

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.49 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Vithai Developers

DARA Park

Unregistered Project

.... Respondent

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

Appearance :- Absent

ORDER

8th 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 etc. In exercise of the said powers delegated to me under Section 81 of the Act, 2016, notices were served to the Respondent-Promoter however, Respondent-Promoter remained absent in spite of sufficient opportunity given.

2. It has been noticed by the MahaRERA Authority that an advertisement through 'Pamphlet' in regards to the project "DARA PARK" situated at Wagholi-Bakori without registering it with MahaRERA was published and distributed amongst the public at large. On going through the record of MahaRERA Authority, it has been noticed that the said

project "DARA PARK" is not registered with MahaRERA. Therefore, by show-cause notice, dated 29.03.2023, the Respondent-Promoter was called to show cause as to why penal action under Section 59 of the said Act should not be initiated against him. The promoter has failed to file his say to the said show cause notice. The notice of hearing was issued to the promoter on 14.07.2023 and promoter was asked to attend the virtual hearing of the matter on 21.07.2023. The promoter however, remained absent in spite of sufficient opportunity given to him by adjourning the matter on 28.07.2023 and 08.08.2023. In this circumstance, this Authority has proceeded further to pass orders in the matter.

4. Perused the advertisement published by way of 'Pamphlet'. It is related to the plotting project "DARA PARK" situated at Wagholi-Bakore, Pune and the name of the Promoter is given as Vithai Developers. After going through the record of MahaRERA, it seems that the said project is not registered with MahaRERA and without registering this project with MahaRERA the promoter has published advertisement for sale of open bungalow plots, which attracts Section 3 of the Act 2016.

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, it is clear that the promoter is under obligation not to advertise, market, book, sell or offer for sale or invite persons to purchase any plot etc. without registering real estate

project with MahaRERA. However, in the present case, promoter had published an advertisement without registering the project with MahaRERA. At this juncture Section 3(2)(b) is relevant which is reproduced hereunder for the sake of brevity.

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

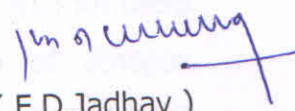
(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act."

7. As the promoter in the instant case has failed to appear and file his reply to the said show cause notice, the contentions made in show cause notice remained unrebutted. It is to be stated that it was necessary on the part of the promoter to register this project with MahaRERA before publishing advertisement. As promoter has utterly failed to register his project with MahaRERA, Section 3 of the Act 2016 would come into play in this matter.

8. 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 N.A. order in relation to plotted development, 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.

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 3 of the Act, 2016 for publishing the advertisement for sale of bungalow plots by way of pamphlet without registering the project with MahaRERA.
10. Therefore, it is hereby directed that a written communication be sent to the concerned Planning Authority for the purpose of ascertaining whether the promoter has obtained any requisite authorization for the aforementioned project, and no additional authorization shall be granted for the said project until such time as the aforementioned project has been duly registered with MahaRERA or obtained N.A. order from competent authority. Moreover, it is directed that the 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 obtained N.A. order from competent authority.


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