

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.52 OF 2023**

MahaRERA on its own Motion Complainant

Versus

Rachana Construction

'ALPHA-1'

.... Respondent

MahaRERA Project Registration No. P52200050470

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

Appearance :- CA Modi.

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. In exercise of the said powers delegated to me under Section 81 of the Act, 2016, notices were served to the Respondent-Promoter. CA Modi appeared on behalf of promoter.

2. It has been noticed by the MahaRERA Authority that an advertisement in newspaper 'Lokmat' without registering the said project with MahaRERA in regards to the project "ALPHA-1" has been published. On going through the record of MahaRERA Authority, it has been noticed that the project "ALPHA-1" was not registered with MahaRERA. Therefore, show-cause notice, dated 25.04.2023 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 notice of hearing, dated 14.07.2023 was issued to the promoter and promoter was asked to attend virtual hearing before this Authority on 21.07.2023. The promoter remained absent on 21.07.2023 and therefore, the matter was adjourned to 28.07.2023. On 28.07.2023 the matter was adjourned to 08.08.2023 for filing reply of the promoter. Promoter filed his reply on 03.08.2023.

3. The promoter by his reply, dated 03.08.2023 submitted that he had already applied for registration on 17.03.2023 and the advertisement was published in 'Lokmat' on 16th April, 2023. According to him, on 16th April, 2023 he accessed the RERA portal which displayed project certificate for issuance at approval section. Further the promoter has referred Section 5 of the Act of 2016, which states that registration should be granted within 30 days from the date of application. According to him, as per said provision of Section 5 registration ought to have been granted to the project of the promoter w.e.f. 15th April, 2023. Otherwise, his application for registration will have to be treated as deemed registered under Section 5 of the Act of 2016.

4. C.A. Modi for promoter has reiterated the contentions stated in the say submitted by promoter on 19.07.2023. He has submitted that the promoter had wished to publish advertisement of the said project on 22nd April, 2023 on the occasion of 'Akshay Trutiya', but unfortunately it was published on 16th April, 2023. Promoter has submitted receipt of 'Abhi Publicity', wherein it has been shown that full page coloured advertisement for the project Alpha-1 has to be published on 'Akshay Trutiya' in the newspapers 'Sakal', 'Lokmat' and 'Pudhari'. It is further submitted by C.A. Modi for promoter that this project has already received registration certificate from MahaRERA Authority w.e.f. 17.04.2023 to 28.03.2025. In this background C.A. Modi has argued that since there is

no violation on the part of the promoter, Section 3 read with Section 59 of the Act 2016 will not be attracted in this matter.

5. Section 5 of the Act 2016 is relevant in this matter which deals with grant of registration. The said Section 5(1)(a) and (b) reads as under :-

"5. (1) On receipt of the application under sub-section (1) of Section 4, the Authority shall within a period of thirty days.

- (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login ID and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or**
- (b) reject the application for reasons recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder;**

Sub-Section (2) of Section 5 is vital provision which reads as under :-

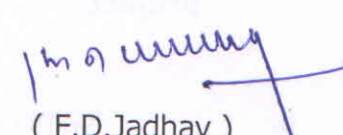
"5. (2) :- If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered and the Authority shall within a period of seven days of the expiry of the period of thirty days specified in sub-section (1), provide a registration number and a Login ID and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project".

6. As per said sub-section (2) of Section 5, if the Authority fails to grant registration or reject the application, as the case may be, within stipulated period of 30 days, the project shall be deemed to have been

registered. In this matter, it has been stated by the promoter that he has applied for registration on 17.03.2023 and on 16.04.2023 the promoter has seen on RERA portal which displayed project registration certificate pending for issuance at approval section. As it has not been communicated by the Authority to the promoter within stipulated period in regards to this project whether registration has been granted or rejected, sub-section (2) of Section 5 of the Act 2016 would come into play. The said provision provides 30 days for approval or rejection of application from the date of application. Otherwise, project will be treated as deemed registered.

7. Undoubtedly, this promoter has submitted application for registration on 17.03.2023 and the registration certificate has been issued by the Authority to the project for the period 17.04.2023 to 28.3.2025. The advertisement in this matter has been published on 16.04.2023. Considering the circumstances mentioned hereinabove, it can be said that there was no any intention on the part of the promoter to violate Section 3 of the Act of 2016. The promoter had already applied for RERA registration prior to 30 days of the advertisement published in the newspaper which was pending for final issuance of certificate. Besides Section 5(2) confers 30 days for approval from the date of application. Otherwise, deemed provision will come into play and thereby project ought to have to be treated as deemed registered.

8. In the circumstances mentioned hereinabove, it can be said that there appears no violation on the part of the promoter under Section 3 of the Act 2016. Therefore, the question of imposing penalty under Section 59 of the Act 2016 does not arise.


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