

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

**SUO MOTU ADVERTISEMENT/  
PUNE CASE NO.43 OF 2023**

MahaRERA on its own Motion ..... Complainant

Versus

Swaraj Construction & Developers  
'Swaraj Heights' ..... Respondent  
"Not Registered with MahaRERA"

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

Appearance :- Adv. Shubham Thakur h/f. Adv. Nagesh Jangale.

**ORDER**

8<sup>th</sup> August, 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. In exercise of the said powers delegated to me under Section 81 of the Act, 2016, notices were served to the Respondent-Promoter. Adv. Shubham Thakur appeared on behalf of promoter.

2. It has been noticed by the MahaRERA Authority that an advertisement in newspaper 'Lokmat', dated 21.05.2023 without registering with MahaRERA the project "Swaraj Heights" has been published. On going through the record of MahaRERA Authority, it has been noticed that the project "Swaraj Heights" is not registered with MahaRERA. Therefore, show-cause notice, dated 30.05.2023 was issued

to the promoter by speed post calling upon him as to why penal action under Section 59 of the said Act should not be initiated against him. The promoter filed his reply on 05.06.2023. The notice of hearing, dated 04.07.2023 was issued to the promoter and promoter was asked to attend virtual hearing before this Authority on 14.07.2023.

3. The promoter by his reply, dated 05.06.2023, has submitted that the promoter has completed the building and he has received completion certificate from Solapur Municipal Corporation and has not taken any advance amount from any customer nor executed any agreement for sale of any flat or shop in his project. The promoter has further submitted that the said advertisement has been published on occasion of 'Shiv Rajya Abhishek' on account of discount offered by the newspaper. It is further contended that the said advertisement is published inadvertently by the local agency.

4. Heard Adv. Shubham Thakur for promoter. He has also reiterated the contentions raised out by the promoter in his reply. Adv. Thakur vehemently argued that since the project is completed and promoter has received completion certificate, the registration of the project is not required.

5. Section 3 of the Act 2016 deals with prior registration of real estate project with Real Estate Regulatory Authority. The said Section 3 reads as under :-

**"3.(1) – No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act;**



6. From the plain reading of Section 3, the promoter is under obligation not to advertise, market, book, sell or offer for sale or invite persons to purchase any plot, apartment etc. without registering real estate project with MahaRERA. However, in the present case, promoter had published an advertisement without registering the project with MahaRERA.
7. At this juncture, Section 3(2)(b) is material. Section 3(2)(b) of the Act 2016 is reproduced hereunder :-

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

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

8. The promoter in the instant case has raised out the contentions that he has received completion certificate from the Solapur Municipal Corporation and therefore, registration of completed project is not required. However, the promoter has not furnished completion certificate to support his contentions. Therefore, the contentions of promoter in this regard cannot be relied upon.
9. Maharashtra Real Estate Regulatory Authority (hereinafter referred to as 'MahaRERA') has issued Circular No. 25/2019, dated 11.10.2019 regarding clarification in respect of registration of agreement for sale/sale-deed for real estate projects. It has been mentioned in the said circular in regards to real estate projects that are excluded from MahaRERA Registration. Serial No.3 in the said circular specifically states that real estate projects where promoter has received completion certificate/occupancy certificate/N.A. order (in case of plotted

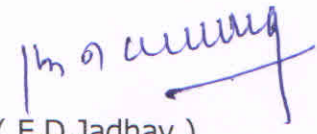
development) from competent authority, any time before agreement for sale/sale-deed registration are excluded from MahaRERA registration. As such, real estate project where promoter has received completion certificate, the said project has been exempted from MahaRERA Registration. MahaRERA has issued Circular No. 25A/2023, dated 09.06.2023 regarding real estate projects that are excluded from MahaRERA Registration. This circular supplements circular No.25/2019, dated 11.10.2019 regarding serial Nos.1 and 2 enumerated therein. Serial No.3 in the earlier circular, dated 11.10.2019 however remained in force till the date as it is.

10. In the case in hand, the promoter though raised out contention that his project is completed and received completion certificate, no any completion certificate from the competent authority is placed on record by the promoter. Therefore, taking into consideration the facts and circumstances of the present case, publication of the advertisement without project registration with MahaRERA prior to receipt of completion certificate can be said to be clear violation of Section 3 of the Act of 2016.
11. 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 3 of the Act, 2016 for publishing the advertisement for sale of flats without registering the project with MahaRERA, and thus this is a fit and suitable case to impose penalty under Section 59 of the Act 2016.
12. In view of the above, the penalty of Rs.50,000/- under Section 59 of the Act, 2016 is imposed upon the promoter for violation of Section 3 of the Act, 2016.
13. 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.

14. It is hereby directed that a written communication be sent to the Planning Authority i.e. Solapur Municipal Corporation for not to grant additional authorization for the said project until such time as the said project has been duly registered with MahaRERA or excluded/exempted from the registration as enunciated in serial No.3 of para 1 of the Circular No.25, dated 11.10.2019 issued by MahaRERA Authority viz. Receipt of full and final completion certificate. Moreover, it is further directed that Registration and Stamp Office shall be instructed to abstain from registering any sale agreements within the said project, until such time as the project is duly registered with MahaRERA Authority or get exemption from registration under Circular No.25, dated 11.10.2019 issued by MahaRERA to that effect i.e. getting full occupation certificate/completion certificate of the project of the promoter.

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