

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.44 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Yashodhan Associates

'Devyani Residency'

.... Respondent

MahaRERA Project Registration No. P52100002412

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

Appearance :- Rahul Navandar, Partner

ORDER

21st 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. In exercise of the said powers delegated to me under Section 81 of the Act, 2016, notices were served to the Respondent-Promoter. Rahul Navandar, partner appeared on behalf of promoter.
2. It has been noticed by the MahaRERA Authority that an advertisement in the daily newspaper 'Sakal', dated 21.05.2023 without mentioning the MahaRERA Registration number, in regards to the project "Devyani Residency" has been published. On going through the record of MahaRERA Authority, it has been noticed that the project "Devyani Residency" is registered with MahaRERA vide Project Registration No. P52100002412. Therefore, by show-cause notice, dated 30.05.2023, the

Respondent-Promoter was called 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 reply on 07.06.2023. 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 07.06.2023, has admitted that he has published advertisement in the "Sakal" newspaper regarding this project. However, he has contended that the said project has received its part occupancy certificate on 21.09.2021, 14.10.2021 and full occupancy certificate on 15.03.2022 from the Pune Municipal Corporation. He has further submitted that cooperative housing society of the unit holders of the said project is also formed and management of the said society already handed over to its management committee. In support of his reply, the promoter has furnished copies of 2 part occupancy certificates and one full occupancy certificate from Pune Municipal Corporation, (1) Part O.C. No.1 dated 21.09.2021 for Phase-2 'H' Building, (2) Part O.C. No.2, dated 14.10.2021 for Phase No.II, Building H, and (3) Part & Final O.C. No.3, dated 15.03.2022 for H Building.
4. Perused the reply filed by the promoter along with copies of the occupancy certificates, as mentioned above. Heard Mr. Rahul Navandar for promoter. He has reiterated the contentions raised out in the reply filed by promoter. He has submitted that the project is completed and the impugned advertisement has been published after receiving the final occupancy certificate and therefore, there is no violation of Section 11(2) of the RERA Act and hence no penalty can be imposed on the promoter.
5. Section 3 (2)(b) of the Act of 2016 is relevant in the matter which reads as under :-

"3(2) Notwithstanding 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."

6. Section 3 of the Act 2016 deals with prior registration of real estate project with Real Estate Regulatory Authority. As per said provision inter-alia, it is mandatory on the promoter to register his project with MahaRERA Authority before giving advertisement of his project. Sub-Section 2 thereof deals with exemptions. Clause (b) of said sub-section (2) of Section 3 specifically states that, 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 this Act.

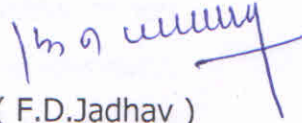
7. MahaRERA Authority, Mumbai in suo-motu Advertisement Case No. 9 of 2023 in the case of MahaRERA on its own motion v/s. Avi Constructions, has held that, "O.C. received on 03.11.2021. Since the promoter had prominently published "O.C. received" in the advertisement dated 05.03.2023 issued by it in the 'Lokmat' newspaper, the promoter is not in violation of Section 11(2) of the RERA." Similarly, in suo-motu Advertisement Case No. 42 of 2023, the MahaRERA Mumbai Authority in the case of MahaRERA on its own motion v/s. A.K. Surana Developers has held that, "since the promoter had already obtained the occupancy certificate on 15.09.2020 for the said project before the advertisement was published on 01.04.2023 in 'Lokmat', the promoter is not in violation of Section 11(2) of RERA."

8. Section 11(2) of the Act 2016 is material in this matter which is reproduced here for ready reference :-

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."

9. In this matter, final occupancy certificate is issued by concerned Pune Municipal Corporation on 15.03.2022 and advertisement is published in daily 'Sakal' on 21.05.2023. It certainly indicates that advertisement is given after receiving of full occupancy certificate of the said project. It is further clarified by the promoter that registration number in the said advertisement was not mentioned due to mistake. Considering these facts and the facts involved in the cases before MahaRERA Mumbai Authority, it can be said the ratio laid down by MahaRERA Mumbai Authority in the aforementioned cases is applicable to the facts of this case.
10. In the facts and circumstances mentioned hereinabove and considering the decisions of MahaRERA Mumbai Authority on similar issue, it can be said that this promoter is not in violation of Section 11(2) of the Act of 2016. Consequently this is not a fit case to impose penalty in the matter under Section 61 of the Act of 2016.


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