

**Real Estate Regulatory Authority, Bihar, Patna**  
**Before Mr. R B Sinha & Mr. S K Sinha, Members of the Authority**

**Case No. SM/227/2018**

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

**Vs**

**M/s Virat Homes Infra Pvt Ltd**

**Present: For the Complainant: Ms. Shivi, Adv**

**For the Respondent: Mr. Satya P.Parashar,Adv**

**31.12.2020**

**ORDER**

1. The Real Estate Regulatory Authority had issued a suo moto show cause notice on 20<sup>th</sup> November 2018 under Sections 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 against M/s Virat Homes Infra Pvt Ltd for violation of Section 3 of the Real Estate (Regulation & Development) Act, 2016 by not registering its ongoing project 'Future City', Near IIT, Lai Road, Bihta, Patna.

2. In the notice, it had been stated that Section 3 of the Act provides that "No promoter shall 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, without registering the real estate project with the Real Estate Regulatory Authority established under this Act."

3. Under sub-section (1) of Section 3 of the Act it has been specifically mentioned that all ongoing commercial and residential real estate projects were required to be registered with the Authority within three months of the date of commencement of the Act i.e. by July 31, 2017

except in projects where area of the land proposed to be developed didn't exceed 500 sq metres or number of apartments proposed to be developed didn't exceed 8 (Eight) inclusive of all phases.

4. In the notice it had also been stated that in spite of several extensions of deadline given by the State Government, the Respondent Company had failed to register or apply for registration of its real estate project - 'Future City, Lai Road, Bihta, Patna - with the Authority. Accordingly, a notice had been issued to the respondent company to show cause, as to why a proceeding under Sections 35 & 59 of the Real Estate (Regulation & Development) Act, 2016 be not initiated against the Respondent Company for non-compliance with the provisions of Section 3 of the Act, within two weeks of issue of the notice.

5. Earlier in February 2018 the interim Real Estate Regulatory Authority, Bihar, headed by the then Principal secretary of the Urban Development and Housing Department, Government of Bihar, had issued suo moto notice to M/s Virat Homes Infra Pvt Ltd for its 'Future City' project advertisement, which had been published in newspapers without getting the project registered with the Authority. The notice had been issued on February 6, 2018 and it was followed by an email sent on February 8, 2018.

#### **Response of the Respondent Company:**

5. The Respondent Company did not furnish any reply to the show cause notice within stipulated period. Following this, the double Bench of the Authority on May 6, 2019 issued a directive to put up the matter on July 5, 2019 for hearing. Accordingly a notice was issued by the Authority on May 9, 2019 to the Respondent Company in which the directors of the Respondent Company were directed to be present or

send their authorized representative to attend the hearing and produce all the documents which they intended to produce in their defence failing which the matter would be heard and determined in their absence.

**Hearing:**

6. The matter was heard on 05/07/2019, 23/07/2019, 30/08/2019, 13/09/2019, 16/12/2019 and 08/01/2020. In the course of hearing, the Respondent Company was represented by its learned Counsel Mr. Satya Prakash Parashar, Advocate. Before the first date of hearing of the case i.e. on July 5, 2019, the company applied for registration of its 'Future City' project with the Authority on June 11, 2019. On the first date of hearing i.e. on July 5, 2019, the Respondent Company's counsels Mr. Satya Prakash Parashar submitted a written response in which that the Respondent claimed that they had not received the Authority's notice issued on November 20, 2018. He also submitted that the second notice sent to the Respondent Company on May 9, 2019 spoke about an order passed by the Authority on May 6, 2019 but copy of this order had not been provided along with the notice. The Respondent Company counsel requested for the copy of the May 6, 2019 order so that a written submission could be made accordingly.

7. Based on the request made by the Respondent Company's counsel, the Bench fixed July 23, 2019 as the next date of hearing of the case. On this date (23/02/2019) too the counsel sought time for filing a reply and the Bench fixed August 30, 2019 as the next date of hearing of the case.

8. In his written submission submitted on August 30, 2019, the Respondent Company's counsel stated that even though the Authority had taken a decision on May 3, 2018 that all the real estate projects

which were outside the planning area needed to be registered with it, the same was published only on the website of the Real Estate Regulatory Authority. He also stated that the Respondent Company had not been informed about this decision even in the notice that had been served by the Authority to the Respondent Company. He also pleaded that since the Respondent Company had voluntarily applied for registration of its project with the Authority on June 11, 2019, the notice issued against it should be dropped.

9. The Authority fixed September 13, 2019 as the next date of hearing of this case.

10. Amid the hearing of the case, Authority, on October 19, 2019, drafted a one-member committee consisting of its counsel Sumit Kumar, Advocate, to visit the site of 'Future City' project at Lai Road, Bihta, Patna. The committee visited the site on November 29, 2019 and submitted its report on December 16, 2019. The report, based on the observations made on the ground, concluded that 'Future City' project was an ongoing project. Photographs of the project site too were provided in the report in support of the observations of the committee.

11. The case was taken up for hearing on January 8, 2020 during which Authority counsel Mr. Sumit Kumar, advocate, drew the attention of the Bench towards the inspection report which clearly mentioned that it was an ongoing project. He also pointed that advertisements had been issued by the Respondent Company regarding this project without getting it registered with the Authority which was a violation of the provisions of Real Estate (Regulation & Development) Act, 2016.

12. He also drew attention of the Bench towards definition of advertisement given in Section 2 (b) of the Act in which 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.”

13. In view of the very wide ambit of the definition of 'Advertisement', the learned Counsel of the Authority claimed that the Respondent Company had violated Section 3 of the Act by advertising the Project without registering it with the Authority.

**Issues for consideration:**

14. There is only one issue for consideration in this case that whether the promoter has violated Section 3 of the Act by advertising, selling, booking or inviting persons to purchase in any manner plots or apartments in these real estate projects without registering the project with this Authority. In course of hearing the learned Counsel of the Respondent Company never denied that 'Future City' project was an ongoing project and he also accepted that the application for its registration had been filed with the Authority in June 2019. He sought dropping of the proceedings in the case on the ground that Authority's decision to make registration of projects outside planning area compulsory had not been communicated to the Respondent Company and it had only been put up on the website of the Authority.

**Order:**

15. Section 59 of the Real Estate (Regulation & Development) Act, 2016 provides that if any promoter contravenes the provisions of Section 3 of the Act, he shall be liable to a penalty, which may extend up to ten per cent of the estimated cost of the project as determined by the Authority.

16. The Respondent Company has itself stated that the estimated cost of its 'Future City' project is **Rs 1,23,61,000 (Rs. One crore Twenty-Three Lakhs and Sixty-One Thousand only)**. The Authority is inclined to accept this value. Keeping the fact in mind that the company has initiated the process of registration of the project, the Authority orders that a token penalty of **Rs 1.23 lakh (Rs One Lakh Twenty-Three Thousand Only)** for its 'Future City' project which is one per cent of the estimated project cost, is 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**