

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

**SUO MOTU ADVERTISEMENT/  
PUNE CASE NO. 02 OF 2024**

MahaRERA on its own Motion .... Complainant

Versus

Abhiraj Associates .... Respondent

Name of Projects :-

(1) "Dwarka Dham-Phase 2"

(2) "Shree Nrushinha Park"

Unregistered Project of Open Plots

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

**Appearance :-** Adv. Shri Anand Mamidwar

**ORDER**

23<sup>rd</sup> April, 2024

(Through Video Conferencing)

1. MahaRERA has issued a show cause notice, dated 21.12.2023 to the respondent-promoter calling upon him as to why penal action under Section 59 of the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016") shall not be taken against him for publishing an advertisement in daily newspaper "Lokmat", dated 03.12.2023 of real estate projects of open plots by name "Dwarka Dham Phase 2" and "Shree Nrushinha Park" situated at Gangakhed Road, Parbhani without registering the same with MahaRERA, and thereby violating the provision of Section 3 of the Act, 2016.
2. The respondent-promoter has furnished his reply, dated NIL to the said show cause notice, dated 21.12.2023. It has been contended by the respondent that the respondent has promulgated a plotted layout for valid sanction under Section 18/45 of the Maharashtra Regional and

Town Planning Act, 1966 from the competent authority. It has also been contended by the respondent in his reply that Respondent is not required to discharge any function towards the end of buyer in respect of any of the beneficial use of the prospective plot purchaser and there is no compliance to be fulfilled or that has remained unfulfilled on the part of the respondent in respect of the project under advertisement. The Respondent has referred a ruling of the Hon'ble MahaRERA Authority in case of Suo-Motu Advertisement Case No.31/2023 dated 26.04.2023 wherein it has been observed that a plotted development compliance of Section 3 of the Act is not required and the concerned person is ordered to be exonerated from the liability to register under the Act. The respondent has further contended that as per Circular No.25/2019 issued by MahaRERA dated 11.10.2019 it is specifically mentioned that if the project is N.A. (in case of plotted development), Real estate projects are excluded from MahaRERA Registration. The respondent has further contended that there is no any restriction for the advertisement of unregistered project as it is NA layout. Lastly, the respondent has contended that there is no violation of the Act on his part and prayed that no any liability be fastened on this respondent on account of the impugned advertisement, dated 03.12.2023.

3. Adv. Mr. Anand Mamidwar has appeared on behalf the respondent-promoter. He has reiterated the contentions raised out by the respondent in his reply. Learned Adv. Mr. Mamidwar on behalf of respondent has submitted that the respondent has obtained the approved layout of the project in question and since it is N.A. plotted scheme, registration under Section 3 of the Act is not required as per the Circular No.25/2019 issued by the MahaRERA Authority. Learned Adv. Mamidwar has further relied upon the approval given by the Town Planning & Valuation Department, dated 30.08.2023 furnished on record.

4. Perused the impugned advertisements, dated 03.12.2023 and 15.12.2023. It is for two projects issued by the respondent, wherein both these projects are claimed to be of Collector sanctioned N.A. Plots. Perused the Approval given by the Sub-Divisional Officer, Parbhani bearing Approval No. RPPAR/LF/2023/APL/00021, dated 30.08.2023. The said approval has been given under Section 18/45 of the Maharashtra Regional & Town Planning Act, 1966.

5. Section 18 of the MRTTP Act of 1966 deals with restriction on change of user of land or development thereof. Section 18 of the said Act is reproduced hereunder.

"18. (1) No person shall, on or after the publication of the notice that the draft Regional plan has been prepared or the draft Regional plan has been approved, institute or change the use of any land for any purpose other than agriculture or carry out any development in respect of any land without the previous permission,—

(i) in case the land is situated in the limits of Municipal Corporation or a Municipal Council, or a Nagar Panchayat or a Special Planning Authority or any other planning authority, of such Municipal Corporation or Municipal Council, Nagar Panchayat or Special Planning Authority or other planning Authority, as the case may be, or

(ii) in case the land is situated in the gaathan, within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966, of the village panchayat concerned, or

(iii) in case the land is situated in areas other than those mentioned in clauses (i) and (ii) above, of the Collector of the District:

Provided that, the Collector may delegate his powers under this clause to an officer not below the rank of Tahsildar.



6. Section 45 of the MRTP Act of 1966 deals with the grant or refusal of permission. Sub-section (1) states that on receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing (i) grant the permission unconditionally, (ii) grant the permission subject to such general or special conditions as it may impose with the previous approval of the State Govt.; or (iii) refuse the permission.

7. Section 42 of the Maharashtra Land Revenue Code, 1966 ( hereinafter referred to as "MLR Code, 1966" ) deals with permission for non-agricultural use. Section 42 of the MLR Code, 1966 is reproduced hereunder :-

"42. (1) No land used for agriculture shall be used for any non-agricultural purposes; and no land assessed for one non-agricultural purpose shall be used for any other non-agricultural purpose or for the same non-agricultural purpose but in relaxation of any of the conditions imposed at the time of the grant or permission for non-agricultural purpose, except with the permission of the Collector.

[(2) Notwithstanding anything contained in sub-section (1), no such permission shall be necessary for conversion of use of any agricultural land for the personal bona fide residential purpose in non-urban area, or for the micro enterprise as defined in clause (h) of Section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 excluding (a) the area mentioned in clause (2) of the Explanation to section 47A, as a peripheral area of the Municipal Corporation or the Municipal Council ; excluding (b) the area falling within the control line of the National Highways, State Highways, District Roads or Village Roads ; (c) the areas notified as the Eco-sensitive Zone by the Government of India.]"

8. Admittedly, the final approval dated 30.08.2023 has not been issued under Section 42 of the MLR Code, 1966. It has been issued under the MRTP Act, 1966 wherein "Appendix D-3 Form for final approval to **the land sub-division/layout** mentioned therein at the top. Para 1 thereof states that **"It shall be the responsibility of the owner to carry out all the development work including construction of roads, sewer lines, water supply lines, culverts, bridges, street lighting, etc. and hand it over to the Planning Authority/Collector after developing them to the satisfaction of the Authority."** Therefore, it cannot be termed as **"N.A. permission"** under Section 42 of the MLR Code, 1966. Moreover, the impugned advertisement does not have mention of the City Survey No./Survey No./Revenue Survey No./Gat No. Therefore, it cannot be said that the land bearing Gut No.95, Mouje Brahmanaon is the same land under the project for which the impugned advertisement has been published.
  
9. 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;**
  
10. 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. This project is of plotting scheme. It has been mentioned in the advertisement that the land under the project is having Collector N.A. sanction.

11. The respondent has relied on the Circular No.25/2019, dated 11<sup>th</sup> October, 2019 issued by the MahaRERA Authority. This Circular clarifies the transactions / projects which do not require the MahaRERA Project Registration for Agreement for Sale/Sale Deed Registration. The relevant portion of the said Circular is reproduced as under :-

**"I. Real Estate Projects that are excluded from MahaRERA Registration.**

**3. Real Estate Projects where the Promoter has received Completion Certificate/Occupancy Certificate/N.A. (in case of plotted development) from Competent Authority), anytime before Agreement for Sale/Sale Deed Registration."**

12. This is plotted development project. However, in the present case there is no any N.A. Order issued by the Competent Authority under Section 42 of the MLR Code, 1966. The learned Advocate for the respondent is wrongly interpreting the Final approval of sub-division layout of the land as N.A. Order, which is difficult to accept.

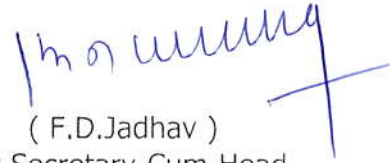
13. The respondent has further relied upon the ruling of the Hon'ble MahaRERA Authority in case of Suo-Motu Advertisement Case No.31/2023, dated 26.04.2023. Perused the Order, dated 26.04.2023 passed in Suo-Motu Advertisement Case No.31/2023 passed by the Hon'ble Secretary, MahaRERA, Mumbai in the matter of Shree Developers, wherein the Hon'ble Authority has observed that the project is plotted development and N.A. order was obtained on 01.11.2022, the promoter is not in violation of Section 3 of RERA. In the said case, the promoter has published advertisement of his project on 21.03.2023.



The N.A. order was obtained on 01.11.2022 i.e. before publication of the said advertisement. Therefore, the Hon'ble MahaRERA Authority was pleased to hold that the promoter is not in violation of RERA. In the instant case, there is no any N.A. order obtained by the promoter. Therefore, there is no substance in the submission of the respondent that the project is excluded from registration as mandatory under Section 3 of the Act, 2016. Needless to state that the facts in the aforestated Advertisement Case No.31/2013 are different than the facts of the present case in hand and therefore, the ratio laid down therein will not be applicable to the facts of this case.

14. In this matter, it is proved that this promoter had published advertisement. It is also proved that the impugned project was/is not registered with MahaRERA. Therefore, taking into consideration the facts and circumstances of the present case it can be said that this promoter is in clear violation of Section 3 of the Act of 2016.
15. Considering the facts *vis-a-vis* law discussed hereinabove, it can be said that it has been proved beyond reasonable 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.
16. Therefore, it is hereby directed that a written communication be sent to the concerned Planning Authority for the purpose of ascertaining whether the promoter has obtained any requisite authorization for the aforementioned project, and no additional authorization shall be granted for the said project until such time the aforementioned project has been duly registered with MahaRERA or obtains full occupancy certificate/completion certificate or N.A. order from competent authority. Moreover, it is directed that the concerned 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 obtains full completion certificate or N.A. order from competent authority.



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