

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

SUO MOTU ADVERTISEMENT CASE NO. 22 OF 2023

MahaRERA on its own Motion Complainant
Versus
Nanda Dilip Pohekar Respondent/ Promoter

MahaRERA Project Registration No. P50500032763

Coram: Shri.Sanjay Bhimanwar,Dy.Secretary, MahaRERA

CA Rachana Agrawal appeared for the respondent/ promoter.

ORDER

04th September 2023

(Through Video Conferencing)

1. The Maharashtra Real Estate Regulatory Authority has delegated certain powers on me 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 section -3 of the Act,2016 by the promoter and to impose penalty under section-61 of the Act,2016 for contravention of section-11(2) of the Act,2016 by the promoter. In Exercise of the 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 01/08/2023 for violation of section 11(2) to the promoter above named for publishing an advertisement dated 26/02/2023, in the Daily Lokmat, Nagpur Newspaper, without mentioning the MahaRERA project registration number, in regard to the project "**Gurukul**" bearing MahaRERA registration no. **P50500032763**, situated at Nagpur.

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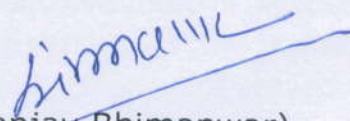
3. The promoter by its reply dated 18/08/2023, to the said show cause notice dated 01/08/2023, had submitted that the advertisement in the Daily Lokmat Newspaper dated 26/02/2023 had been published by its channel partner, Nirmay Infratech, a real estate marketing company registered with MahaRERA having Real Estate agent number A50500029331. The promoter further submitted that the aforesaid advertisement had not been advertised by the promoter nor did its name appear in the advertisement and therefore, promoter is not in violation of section 11(2) of the Act.
4. In this regard, a hearing was scheduled on 04/09/2023 through video conferencing as per the MahaRERA Circular No. 27/2020 and MahaRERA Order No. 593/2023, when the promoter appeared through its representative and made its submissions.
5. During the hearing, the promoter submitted that the advertisement in question was not issued or published by the promoter but was in fact disseminated by the real estate agent.
6. In this regard, it is necessary to peruse the provision of section 11(2) of the RERA which 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."
7. From the plain reading of section 11(2), the promoter is under obligation to mention prominently, the registration number of the project in the advertisements or the prospectus issued by it. Section 11(2) speaks about the promoter only and imposes the responsibility on the promoter to mention the registration number prominently. It is also a fact that the promoter often advertises its projects through an advertising agency or channel partner or through a real estate agent. As per legal maxim "***Qui facit per alium facit per se***", means he who acts for another is deemed in law to have done it himself. This clearly explains principal/promoter - agent relationship. An agent is a person who acts on behalf of the principal/promoter. Therefore, if an agent does any wrongful act in the course of employment, then the principal/promoter will be held liable for

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the acts committed by its agent. In the present case, the aforesaid advertisement dated 26/02/2023 has been published by the promoter's authorized channel partner. Although the advertisement has been published by the channel partner but being the ultimate beneficiary of advertising the aforesaid project "**Gurukul**", the onus lies on the promoter only. Also, the promoter has not taken any kind of legal action against the channel partner for not mentioning the registration number of the aforesaid project. Therefore, the promoter is held vicariously liable for the act of its channel partner for not mentioning the registration number of the project in the aforesaid advertisement. Hence, the promoter is in violation of section 11(2) of the Act, 2016 for publishing the advertisement of the said project "**Gurukul**" for not mentioning the MahaRERA registration number prominently in the said advertisement.

8. In view of the above, a penalty of Rs. 25,000/- under section 61 of the of the Act, 2016, is imposed upon the promoter for violation of section 11(2).
9. The said penalty shall be payable by the promoter within a period of 15 days from the date of this order, failing which a further penalty of Rs. 1,000/- per day would be imposed till compliance.
10. The Technical and Finance Department* of the MahaRERA authority shall verify the payment of the said penalty before processing any applications viz. extension, correction, change of name etc., with respect to the said project.
11. With the above directions, the present case stands disposed of.


(Sanjay Bhimanwar)
**Dy. Secretary,
MahaRERA, Nagpur.**