

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, PUNE**

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.1 OF 2023**

MahaRERA on its own Motion Complainant

Versus

Mahalunge Township Developers LLP Respondent

MahaRERA Project Registration No.P52100029559

Coram: Shri.F.D.Jadhav, Dy.Secretary-Cum-Head
Adv.Atharva A Dandekar appeared for the promoter/respondent.

ORDER

24th May, 2023

(Through Video Conferencing)

1. Maharashtra Real Estate Regulatory Authority has delegated certain powers on me on dated 26-04-2023 under Section-81 of the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016"). The said powers, inter alia, contains imposing of penalty under Section-59 of the Act, 2016 for contravention of the provision of Section-3 by the promoter and to impose penalty under Section-61 of the Act for contravention of Section 11(2) of the Act etc. In exercise of the said powers delegated to me under Section 81 of the Act, 2016, notices were served to the parties, heard the parties and thereafter matter is disposed of.
2. The MahaRERA Authority had issued a show cause notice dated 08-03-2023 to the promoter above named for publishing an advertisement in the 'Facebook' without mentioning the MahaRERA Registration number, in regards to the project "Godrej Hill Retreat" Mahalunge, Pune, bearing MahaRERA Registration No.P52100029559 situated at Mahalunge, Pune.

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3. The promoter in his say dated 20-03-2023 has submitted that the show cause notice is very vague in nature and does not include any details of alleged advertisement. It is further submitted that no print or copy of such alleged advertisement, nor any particulars thereof was provided to them. As such promoter had requested to the Authority, in the alternative, to provide details about the basis of the charges levelled against Godrej Properties Limited for the project in the show cause notice.
4. This Authority alongwith letter dated 27-3-2023 provided the copy of the advertisement given by the promoter in the 'Facebook' without mentioning the MahaRERA registration number. Thereafter the promoter has replied on dated 9-5-2023 thereto. It has been stated by the promoter in the aforestated reply that one "Save Max Real Estate", a registered agent with MahaRERA was appointed by them to carry out advertisement and sales for the said project. According to the promoter the said allegedly offending advertisement was made by the said channel partner without any reference to them or ratification or approval by them.
5. It has been further submitted by the promoter in his aforestated reply that the said channel partner by its email dated 5-4-2023 informed them and thereby admitted there was a mistake committed by them which is violative of the law and the same was caused due to an error caused by a new employee who join the services of the said agent. The promoter also in his reply apologize unconditionally for the offending advertisement caused by the said agent with regard to the project.
6. This matter was scheduled for hearing on 17-05-2023. Learned Adv.Atharav Dandekar appeared alongwith A.R.Basudeb Biswas and Rakhi Yadav. During the hearing Learned Advocate sought time to submit detailed say in the matter. Accordingly matter was adjourned till 24-05-2023.
7. The promoter has submitted his say on 24-05-2023 in the morning, though the date has been mentioned therein as 23-05-2023. In this say

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the promoter has reiterated all his main contentions as mentioned in earlier replies.

8. In this regard hearing was scheduled on 24-05-2023 through Video Conferencing as per the MahaRERA Circular No.27/2023 and MahaRERA Order No.593/2023 wherein Adv.Dandekar appeared and made his submissions for the promoter.
9. During the hearing, Adv.Dandekar has submitted that the promoter has executed agreement with Channel Partner which is at Annexure 'C' dated 27-02-2023. He has pointed out para 3.3 of the said agreement which states as under:

"The Channel Partner agrees and acknowledges that it shall only share marketing materials which is approved by the Company in writing and not accept any money offer any discount whatsoever nature on the total sale consideration of Properties in writing or through advertisements or make any commitment or promise on behalf of the Company, at any point of time without the prior written approval of the Company".

10. Adv.Dandekar has also invited attention to para 8.1 which reads as under:

"The Channel Partner agrees, confirms and undertake to the following: It shall quote the registration number as granted by the RERA authorities in every sale that is facilitated by the Channel Partner on behalf of the Company".

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11. Adv.Dandekar for the promoter has emphasized on Section 11(2) and Section 61 of the Act, 2016. The said Sections read as under :

Sec-11(2):-The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto."

Sec-61: "Penalty for contravention of other provisions of this Act- If any promoter contravenes any other provisions of this Act, other than that provided under Section 3 or Section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend upto five per cent of the estimated cost of the real estate project as determined by the Authority".

12. The learned Adv.Shri.Dandekar has argued that the promoter has not given any advertisement and the alleged advertisement was published by the channel partner and therefore according to him this promoter is not liable to the wrongful act done by the channel partner. As such according to him Section 11(2) will not be attracted in the matter. Likewise according to him Section 61 of the Act emphasis on the contravention of the provisions by the promoter. If the promoter himself contravened the provision then only he would be liable to a penalty. Adv.Dandekar vehemently argued that since in this matter the advertisement is not

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given by the promoter he has not contravened any provision of the Act, and thus not liable for any action/penalty.

13. Admittedly promoter has entered into an agreement with the channel partner Save Max Real Estate and thereby authorized the channel partner to give advertisement of the said project. The promoter has also put on certain conditions on the channel partner for publishing advertisement in respect of their project. However, according to the promoter the channel partner has violated certain conditions before giving advertisement which was without MahaRERA registration number. As per agreement, the channel partner has to get approval from promoter before giving advertisement of said project. But channel partner has not taken such approval. Therefore according to Adv.Dandekar this promoter is not liable for any penalty as he has not violated Section 11(2).

14. At this juncture it is to be stated here that the agreement is inter se between the two parties and if one party has violated any of the term of the agreement then it is open to another party to take legal action against him in accordance with the law. Breach of any of the clauses of agreement would invoke actions as envisaged under the said agreement and/or as per provisions of Indian Contract Act. Thus it would not be legal and proper to say that as channel partner has breached the terms of the agreement, Section-11(2) would not attract in the matter.

15. It is submitted by the Adv.Dandekar that they have blacklisted the channel partner as channel partner did not obtain their approval prior to giving alleged advertisement. The letter dated 17-4-2023 regarding intimation of blacklisting of M/s.Save Max Real Estate and intimation of termination of channel partner agreement dated 27-2-2023 due to breach of terms of the agreement is at Annexure 'H'. It is further submitted by learned Adv.Dandekar that as promoter is not liable for the alleged violation since the channel partner admittedly published advertisement, the MahaRERA Authority may take action against the channel partner who

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is registered under MahaRERA under Section-10 of the Act, 2016. As the issue of infringement of Section 11(2) of the Act, 2016 is involved in this matter, the question of taking action under Section-10 would not arise.

16. At this juncture, it is necessary to go through the provision of Section 11(2) of the aforesaid Act, 2016 which reads as under:

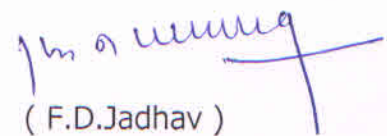
Sec-11(2):- "The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto."

17. On careful perusal of the Section 11(2) manifestly shows it is imperative on the part of the promoter to mention the MahaRERA Registration number of the project in the advertisement issued by him. Though the advertisement actually published by the channel partner, the entire onus is on the promoter of the project for said advertisement. In fact the advertisements are given for the purpose of attracting public at large towards the project. Intention behind the advertisement is that the public at large should know about their project and other important things/features about the project.

18. Adv.Dandekar unhesitatingly admitted that no promoter is giving advertisement personally. He has further clarified that the promoter has to appoint either channel partner, Ad agencies or agent to publish advertisement of the project. In this matter the promoter has empowered the channel partner to give advertisement, though on certain terms and conditions. By virtue of this authorization the channel partner has published alleged advertisement. In this background it cannot be said promoter has/had no role in publishing the alleged advertisement.

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19. It is to be stated that though the channel partner has given advertisement the promoter might have got some directly or indirectly benefit of the said advertisement. Mere denying by promoter by saying that he has not benefited by the said advertisement, would not be proper and correct and therefore cannot be accepted.
20. Considering the facts vis a vis law discussed hereinabove the promoter cannot say that he will not be liable for the alleged advertisement. Taking into consideration the scope of Section 11(2) of the Act, 2016 it can be said that the promoter has violated the provision of Section 11(2) of the Act, 2016 for publishing the advertisement without MahaRERA registration number.
21. Section 61 of the Act, 2016 deals with penalty for contravention of other provisions of this Act. The said provision, inter alia, states that.....
..... **promoter shall be liable to a penalty which may extend upto five percent of the estimated cost of the real estate project as determined by the Authority.** However, considering the facts and circumstances of this case lenient view ought to be taken while imposing the penalty in the matter.
22. In view of the above, the penalty of Rs.25,000/- under Section 61 of the Act, 2016 is imposed upon the promoter for violation of Section 11(2).
23. The said penalty shall be payable by the promoter within 15 days from the date of this order, failing which promoter shall be liable to further penalty of Rs.1,000/- per day till the realization of entire amount.
24. The Technical and the Finance Department of the MahaRERA Authority shall verify the payment of the said penalty before processing any applications viz. extension, corrections, change of name etc., with respect to the said project.
25. In view of the above, the present case stands disposed of.


(F.D.Jadhav)
Dy.Secretary-Cum-Head,
MahaRERA, Pune