


**In the matter of Real Estate Project, for NPR No.00818**

**Promoter: Modello Ventures LLP ,**

**Name of Project: Modello Heights**

Sl. Number and date of order	Order and signature of Officer	Note of action Taken on order
09-01-2020  Dictated & corrected by me  	<p>An application for registration of the project was filed by Director of Modello LLP Mr Rajiv Tibrewal on WBHIRA website in terms of Section 4 of the WBHIRA Act, 2017, filling up online format notified vide Notification No. 61-HIV/3M-4/18 dated 13th September,2018 and payment of application fee was made online. NPR Number of application was generated by WBHIRA web portal and intimated to applicant Director on user email and login as created by him for the purpose of filing application for registration of project.</p> <p>Be it noted, section 4 of the West Bengal Housing Industry Regulation Act, 2017 and Rule 3 of the West Bengal Housing Industry Regulation Rules, 2018 provide for online submission of application, uploading mandatory documents in terms of requirements of Section 4 of the Act and format of application as notified.</p> <p>Office of WBHIRA Authority after preliminary scrutiny of application pointed out defects on the application, which were intimated to user login, as per set procedure for registration for any application to WBHIRA followed in all other cases. As per the record available on WBHIRA web portal, accessible by applicant also by user login, defects in documents against serial number 2, 4, 6, 9 and 14 of the prescribed format for project registration were intimated and application was returned to the applicant's login for rectification and re-submission.</p> <p>This is provided under Section 4 of the Act that authenticated accounts for last three years along with Income Tax Returns for the promoter company are required to be uploaded against Serial Number 2, encumbrances on land at serial number 3, draft sale agreement and deed against serial number 6 in terms of requirements of Rule 9</p>	



Dictated  
& corrected  
by me



and Annexure A of the WBHIRA Rules, 2018 along with declaration on affidavit at serial number 14 are mandatory documents to be uploaded. Instead of removing the defects and complying the requirements as per the provisions of law, applicant re-submitted the application online with defects still persisting.

Declaration in Form A in terms of WBHIRA Rules, 2018 on affidavit was not found uploaded against serial number 14 of the project application. Rather, list of contractors, architect/ engineers uploaded at serial number 13 was repeated at serial number 14. Further, applicant given opportunity to declare status on any booking, advertisement or collection of money from allottees duly verified by chartered accountant and project engineer so as to enable the WBHIRA Authority to take decision in the matter of granting the registration of the project under section 5 (1)(a). No declarations were submitted, though requested by WBHIRA office and no claims were made anywhere in application or documents submitted therewith that the project is completed. Reports of Engineer and chartered accountant are crucial to decide application which has been filed beyond 90 days of commencement of the Act for ongoing projects not obtained completion certificate. Such declarations have been submitted by other applicants without any protest and refusal which was helpful in disposal of application by WBHIRA Authority in time. The fact that project registration application was filed under WBHIRA Act, 2017 paying requisite fee is admission of applicant that this project requires registration under section 3 of the WBHIRA Act, 2017.

It is also revealed from the records that no completion certificate was submitted and claimed to have been obtained for the project prior to 1st June, 2018, the date of commencement of the Act, which could have exempted this project in terms of proviso to Section 3. The fact that July, 2018 is declared as completion timeline of the project in the application makes it mandatory for the project to get registered under section 3 of the Act as no completion certificate was obtained at the time of commencement of the Act.

Application is not at all valid without declaration of promoter on affidavit and without fulfillment of requirements of Section 4 of the Act.

Considering these findings of the office of the WBHIRA Authority on the NPR 00818 , WBHIRA Authority issued notices to the applicant for opportunity of



hearing before decision as application was not found to be in order for grant of registration under section 5 (1)(a) of the Act for non fulfillment of requirements of Section 4 read with rule 3 and rule 9 as explained in the foregoing paragraphs of the proceedings and recorded in NPR case findings dated 14th November, 2019 on examination of online application.

Applicant was asked to show cause as to why the application shall not be rejected under section 5(1)(b) of the Act, for the defects duly communicated and known to the applicant. In response to such notice, the applicant neither took any steps to rectify the defects and submit valid application with declaration on affidavit as per requirement of the law but also didn't challenge findings of the WBHIRA Authority pointing out defects making application liable to be rejected under section 5(1)(b) of the Act.

I have gone through the prayer filed by applicant on affidavit, seeking recalling the orders of Designated Authority dated 14th November 2019 and any other orders as this Authority seems fit.

Applicant has pleaded that the project for which he applied for registration under WBHIRA Act, 2017 does not come under the purview of the WBHIRA Act, 2017 as the project is completed and not ongoing project in terms of Section 3 of the Act. Applicant challenged the jurisdiction of Designated Authority in view of the Appeal Case bearing No. MAT 1477 of 2019 filed in High Court. Applicant couldn't produce any orders of Hon'ble Court curtailing jurisdiction of this Authority or granting any orders for stay of proceedings. This is settled law that mere filing of appeal does not operate as stay of order challenged and further proceedings of the trial court. SCC (2005) volume 1 Page 705 R.C.LAHOTI.CJI G.P.MATHUR Judgment 10TH DEC 2004.

After careful examination of application and documents uploaded therein, this Authority is satisfied that the application does not fulfill all requirements of Section 4 read with requirement of declaration on affidavit in terms of Rule 9 and format of the application for registration of project and being satisfied notices were issued under section 5 (1)(b) of the Act, extending opportunity to the applicant but defects in the application have not be cured by the Applicant. I am satisfied that this application is not found in order to grant registration under section 5(1)(a) of the Act and therefore, this Authority rejects the application for the defects stated above and

Dictated  
& corrected  
by me





for the reasons that declaration on affidavit is not filed by the applicant as required under the law despite reasonably long time availed by him for submission of corrected valid application.

Hence, registration application is rejected, in exercise of powers under section 5(1)(b) of the WBHIRA Act, 2017.

Now, recall prayer is considered in terms of provisions of the law.

This Authority is of considered view that no project requiring mandatory registration under Section 3 of the Act can be offered for sale, marketing, advertisement, booking or collection of money after 1st June, 2018 without registration of the project. This Authority's order dated 14th November, 2019 has merely pointed out provisions of the law, which should not be construed as any order but mere provision of the law applicable for any project that contravenes section 3 of the Act and penal provisions of the Act can be invoked.

Whether, this project attracts provisions of WBHIRA Act, 2017 and shall be treated as ongoing project or not, can only be determined conclusively on verification of documents related to occupancy by allottees and physical status of the project to be caused by WBHIRA Authority. It is appropriate that applicant promoter extend necessary cooperation and submit relevant documents.

Secretary of the WBHIRA Authority is directed to seek a report from Engineers of Local Municipality as regards physical status of the project along with status of occupancy, connection of sewerage and water etc and possession of allottees. Municipal Authorities shall confirm whether final occupancy certificate has been granted and date of issue of such certificate.

This dispose off the NPR 00818.

Secretary, WBHIRA shall issue intimation in Form 'C' as per Rule 6(2) of the WBHIRA Rules, 2018.

Communicate this order to the Applicant.

  
(ONKAR SINGH MEENA)  
Designated Authority  
Housing Industry Regulatory Authority  
West Bengal

Dictated  
& corrected  
by me

