

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.29 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Nircon Developers

.... Respondent

Nirmitee Sakura

MahaRERA Project Registration No.P52600027488

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

Appearance :- A.R. Saklen Shaikh

ORDER

18th July, 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 Respondent-Promoter. A.R. Saklen Shaikh appeared on behalf of promoter.

2. It has been noticed by the MahaRERA Authority that an advertisement in daily newspaper 'Lokmat' without mentioning the MahaRERA Registration number, in regards to the project "Nirmitee Sakura" has been published. On going through the record of MahaRERA Authority, it has been noticed that the project "Nirmitee Sakura" is registered with MahaRERA vide Registration No. P52600027488. Therefore, by show-cause notice, dated 28.03.2023, the Respondent-

Promoter was called upon to show cause as to why penal action under Section 61 of the said Act should not be initiated against him. Notice of hearing was issued to the Respondent on 16.06.2023 and directed to attend the virtual hearing on 27.06.2023. Promoter has filed his reply on 11.07.2023.

3. The promoter by his reply, dated 11.07.2023 admitted to have published the advertisement in daily newspaper 'Lokmat', dated 21.03.2023 of their above named project without mentioning RERA Registration Number, but according to him, it is due to human error and there was no ill motives involved therein. The respondent further contended that every advertisement of their above named project has MahaRERA number and Logo and in support of it attached advertisement issued by him in Divya Marathi Newspaper, dated 03 Oct. 2022 and 23 Oct. 2022.

4. Heard A.R. Saklen Shaikh for promoter. He reiterated the contentions raised out in the reply filed by promoter. He has also admitted to have published the said advertisement without mentioning RERA Registration Number, but argued that it was issued by their channel partner.

5. At this juncture it is necessary to reproduce Section 11(2) of the 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."

6. On careful perusal of the Section 11(2) manifestly shows it is imperative on the part of the promoter to mention the MahaRERA

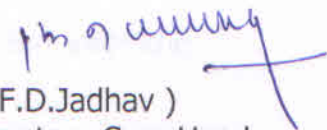
Registration number of the project on the prominent part of the advertisement issued by him. Perused the advertisement. The project is ongoing and the advertisement clearly indicates that there was no MahaRERA registration number of the project and as such there is violation of Section 11(2) of the Act of 2016.

7. The act of the channel partner of the promoter publishing the advertisement without mentioning MahaRERA registration number definitely is for the sale of units in the project of the promoter and therefore, the promoter cannot escape from his liability from complying the mandatory provision under Section 11(2) of the Act 2016. It is also admitted fact that advertisement was given in "Lokmat" daily newspaper. Therefore, it is proved that by publishing the said advertisement in question without mentioning MahaRERA registration number, this promoter has breached Section 11(2) of the Act, 2016.

8. Considering the facts *vis-a-vis* law discussed hereinabove, it can be said that it has been proved beyond doubt that the promoter has violated the provision of Section 11(2) of the Act, 2016 for publishing the advertisement without MahaRERA registration number, and thus this is a fit and suitable case to impose penalty.

9. 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. A.R. Saklen Shaikh argued that prior to the impugned order, the promoter has published advertisement of this project in newspaper "Divya Marathi", dated 03.10.2022 and 23.10.2022, wherein the RERA Registration No. has been mentioned, and this project being a small project, prayed for lenience in the matter. Considering the facts and circumstances of this case, lenient view ought to be taken while imposing the penalty in the matter.

10. In view of the above, the penalty of Rs.10,000/- under Section 61 of the Act, 2016 is imposed upon the promoter for violation of Section 11(2) of the Act, 2016. .
11. The said penalty shall be payable by the promoter within 30 days from the date of this order, failing which promoter shall be liable to penalty of Rs.1,000/- per day, in addition, till the realization of entire amount.
12. The Technical and Finance Department of the MahaRERA Authority shall verify the payment of the said penalty before processing any applications by promoter for extension, corrections, change of name etc., with respect to the said project.


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