

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.66 OF 2023**

MahaRERA on its own Motion Complainant

Versus

Pandurangsai Residency. Respondent

Pandurangsai Residency
Unregistered Project.

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

Appearance :- Mr. Mahesh Yeole, A.R. for the promoter.

ORDER

29th 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. Yeole, A.R. on behalf of respondent/promoter appeared in the matter.

2. It has been noticed by the MahaRERA Authority that an advertisement in daily newspaper 'Divya Marathi', dated 08.04.2023 of the

real estate project by name, "PANDURANGSAI RESIDENCY", situated at Gat No.206, village Pimprala, Jalgaon 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 11.04.2023, 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 failed to file his reply to the said show cause notice. Notice of hearing, dated 04.08.2023 was issued to the Respondent-promoter and directed to attend the physical hearing on 22.08.2023. However, the said notice returned unserved. Therefore, again on 23.08.2023 Notice of hearing was re-issued to the respondent and matter was fixed on 29.08.2023. On 29.08.2023, A.R. Mr. Mahesh Yeole for promoter appeared before this Authority and filed his say.

3. Promoter has contended in his say that he has constructed 5 row houses on Plot No.16+17, Gat No.206, Pimprala and obtained occupancy certificate of the same on 23.09.2022 and the area of the plot is admeasuring 321 sq. mtr. A.R. Mr. Yeole further contended that the promoter Mr. Amit Kale had already sold 3 row houses and was willing to sell out remaining two row houses admeasuring 825 sq. ft. and 625 sq. ft. The promoter has asked A.R. Mr. Mahesh Yeole to publish advertisement for the sale of these two row houses. In this background, advertisement came to be published by A.R. Yeole. Promoter has further contended that since the area of the plot is less than 500 sq. mtrs., there is no necessity to register the project with MahaRERA. In support of his contentions, promoter has filed on record copies of the 7/12 extract as well as occupancy/completion certificate, dated 23.09.2022 and building plan sanctioned by Jalgaon City Municipal Corporation.

4. Perusal of the sanctioned plan by the Assistant Director of Town Planning, Jalgaon City Municipal Corporation indicates that the area of the

plot is shown as 321.60 sq. mtrs. whereas occupancy certificate, dated 23.09.2022 shows that the construction is made on plot Nos.15 + 16 out of Gat No.206 of village Pimprala and it is issued in the name of Amit Kale by the Jalgaon City Municipal Corporation under Section 263 of the Mumbai Provincial Municipal Corporation Act. 7/12 extract of the said property also shows the area of the plot is 320 sq. mtrs. and the names of three persons other than promoter Shri Kale have been entered in the said Govt. record. The said three persons namely (1) Mr. & Mrs. Jitendra Salvi, (2) Mr. & Mrs. Pratibha Thakur and (3) CMr. & Mrs. Chhaya Santosh Sangolkar have purchased the plots from this promoter Amol Kale. The area of their plot are also 0.56, 0.56 and 0.80 sq. mtrs. respectively. Besides their transactions also stated to be made after obtaining O.C. from 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".

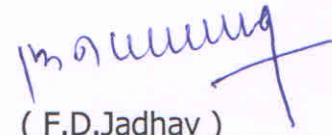
6. From the plain reading of Section 3, it is clear that the promoter is under obligation not to advertise, market, book, sell or offer for sale or invite persons to purchase any plot etc. without registering real estate project with MahaRERA. However, in the present case, it is alleged that promoter had published an advertisement without registering the project with MahaRERA. At this juncture Section 3(2)(a) is relevant for the purpose of issue involved in this matter 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 –

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases."

7. Besides this, the promoter has filed occupancy certificate of Gat No.206, Plot No. 16 and 17 which has been issued on 23.09.2022. It manifestly indicates that this occupancy certificate was obtained by the promoter much prior to publishing the advertisement in the local newspaper i.e. 08.04.2023. In this regard, the reference of Circular No. 25/2029 dated 11th Oct.2019 and Circular No.25A/2023, dated 09.06.2023 issued by MahaRERA Authority is necessary. Para 1 of the Circular No.25/2019 deals with Real Estate Projects that are excluded from MahaRERA Registration. Clause 1 of para 1 specifically states that real estate projects where the area of land proposed to be developed is less than or equal to five hundred square meters. Likewise, clause 3 of para 1 states real estate projects where promoter has received completion certificate/occupancy certificate/N.A. (in case of plotted development) from competent authority, any time before agreement for sale/sale deed registration.
8. Considering Section 3, 3(2)(a) and circulars mentioned hereinabove issued by MahaRERA Authority, it can be said that there is much substance in the defence of the promoter. Promoter has sufficiently proved that there is/was no necessity to register his plotted project with MahaRERA on both counts viz. occupancy certificate prior to advertisement and area of the plot less than 500 sq. mtrs.
9. Considering the factual aspect of this matter as well as law discussed hereinabove, there is no hesitation to hold that this is not a fit case to impose penalty in the matter under Section 59 of the Act 2016.

There was no necessity to register this project with MahaRERA as this project falls within the scope of clause 1 and 3 of para 1 of Circular No.25/2019 issued by MahaRERA. This matter is disposed of accordingly.



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