

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO. 143 OF 2023**

MahaRERA on its own Motion Complainant
Versus
Chandrakant Satish Maheshwari. Respondent-Agent
"SHIKSHAK NAGAR"

MahaRERA Real Estate Agent Registration No.A49900009229

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

Appearance :- Adv. Nidhi Nawal for Respondent-Agent

ORDER

19th December, 2023
(Through Video Conferencing)

1. Present case has been initiated by MahaRERA Suo-motu against the respondent-agent for publishing advertisement of the real estate project "Shikshak Nagar" situated at Gat No.223/3, Savkheda Shivar, Jalgaon in daily newspaper "Lokmat" on 19.10.2023, which is not registered with MahaRERA, and thereby violating the provision of Section 10(a) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "Act of 2016), Rule 14 of the Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017 and directions issued by the MahaRERA under Order No.46B/2023 read with Order No.46/2023.
2. In pursuance of the aforesaid advertisement and in exercise of the powers delegated by MahaRERA under Section 81 of the Act, 2016, show cause notice, dated 08.11.2023 was issued to the respondent-agent for taking action of imposing penalty against him under Section 62 and Section 65 of the Act, 2016.
3. The Respondent-agent has filed reply on 29.11.2023. He has contended in his reply that Mr. Krishna Raghunath Khadke, the owner of the lands approached him for promoting the sale for which the N.A. order

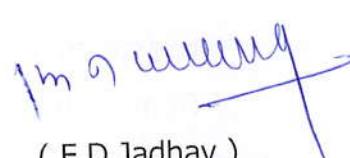
was issued in 2001 and to be sold "As is where is basis". Later on, he has published advertisement in the daily newspaper 'Lokmat'. According to the respondent, the said advertisement is not in contravention of the provision of the law, as the advertisement relates to the plot bearing Gat No. 223/3, Sector 3, admeasuring 36.05 Hectar of land, which was converted into Non-Agricultural land in 2001 vide N.A. Order, dated 12.01.2001 issued by the District Collector, Jalgaon.

4. The Respondent has further contended that the Hon'ble Supreme Court in the matter of **Newtech Promoters & Developers Pvt.Ltd. v/s. State of U.P. – Civil Appeal No. (S) 6745/2021** has been held that the RERA Act does not apply to the projects already completed or to which the completion certificate has been granted at the commencement of the Act. It is further contended by the respondent that the said plot does not fall within the jurisdiction of RERA Act and hence according to him, RERA Authority has no powers to adjudicate on the said subject matter. It is further submitted by the respondent that after commencement of the Act, 2016, no new development was made on the said plot and therefore, the respondent and the land owner were under bonafide belief that since their project is not 'ongoing project', no registration under the Act, 2016 would be required since the N.A. order has been received in 2001.
5. Advocate Nidhi Nawal has appeared on behalf of the respondent. She has reiterated the contentions raised out in the reply filed by the respondent. She has submitted that the land owner Shri Krishna Raghunath Khadke has received N.A. certificate from the District Collector, Jalgaon on 12.01.2001 and since then till this date the owner has not made any development on the project plot. As such according to her, the provisions of RERA Act would not be applicable to the said project since the owner of the said plot has received the N.A. order from the District Collector much prior to the commencement of the Act, 2016. It has further been submitted by the counsel for the respondent that since the provisions of RERA Act are not applicable to the said project, the question of registering the said project with MahaRERA would not arise.

6. The respondent has submitted the copy of N.A. order issued by the District Collector, Jalgaon on 12.01.2001. Perusal of the said N.A. order, it appears that the said N.A. order has been issued to the land owner Shri Krishna Raghunath Khadke, village Savkheda Budruk, Tal. Jalgaon, District Jalgaon Gat No.223/3, admeasuring 3 H. 36.05 Are. The copy of the impugned advertisement is also on record. Impugned advertisement has been published in the daily newspaper "Lokmat" on 19.10.2023. It has been mentioned in the said advertisement that the plot is N.A. layout and the Gat number has been shown as 223/3, Savkheda, Jalgaon.
7. The advertisement mentioned hereinabove has been issued in the 'Lokmat' daily newspaper in respect of the aforesaid real estate project on 19.10.2023 and the N.A. order has been issued by the District Collector much prior to this advertisement as well as much prior to the enforcement of the Act, 2016. This manifestly discloses that the impugned project is no longer "ongoing project". The Hon'ble Supreme Court in the case of **Newtech Promoters & Developers Pvt.Ltd. v/s. State of U.P.** has held in para 40, *inter-alia* that **"the ambit of the Act is to bring all projects under its fold provided that completion certificate has not been issued". It has been further observed in the said para that "those projects under Section 3(2) need not be registered under the Act and therefore, the intent of the Act lingers on whether or not a project has received completion certificate on the date of commencement of the Act."** In view of the aforesaid observation of the Hon'ble Apex Court, this project is not required to be registered with MahaRERA since it has already been received N.A. order from District Collector, Jalgaon much prior to the inception of the Act, 2016.
8. MahaRERA Authority has also issued Circular No.25/2019 and para 1 of the said circular deals with real estate projects that are excluded from MahaRERA registration. Clause 3 of the said para (1) states that real estate project 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. Considering this clause (3) which speaks in respect of N.A. order (in case of plotted development), the project in question appears to be clearly falls within the scope of said clause (3) and hence this project can be said to be excluded from MahaRERA Registration.

9. In view of the above, it can be said that there is no any evidence to prove that this respondent-agent has violated the provisions of Section 10(a) read with Rule 14 as well as MahaRERA Order No. 46B read with 46/2023. Consequently, it goes to show that there is no breach on the part of the respondent-agent under Section 10(a) of the Act, 2016, Rule 14 of the Rules, 2017 and MahaRERA Order No. 46B/2023 read with Order No.46/2023.
10. In view of the above mentioned facts, circumstances, circular of MahaRERA No.25/2019, provisions of the Act, 2016 and judgment of the Hon'ble Supreme Court in the case of Newtech Promoters & Developers, it can be said that no prima facie case is established against this respondent-agent. Therefore, this respondent cannot be held liable for violation of Section 10(a) of the Act, 2016, Rule 14 of the Rules, 2017 and MahaRERA Order No.46B/2023 read with Order No. 46/2023.
11. Consequently, this is not a fit case to impose penalty under Section 62 and Section 65 of the Act, 2016 for violation of Section 10(a) of the Act, 2016, Rule 14 of the Rules, 2017 and MahaRERA Order No.46B/2023 read with Order No. 46/2023.
12. In this background, this case stands disposed off.


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