

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

**SUO MOTU ADVERTISEMENT/  
PUNE CASE NO. 158 OF 2023**

MahaRERA on its own Motion .... Complainant

Versus

Shree Venkatesh Malhar Builder  
'Swarajya-Malhar'  
Unregistered Project .... Respondent

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

Appearance :- Adv. Mr. Rameshwar Dixit for Respondent.

**ORDER**

9<sup>th</sup> January, 2024  
(Through Video Conferencing)

1. MahaRERA has issued show cause notice, dated 01.12.2023 to the Respondent-Promoter as to why penalty should not be imposed upon him under Section 59 of the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016" for the sake of brevity) for publishing advertisement of his real estate project "Swarajya-Malhar" situated at Bale, Solapur in daily newspaper "Lokmat", on dt. 12.11.2023 without registering the same with MahaRERA, and thereby violating the provision of Section 3 of the Act, 2016.
2. In pursuance of the aforesaid show-cause notice, Respondent-Promoter has filed his reply, dated 04.01.2024. The Respondent has contended in his reply that the Asst. Director, Town Planning, Solapur has granted preliminary approval to the layout on 04.03.2020. It is further contended in the reply by the promoter that the Tashildar, North Solapur has granted N.A. permission on 17.03.2022 and the final approval to the said layout has been granted on 11.03.2022. The respondent-promoter has further contended that the intention of the promoter is only to sell the plots exclusively. The respondent has further contended that the promoter has

constructed a structure on one of the plot of the said land as their site office only and in the impugned advertisement, the promoter just wished to suggest the prospective buyers the utilization of the plot by either constructing a bungalow, a row-house or a simple home as per their wish and need. The respondent has also contended that as per the Circular No.25/2019, dated 11.10.2019 issued by the MahaRERA, the 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, such projects are excluded from MahaRERA Registration. The respondent has also contended that the Solapur Municipal Corporation issued N.A. Sanad under Section 42A , dated 17.02.2022 and on 11.03.2022 granted final sanction. The respondent has contended that the advertisement only shows that the plot purchaser can construct a bungalow lawfully in the project however there is no sell of row house, bungalow or constructed unit. The promoter has contended that the said project does not need to register with MahaRERA as it is of open plots with requisite N.A. permission and sanctioned layout. Lastly, it is submitted by the promoter that no penal action under Section 59 of the Act, 2016 is required against the promoter.

3. Adv. Mr. Rameshwar Dixit appeared on behalf of respondent-promoter. Heard Adv. Mr. Rameshwar Dixit at length. He has reiterated the contentions made out in the reply by the Respondent-promoter. He has argued that the project has received N.A. order and final approval from the competent authority much prior to the impugned advertisement. There is no any intention of the promoter to sell any constructed unit, but the project is exclusively of open plots. He has further submitted that the advertisement has specific mention of Solapur Municipal Corporation final sanctioned layout number and date and the plot is for 2 & 3 BHK Row Bungalow, which clearly suggests the size of the plot for 2 & 3 BHK Row Bungalow.

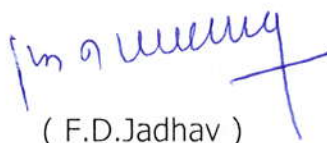
4. The respondent-promoter has furnished N.A. Sanad, dated 17.02.2022 issued by Tahsildar, North Solapur, final sanction letter, dated 11.03.2022 to

the layout for residential use issued by Solapur Municipal Corporation, 7/12 extracts of the various plots from S.No.2/3 of village Bale, Tal. North Solapur, District Solapur, Index-II of plots sold from the said sanctioned layout.

5. Perused the N.A. order, dated 17.02.2012 issued by the Tahsildar, North Solapur. The said order has been issued under Section 42-A of the Maharashtra Land Revenue Code, 1966 on certain terms and conditions. Also perused the final approval to the sanctioned layout issued by the Asst. Director, Town Planning, Solapur Municipal Corporation, dated 11.03.2022. The sanctioned layout is also furnished on record. The Index II produced on record also shows that the promoter has sold open plots.
  
6. 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. Para 1 of said Circular deals with "Real estate projects that are excluded from MahaRERA Registration". Serial No.3 therein 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 (emphasis supplied). In other words, real estate project where promoter has received N.A. order in relation to plotted development prior to the date of advertisement, the said project can be said to be 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. However, Serial No.3 in the earlier circular, dated 11.10.2019, remained unchanged and still in force till the date. By invoking Serial No.3 from circular No.25/2019, dated 11.10.2019, it can be said this project squarely falls within the scope of serial No.3 of Para 1 and therefore, it can be

said, this project needs no registration as it has already received N.A. order much prior to publishing advertisement.

7. Considering the evidence on record adduced by the respondent-promoter and the provision of the Act, 2016 and Serial No.3 from para 1 of circular No.25/2019, dated 11.10.2019, it can be said this project squarely falls within the scope of serial No.3 of Para 1 of Circular No.25/2019. Resultantly, this project needs no registration as it has already received N.A. order from Competent Authority prior to publishing advertisement.
8. In view of the above, it can be said, no case is made out against the respondent-promoter for violation of Section 3 of the Act, 2016. There is no iota of evidence to prove that this respondent has breached the Section 3 of the Act of 2016. Under these circumstances, Section 59 of the Act of 2016 cannot be invoked in the matter. Consequently, the penalty under Section 59 of the Act, 2016 cannot be imposed in the present matter.
9. The matter therefore, stands disposed off without imposing any penalty.

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