuyers and to safeguard the objective and spirit envisaged under the RERA Act, the Authority imposes penalty against the promoter under Section 59(1) of the Act which states that on contravention of Section 3 of the Act, the promoter shall be liable to a penalty which may extend upto 10% of the estimated cost of the real estate project as determined by the Authority
23. It is evident that the respondent has deliberately did not disclose any land details substantiating the claim of exception. Since, the violation of Section 3 by the respondent has been proved on the basis of materials on record, the mere absence of land document should not be a reason for the respondent to bypass the penalty. It is also not uncommon in the contemporary scenario for the financial budget of a project to runs in lakhs especially in district such as Saran.
24. Thus, it is established that the promoter has violated Section 3 by advertising a real estate project without registration. Although specific land area or project cost has not been disclosed, the advertisement indicates the intention to market real estate units in violation of the Act. In absence of complete land details, the Authority adopts a traditional estimate based on market norms and imposes a penalty of Rs. 5,00,000/- under Section 59(1).

25. The penalty amount, as mentioned above, shall be paid by the respondent company within sixty (60) days from the date of issuance of this order. Failure to comply with this direction will attract further action under Section 59(2) of the Real Estate (Regulation and Development) Act, 2016.
26. The Concerned Circle Officer is directed to not to proceed with the mutation of any plot falling within the area of the said project land till further order by the Authority.
27. The Authority further directs the office to issue a letter to the I.G. Registration, Bihar to issue letter to all the concerned DSRS's / Sub-Registrars of Patna to impose a blanket ban on execution of sale deed for the project namely Aarya City Phase -05 of the respondent - M/s Arya Construction and suppliers.
28. The office is directed to act accordingly and issue necessary directions to all concerned

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

Sd/-
(Alok Kumar)
Secretary,
RERA, Bihar