

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

**SUO MOTU ADVERTISEMENT/  
PUNE CASE NO.56 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Varad Vinayak Real Estate Pvt.Ltd.

.... Respondent

Varad Vinayak Park  
Unregistered Project.

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

**Appearance :-** Indrajit Janardan Tople, director of promoter.

**ORDER**

29<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 and 24.08.2023 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 and to impose penalty under Section 63 of the Act for contravention of the directions issued under MahaRERA Order No.46/2023, dated 29.05.2023 and to impose penalty under Section 62 of the Act for violation by real estate agents of Section 10(a) of the Act and Rule 14 of the Rules. In exercise of the said powers delegated to me under Section 81 of the Act, 2016, notices were served to the Respondent-Promoter. Mr. Indrajit Tople, director of respondent/promoter appeared in the matter.

2. It has been noticed by the MahaRERA Authority that an advertisement in daily newspaper 'Sakal', dated 14.04.2023 of the real estate project by name, "VARAD VINAYAK PARK", situated at behind

Sankalp Siddhi, Near Mhasoba Mandir, Wadipir, Kolahpur has been published. The said advertisement is silent as to whether the said real estate project is registered or not with MahaRERA. On going through the record of MahaRERA, it has been found that the project of the Respondent is not registered with MahaRERA, though mandatory under Section 3 of the Act 2016. Therefore, by Show Cause Notice, dated 25.04.2023, the Respondent-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. Promoter has filed his reply, dated 12.05.2023 to said show cause notice. Notice of hearing, dated 20.07.2023 was issued to the Respondent-promoter and directed to attend the virtual hearing on 25.07.2023.

3. Perused the reply filed by the respondent/promoter. It has been contended by the respondent/promoter that the impugned advertisement was given by the brokers who are not concerned with the promoter/company and company has already issued show cause notice to them and in process to take legal action against them. It is further contended by the promoter that the registration of the project with MahaRERA is in progress and thus the promoter is not liable for violation of Section 3 of the RERA Act.
4. Heard Mr. Indrajit Tople, one of the directors of the promoter company. He has submitted that the project in question is plotting project and the promoter has already obtained N.A. Order from the competent authority on 23.08.2022 and also got sanctioned the layout from the Kolhapur Urban Area Development Authority. In support of his contentions, the promoter has filed copy of Challan dated 12.08.2022 and N.A. order, dated 23.08.2022. He has further argued that the N.A. order is obtained much prior to publishing the impugned advertisement, dated 14.04.2023 and therefore, there is no violation of Section 3 and thus there is no question arises for imposition of penalty under Section 59 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.

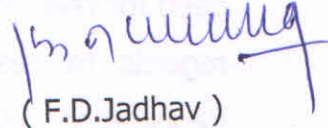
**"Section 3 - (2) Notwithstanding anything contained in sub-section (1) no registration of the real estate project shall be required –**

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

7. 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 has been exempted from MahaRERA Registration. MahaRERA has issued another 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.

8. The facts in the instant case explicitly indicates that this promoter has already obtained N.A. order on 23.08.2022, and Challan has been submitted showing Non-Agricultural Assessment paid by this promoter on dt. 12.08.2022. Thereafter advertisement was published on 14.04.2023. These facts clearly shows there is no need to register this project with MahaRERA.
9. Considering the facts discussed hereinabove, it can be said that the promoter has obtained N.A. Order from the competent authority prior to publishing the impugned advertisement. Moreover, the aforesaid circulars issued by MahaRERA, unequivocally speaks that the projects which are received N.A. order are excluded from registration with MahaRERA. Consequently it can be said there is no violation of Section 3 of the Act by the promoter.
10. In view of the above, this is not a fit case wherein action of imposing penalty under Section 59 of the Act 2016 can be taken against the promoter. The matter is disposed off accordingly.

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