

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.73 OF 2023**

MahaRERA on its own Motion Complainant

Versus

1. Godrej Plots Hinjwadi Respondent/Promoter

2. Svaika Corporate Pvt.Ltd. Respondent/Agent

(MahaRERA Real Estate Agent Registration No.A52100034708)

Godrej Plots Hinjwadi Phase-I.

Unregistered Project.

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

Appearance :-

Respondent-Promoter :- Adv. Atharva Dandekar

Respondent-Agent :- Sagar Narawade, A.R.

ORDER

12th December, 2023

(Through Video Conferencing)

1. Maharashtra Real Estate Regulatory Authority (hereinafter referred to as "MahaRERA") has issued a show-cause notice, dated 19.07.2023 to the respondent-promoter calling upon him to show cause for publishing advertisement in 'facebook' in respect of a real estate project by name, "Godrej Plots Hinjwadi Phase-I' situated at Hinjwadi, Pune without registering the same with MahaRERA, and thereby in violation of Section 3 of the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016").
2. The respondent-promoter Godrej Properties Limited (hereinafter referred to as 'GPL) has submitted its reply, dated 15.11.2023. It has been contended by GPL that the promoter has not put up any

advertisement on 'facebook' or any online platform in respect of the alleged project. In fact, according to the promoter, it was not aware of any of such advertisement until receipt of the show-cause notice. It is further contended by the promoter that in the inquiry, this promoter discovered that said advertisement was put up by a channel partner named "Svaika Corporate Pvt.Ltd." (hereinafter referred to as "Svaika"). The said channel partner has unilaterally and without promoter's permission put up the advertisement in question. Even the contents of the advertisement had not been approved by the promoter. The channel partner Svaika by e-mail, dated 5th Nov. 2023 to the promoter stated in clear terms that advertisement had been launched by Svaika website maintenance agency. The channel partner Svaika has admitted that this advertisement was without obtaining any consent whatsoever from promoter or any of its group entities. Svaika also stated clearly that even the contents of the advertisement were not approved by the promoter or any of its entities. The said channel partner by the aforesaid e-mail unconditionally accepted full responsibility for the lapse and for the show-cause notice issued by MahaRERA. Thus according to the promoter, it is clear from the admission of the channel partner that the promoter has not committed or caused to be committed any violation of Section 3 of the Act, 2016 and contravention, if any of Section 3 of the Act has been committed by Svaika alone.

3. It is further contended by the promoter in its reply that the promoter has not sold, offered to sale, marketed, booked or invited any person to purchase any unit in any project by the name "Godrej Plots Hinjwadi Phase-I". The promoter has not accepted any bookings in any such project. Thus according to promoter, it has not derived any benefits whatsoever from the advertisement that Svaika has admittedly put up, as no booking are being invited or accepted. It is further contended by the promoter that the impugned advertisement was not issued or published with the knowledge, concurrence or approval of the promoter.

Furthermore, the advertisement was not even published on the facebook page of the promoter or any of its group entities. In these circumstances, the promoter has submitted that in the light of categorical admission by Svaika, penal consequences under Section 3 read with Section 59 of the Act, 2016 cannot be vested upon the promoter or any of its group entities in connection with the advertisement in question. Promoter or its group entities have not been benefitted in any manner from such contravention, which was caused unilaterally by Svaika. Svaika has also categorically admitted its culpability and responsibility for publishing the advertisement in question without any permission from the promoter or its group entities. In view of the above, the promoter has submitted that no any penal action be taken against it or its group entities, and lastly requested to close the matter in the afore stated circumstances.

4. Promoter has submitted the letter issued by the channel partner Svaika to the promoter, wherein the said channel partner has specifically admitted in respect of publishing the advertisement without the approval of the promoter. The said channel partner has mentioned in the said letter that they regret the inconvenience caused to the promoter due to the said advertisement and unconditionally accepts full responsibility for the notice issued by the MahaRERA in this regard.

5. Advocate Atharva Dandekar appeared for the respondent-promoter-GPL. He has reiterated the contentions mentioned in his reply. According to him, this promoter has not published any advertisement on facebook in respect of the project 'Godrej Plots Hinjwadi Phase-I'. He has argued that one channel partner namely 'Svaika' has published the said advertisement on facebook without their knowledge, approval therefor. According to the learned counsel Shri Dandekar, Channel Partner Svaika has admitted that they have published advertisement without the consent, authority from the promoter. Therefore, Channel Partner is solely responsible for the violation of the provisions of the RERA Act. According

to him, since promoter has not breached any of the provisions of Act, 2016, no penalty can be imposed against him.

6. Mr. Sagar Narawade, A.R. appeared for the channel partner Svaika. He has admitted that impugned advertisement has been published by them without the consent and approval of the promoter. He has admitted that the violation of the provisions of the Act, 2016 by publishing the advertisement of this project without registering the same with MahaRERA has been committed by them. He has voluntarily stated that he will not file any reply in the matter and order be passed in this matter on his such admission of violation of the provisions of the Act, 2016.

7. Section 3 of the Act, 2016 deals with prior registration of real estate project with Real Estate Regulatory Authority. Section 3(1) of the Act, 2016 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;

Provided that

Provided thatshall apply to such projects from that stage of registration."

8. In this matter, it can be seen that this promoter has not committed any breach or violation of any of the provisions of the Act, 2016. The impugned advertisement has been issued by the Channel Partner without consent, knowledge and authority of the promoter. Therefore, this

promoter cannot be held liable for Section 3(1) read with Section 59 of the Act, 2016.

9. Section 10 of the Act, 2016 deals with the functions of the real estate agent. Section 10(a) is relevant in this matter, which reads as under :-

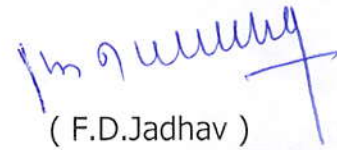
"Section 10. Functions of real estate agents. – Every real estate agent registered under Section 9 shall –

(a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority".

10. In this matter, the channel partner has voluntarily admitted that he has published the advertisement on facebook of the project 'Godrej Plots Hinjwadi Phase-I' , which is not registered with MahaRERA. The channel partner Svaika has also admitted that they have not obtained any permission or approval from the promoter prior to issuance of said advertisement on facebook. Considering the voluntary admission of the channel partner Svaika, it can be said that the said channel partner is liable for breach of Section 10(a) of the Act, 2016.

11. The documentary evidence on record, provisions of the Act, 2016 as well as voluntary admission of the channel partner Svaika manifestly shows that the channel partner has violated the provision of Section 10(a) of the Act, 2016. Therefore, the channel partner is liable for penalty under Section 62 of the Act, 2016 for the breach of Section 10(a) of the Act, 2016.

12. In view of the above, the penalty of Rs. 25,000/- is imposed upon the respondent-agent Svaika Corporate Pvt.Ltd. under Section 62 of the Act, 2016 for violation of Section 10(a) of the Act, 2016.
13. The aforesaid penalty shall be payable by the respondent-agent within a period of 15 days from the date of this order, failing which a further penalty of Rs. 500/- per day, in addition would be imposed till realization of the entire amount.
14. The Technical and Registration Department of the MahaRERA Authority shall verify the payment of the said penalty before processing any applications by the real estate agent for renewal, change of name etc., with respect to his registration as a real estate agent.



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