

Real Estate Regulatory Authority (RERA), Bihar, Patna

Bench of R B Sinha and Dr S K Sinha, Members of RERA

RERA Suo-motu case no- RERA/SM/ 47 / 2018

Authorised Representative of RERA.....Complainant

Vs

M/s Aryavart Lifespaces Pvt Ltd.....Respondent

**Present: For the Complainant:-Mr Sumit Kumar, Advocate
Ms Shivi, Advocate
For the Respondent:- Mr Dinesh Kumar Singh, Administrator**

30/05/2019

O R D E R

1. The Real Estate Regulatory Authority (RERA) issued a suo motu notice on 16th May 2018 under Section 35 and 59 of the Real Estate (Regulation & Development) Act, 2016 for non-compliance of the provisions of Section 3 of the Act against M/s Aryavart Lifespaces Pvt Ltd for non-registration of their ongoing projects Aryavart Greens and Aashray 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/plotted land 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.

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 Act, i.e. by 31st July, 2017 with the Real Estate Regulatory Authority except in projects where area of land proposed to be developed does not exceed 500 sqmtrs or number of apartments proposed to be developed does not exceed 8 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 project Aryavart Greens and Aashray with the Authority though they have been advertising and taking advances against the bookings made in the project since long ago.
5. Accordingly, the respondent company were 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 to the reminder sent on 25th June 2018, the Respondent Company stated on 2nd July 2019 that they tried to complete the registration process before 31st May 2018 but due to technical problems on the RERA website, they were unable to complete the process. They have since submitted the hard-copies of the application for registration of the project with the Authority.
7. As the company had submitted the application for registration of only one project Aryavart Greens, the Respondent company was called for hearing on 25.01 2019.
8. On the date of hearing on 25.01.2019, the Respondent Company filed a petition stating that they had initial verbal discussion with the landlords and had been planning for the projects. They claimed that due to some problems, the project Aashray did not materialise. They also claimed that they were not doing any sales and marketing activities for the project. They assured that they would complete all legal formalities before starting any project.

Hearing

9. In course of hearing, the Respondent Company was directed to produce the bank statements and audited annual accounts of the company for the last three years, which they did in batches. Initially they submitted for the financial years 2016-17, 2017-18 and 2018-19 (till 11th February 2019) on 14th February 2019 and thereafter , the Balance Sheet , Profit & Loss account along with other documents for

the last three financial years 2015-16, 2016-17 & 2017-18 on 27th February, 2019.

Issues for Consideration

10. There is only one issue for consideration i.e. whether the Respondent Company had ongoing real estate projects namely Aryavart Greens and Ashray on the date of issue of show-cause notice. The Respondent Company in their response claimed that Aryavart Greens was only project which was ongoing and hence they submitted the application for registration of the project Aryavart Greens.
11. Learned Counsel of the Authority however submitted copies of brochures of both projects which were issued by the respondent company for advertising the projects and booking the plots of lands. As per the brochure, the Aryavart Greens was a premium 41 acres project with state of art facilities like fully developed parks, clubhouse, banquet facilities, spa, health club and recreational facilities while Ashray was 20 acres project located at chirora, Gopalpur, near AIIMS, Patna with external boundary, 30 feet road and 20 ft streets, street light, clubhouse and park, drainage/sewerage, main gate & security post.
12. The Project Aryavart Greens was launched in October 2015 and continues to be an ongoing project with most of the state of art facilities, as claimed by the promoter, like fully developed parks, clubhouse, banquet facilities, spa, health club and recreational facilities are still required to be developed.

- 13 The brochure/development time line for Aryavart Ashray project indicated that 30 ft road and 20 ft streets of the 1st phase of the project was to be demarcated between December 2017 and March 2018 and individual units of plots under the first phase of the project was to be demarcated between December 2017 and March 2018. Learned Counsel of the Authority also brought the fact of completion of the first phase of the project in July 2018 and launch of the 2nd phase of the project thereafter.
14. It was therefore evident that both real estate projects- Aryavart Greens and Aryavart Ashray were ongoing as on 16.05.2018 when suo motu notices were issued to the Respondent company. Further, it was clear that the Respondent company had misrepresented before the Bench when they claimed that Aryavart Ashray didn't materialize. As a matter of fact, Ashray was launched in Feb-March 2017 and the first phase was registration of the land was completed in June 2018 and 2nd phase was launched thereafter. Learned Counsel of the Authority brought to the attention of the Bench large number of photographs and notices taken from the facebook account of the respondent Company that indicated that both projects were ongoing and the respondent company had contravened the Section 3 of the Act with impunity.

Order

15. Section 59 of the Real Estate (Regulation & Development) Act, 2016 states that if any promoter contravenes the provisions of Section 3, he shall be liable to a penalty which may extend up to 10% of the estimated cost of the real estate project as determined by the Authority. In his application, the MD of the company has

himself estimated the cost of the project as Rs 21.50 crore. We are inclined to accept it.

Keeping in view, the fact that the respondent company had filed the application for registration of one project – Aryavart Greens in June 2018 we feel that the Authority should be considerate and show leniency towards the Respondent company. However, considering the fact that, the Respondent Company has misrepresented the fact that the Project Ashray did not materialize whereas the project was ongoing since February-March 2017, we impose a penalty of one and half percent of the estimated cost i.e. Rupees thirty two lakhs and twenty five thousands on the Respondent company, to be paid within 60 days of issue of this order.

We also direct the IG registration to issue necessary directions to prohibit District Sub-registrar, Patna, Sonapur and Danapur from registering any plots of land under these projects until they register these projects with the Authority and pay the penalty.

Sd
(R B Sinha)
Member

Sd
(Dr S K Sinha)
Member