

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

**SUO MOTU ADVERTISEMENT/  
PUNE CASE NO.112 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

**DILIP DEVICHAND CHOUDHARI.**

.... Respondent-Promoter

**Project -**

**NISARG GARDEN**

**MahaRERA Project Registration No.P50100000101 & P50100019355**

**Coram: Shri.F.D.Jadhav, Dy.Secretary-Cum-Head**

**Appearance :-** Mr. Mangal Choudhari, A.R. for Respondent-Promoter.

**ORDER**

12<sup>th</sup> December, 2023

(Through Video Conferencing)

1. MahaRERA has issued show-cause notice, dated 13.09.2023 to the respondent-promoter calling upon him to show cause for publishing advertisement of the aforesaid registered real estate projects by name "Nisarg Garden" situated at Chandur, Akola in daily newspaper "Lokmat", dated 19.08.2023 for not including Project Registration Number and Quick Response (QR) Code and for violation of the provisions of Section 11(2) of the Real Estate (Regulation & Development) Act, 2016 ( hereinafter referred to as "Act, 2016) and the directions issued by the Maharashtra Real Estate Regulatory Authority under MahaRERA Order No. 46/2023, dated 29.05.2023 read with MahaRERA Order No.46A, dated 25.07.2023.
2. Respondent-promoter has filed his reply, dated 22.09.2023 and has contended that the project bearing MahaRERA Project Registration No. P50100000101 by name Nisarg Garden (Wing A, B, C. D. E & F) and the project bearing MahaRERA Project Registration No. P50100019355 by name Nisarg Garden (Wing H, I, J & K) as mentioned in the show cause notice, dated 13.09.2023 are altogether different and both these projects

are totally completed and possession of all these units have been handed over to the respective buyers. The respondent has further contended that the impugned advertisement is in respect of the project "Nisarg Garden R Wing" containing six units and all six units are completed and occupancy certificate has been obtained. The respondent-promoter has further contended that as the number of units in the said project were less than six and the promoter has offered it for sale only after obtaining the occupancy certificate, hence the advertisement was put in the daily newspaper, dated 19.02.2023.

3. Mr. Mangal Choudhari, A.R. has appeared in the matter on behalf of respondent-promoter. He has reiterated the contentions raised out by the promoter in his reply. He has submitted that the projects of which project registration numbers mentioned in the show-cause notice are already completed and occupancy certificates thereof are already obtained by the promoter. He has further submitted that the impugned advertisement is of the project Nisarg Garden R Wing, wherein there are only six units and they are also completed and occupancy certificate of the same is also obtained. He has further submitted that since the number of units in the said project of which impugned advertisement is published, is less than eight, the registration of the same is not required.

4. In support of his contentions, the respondent-promoter has furnished on record the registration certificate, dated 03.07.2017 of the project Nisarg Garden vide Registration No. P50100000101, situated at Survey No.30/2, Layout Plot No.1 to 30 at Chandur, Akola and registration certificate, dated 23.01.2019 bearing Registration No.P50100019355 for the project Nisarg Garden situated at Plot No.30/1 and 30/2 at Chandur, Akola. The respondent-promoter has also furnished on record (1) occupancy certificate, dated 20.10.2015 issued by Grampanchayat, Chandur, Akola in respect of Wing A, B, C, D & E, at Survey No.30/2, Plot No. 1 to 31, (2) occupancy certificate, dated 15.03.2019 in respect of Wing F & G constructed at Survey No. 30/2, Plot No. 24A to 31A and 31B.



Also the occupancy certificates, dated 30.05.2019 issued by the Sub-Divisional Officer, Akola with respect to 10 Row Houses at Plot No.12 to 16 and 16 Row Houses at Plot No. 19 to 23 of Survey No.30/1 and Plot No.32 to 39 of Survey No. 30/2 of Chandur, Takola, occupancy certificate, dated 15.09.2020 with respect to 12 Row Houses at Plot No.5 to 9 and 56, 57 of Survey No.29/1 and 30/1, occupancy certificate, dated 15.09.2020 with respect to 11 Row Houses at Plot No.46 to 53 of Survey No.29/1, occupancy certificate, dated 19.01.2021 with respect to 11 Row Houses at Plot No.18 to 19, Survey No.29/2 and Plot No.26 to 35 of Survey No.30/1 and part occupancy certificate, dated 02.03.2021 with respect to 7 Row Houses (N-7 to N-13) at Plot No.58 to 59 of Survey No.29/1 and Plot No.1 to 4 of Survey No.30/1. The respondent-promoter has also furnished on record 7/12 extract of Gat No. 30/2/R admeasuring H.R/Sq.Mtr. 24.29.00 of village Chandur, Tal. Akola, District Akola in the name of Dilip Devichandji Choudhri, which shows that the said land is Non-Agricultural Land.

5. The promoter has also furnished on record, Occupancy Certificate, dated 22.11.2022 with respect to Row House No.R1 to R6 at Plot No.43 to 56 of Survey No.30/2, issued by Sub-Divisional Officer, Akola as well as Part Completion Certificate, dated 21.11.2022 issued by the Assistant Director, Town Planning Akola with respect to Row House No.R-1 to R6 at Plot No.43A to 56B, Survey No. 30/2.
6. Perused the impugned advertisement, dated 19.08.2023 published in daily newspaper "Lokmat". It contains the name of project as Nisarg Garden of 3 BHK Row House and name of promoter is mentioned as Dilip Chaudhari, Builders & Developers. This advertisement do not contains any Wing/Survey No./Plot No. of the land of the project. However, perusal of the aforesaid documents i.e. various occupancy certificates issued by the Sub-Divisional Officer, Akola as well as Grampanchayat, Chandur, there is substance in the contention of the respondent-promoter that the project by name Nisarg Garden is of various Wings and some of the Wings are

already completed and occupancy certificates thereof are already obtained prior to publishing the impugned advertisement. The further contention of the respondent-promoter that the impugned advertisement is in respect of the project by name Nisarg Garden R Wing, having six units have been substantiated by the part occupancy certificate, dated 21.11.2022 issued by the Asst. Director, Town Planning, Akola and occupancy certificate, dated 22.11.2022 issued by the Sub Divisional Officer, Akola.

7. Section 3(2)(a) of the Act, 2016 is relevant in the matter. It reads as under :-

**3. (2) "Notwithstanding anything contained in sub-section (1) no registration of the real estate project shall be required –**

**(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed, does not exceed eight, inclusive of all phases.**

**(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act."**

8. In other words, it can be said Section 3(2)(a) and (b) of the Act of 2016 exempts the project from registration where the number of apartments proposed to be developed does not exceed eight, inclusive of all phases and the promoter has received O.C. prior to the advertisement of project. Circular number 25/2019 issued by MahaRERA Authority deals with clarification regarding registration of agreement for sale, etc. Para 1 thereof deals with real estate projects that are excluded from MahaRERA Registration. Clause 2 thereof states that real estate projects where number of apartments proposed to be developed is less than or equal to eight apartments. Clause 3 speaks about real estate projects where



promoter has received occupancy certificate, etc. from Competent Authority. Since in this matter, the number of units proposed to be developed are only six and the promoter has already received occupancy certificate prior to issuance of advertisement, I am of the view that this case squarely falls within the provision of Section 3(2)(a) and (b).

9. At this juncture, it is material to go through Section 11(2) of the Act, 2016 and Order No. 46/2023 and 46A/2023. Section 11(2) of the Act, 2016 reads as under :-

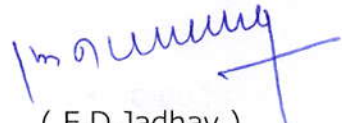
**11.(2) "The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental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

10. MahaRERA Order No.46/2023 deals with display of QR Code in promotions/advertisements material relating to real estate projects registered with MahaRERA. MahaRERA Order No.46A/2023 also deals with non-display of Quick Response (QR) Code in promotions/advertisement of real estate projects registered with MahaRERA. As per the aforesaid Orders the promoter shall prominently display Quick Response (QR) Code on each and every project promotion/advertisement published after 1<sup>st</sup> August, 2023. Failure to comply with this shall be construed as violation of the directions issued in the above referred MahaRERA Order and penalty which may extend up to Rs. 50,000/- subject however to a minimum penalty which shall not be less than Rs.10,000/- under Section 63 of the Act shall be imposed upon promoters for each such violation.

11. Though the show cause notices are issued for violation of Section 11(2) of the Act, 2016 and for violation of MahaRERA Order No. 46/2023, dated 29.05.2023 and MahaRERA Order No. 46A/2023, dated 25.07.2023,

perusal of the impugned advertisement shows that the project in question is of six units only and occupancy certificate thereof has already been issued by the competent authority prior to publication of the said advertisement. Thus this project can be said to be exempted from registration under the provision of Section 3(2)(a) and (b) of the Act, 2016. MahaRERA Authority has also issued explanation vide Circular No.25/2019, dated 11<sup>th</sup> Oct. 2019 in regards to the projects excluded from MahaRERA registration which is self explanatory. In these circumstances, provision of Section 11(2) of the Act, 2016 and the MahaRERA Order No. 46/2023, dated 29.05.2023 and MahaRERA Order No. 46A/2023, dated 25.07.2023 are not attracted in the present case. In other words, there appears no violation of any of the provision of the Act, 2016 and MahaRERA Order No. 46/2023 and 46A/2023 on the part of the respondent-promoter.

12. Consequently this is not a fit case to impose penalty in the matter under Section 61 as well as Section 63 of the Act of 2016.

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