

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.55 OF 2023**

MahaRERA on its own Motion Complainant

Versus

Mauli Landmarks Respondent

Maa Saheb Landmark.
Unregistered Project.

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

Appearance :- Promoter Mauli Chandrakant Zambare in person &
Accountant Somnath Kandikatla.

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.

2. It has been noticed by the MahaRERA Authority that an advertisement in daily newspaper 'Lokmat' without registering the project "Maa Saheb Landmark" with MahaRERA has been published on 28.06.2023. On going through the record of MahaRERA, it has been found that the project of the Respondent is not registered with MahaRERA.

Therefore, by Show Cause Notice, dated 03.07.2023, the Respondent-

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Promoter was called upon to show cause as to why penal action under Section 3 r.w. 59 of the said Act should not be initiated against him. The promoter has filed his reply to show cause notice, which received by this Authority on 11.07.2023. Notice of hearing was issued to the Respondent on 20.07.2023 and directed to attend the virtual hearing on 25.07.2023. Promoter Mauli Zambare appeared in the virtual hearing in person in the matter.

3. The promoter in his reply has admitted to have published the advertisement in daily newspaper 'Lokmat', dated 28.06.2023 of his above named project. But according to him, he received primary layout approval from the Solapur Municipal Corporation on 15.02.2022 and prior to advertisement of the project, he had already applied for completion certificate to Public Health Authority (Water Pipeline) on 18.11.2022 and the work on the site has already been completed and work completion certificate has been issued on 05.05.2023. He further submits that he has not taken any booking amount against the said project and his intention for advertisement was just to promote the project site on the occasion of 'Ashadhi Ekadashi' to aware the people about the project and not to sale the plots prior to acquiring N.A. order from the competent authority.
4. Heard promoter Mauli Zambare, who reiterated the contentions raised out in the reply filed by promoter. He has also admitted to have published the said advertisement. He has submitted that the work completion certificate has been issued by the Municipal Corporation, Solapur and therefore, there is no necessity to register the project with MahaRERA. He has however, admitted that he has not yet received N.A. order from the competent authority.
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 :-

"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 raised out the contentions that he has received work completion certificate from the Solapur Municipal Corporation, it is necessary to go through the impugned completion certificate. The completion certificate, dated 16.05.2023 issued by City Engineer, Solapur Municipal Corporation placed on record shows that the work of road, drainage and light-poles have been completed in the impugned project. Admittedly, the impugned project is of plotting project and work completion certificate is not a N.A. order. As such, this project squarely falls within four corners of Section 3 of the Act 2016.

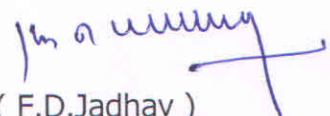
8. Maharashtra Real Estate Regulatory Authority (hereinafter referred to as 'MahaRERA') has issued Circular No. 25/2019, dated 11.10.2019

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. In the case in hand, the promoter has admitted that he has not yet received N.A. order from the competent authority. The work completion certificate, dated 16.05.2023 cannot take place of N.A. order. The N.A. Order has to be issued by the competent authority to exclude the project from registration with MahaRERA where the project is plotted development. Therefore, taking into consideration the facts and circumstances of the present case as well as law thereon, publication of the advertisement without project registration with MahaRERA prior to issuance of N.A. Order can be said to be clear violation of Section 3 of the Act of 2016.

10. 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 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.

11. The promoter has prayed for leniency by contending that almost all the documents have been submitted to the Municipal Corporation so far as this project is concerned, and he will get the N.A. order from the concerned Planning Authority within a day or two. Considering the request by promoter for leniency and considering the entire record, it is necessary to take lenient view in the matter while imposing penalty.
12. In view of the above, the penalty of Rs.40,000/- 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 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.25/2019, dated 11.10.2019 issued by MahaRERA Authority viz. Receipt of N.A. Order. 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.25/2019, dated 11.10.2019 issued by MahaRERA to that effect i.e. getting of N.A. order in case of plotted development/scheme.


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