

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.39 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Yashoda Developers

Trident 9, Baner

.... Respondent

MahaRERA Project Registration No.P52100024707

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

Appearance :- Adv. S. Dayma for promoter

ORDER

11th 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. Adv. S. Dayma appeared on behalf of promoter.

2. It has been noticed by the MahaRERA Authority that an advertisement in the daily newspaper 'Times of India', dated 13.05.2023 without mentioning the MahaRERA Registration number, in regards to the project "Trident 9, Baner" has been published. On going through the record of MahaRERA Authority, it has been noticed that the project "Trident 9, Baner" is registered with MahaRERA vide Registration No. P52100024707. Therefore, by show-cause notice, dated 30.05.2023, 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. The promoter filed his say on 08.06.2023. The matter was posted to 11.07.2023 for virtual hearing and notice of hearing was issued to the promoter on dtd. 04.07.2023.

3. The promoter by his reply, dated 08.06.2023, contended that in the said advertisement, they have mentioned 'completed projects' for the advertisement of project 'Trident 9,Baner', and completion certificate of the same is already uploaded on MahaRERA site. The promoter contended that as the project is completed project, the provision under Section 11(2) of the Act, 2016 does not attract to the completed project. Therefore, promoter has not violated any of the provision of this Act and penalty should not be imposed. In support of his reply, the promoter has filed along with reply Part Completion Certificate, dated 23.01.2023.

4. Heard Adv. S. Dayma for promoter. He reiterated the contentions raised out in the reply filed by promoter. He argued that the project 'Trident 9,Baner' is completed project and the promoter has uploaded the completion certificate and also possess certificate of architect.

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

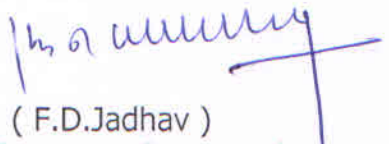
Sec-11(2):- "The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental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

Perused the advertisement. The advertisement speaks the project 'Trident 9, Baner is completed project. However, the Part completion certificate produced on record by the promoter proves that the said project is not completed and full O.C. is not received. Adv.S. Dayma argued that promoter possess certificate of architect showing that the project is completed and on the basis of it promoter has applied to the planning authority for issuance of full O.C. The record of MahaRERA shows that form 4 has not been uploaded. Moreover, merely issuance of completion certificate by the architect does not mean that the project is completed, unless full O.C. is issued by the planning authority.

7. Moreover, no registration of the real estate project shall be required where the promoter has received completion certificate for a real estate project prior to commencement of the Act, 2016 as enunciated under Section 3(2)(b) of the said Act of 2016. The record before this Authority clearly proves that the project in question is not completed and is ongoing at the time of publishing advertisement. The impugned advertisement also indicates ongoing projects and coming soon projects and there is no mention of RERA Registration No. of even a single project in the said advertisement.
8. Legal inference can be drawn from the act of the promoter viz. publishing the advertisement without mentioning MahaRERA registration number. The advertisement undoubtedly is for the sale of units in the project of the promoter. Therefore, it is proved beyond doubt that by publishing the said advertisement in question without mentioning MahaRERA registration number, this promoter has breached Section 11(2) of the Act, 2016.
9. 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.

10. 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.** Learned Counsel Shri S.Dayma has prayed for lenience in the matter.
11. In view of the above, the penalty of Rs.20,000/- under Section 61 of the Act, 2016 is imposed upon the promoter for violation of Section 11(2) of the Act, 2016.
12. 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.
13. 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