

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO. 154 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Avishkar Infra

1. 'PANORAMA HILLS'

.... Respondent

2. NANDINI JADHAV NAGAR'

Unregistered Projects

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

Appearance :- Adv. Parth Chande & Adv. Sahil Parandwal for Respondent.

ORDER

5th January, 2024

(Through Video Conferencing)

1. MahaRERA has issued show cause notice, dated 01.12.2023 to the respondent as to why penal action under Section 59 of the the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016") should not be taken against him for publishing advertisement in respect of real estate projects (1) "Panorama Hills" and (2) "Nandini Jadhav Nagar" situated at Shahuwadi, Kolhapur and Kalamba-Gargoti Main Road Touch, Kolhapur in daily newspaper "Lokmat", dated 11.11.2023 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, the respondent-agent has filed his reply on 14.12.2023. It has been contended by the respondent in his reply that the project No.1 i.e. "Panorama Hills" has already received No Objection Certificate on 27th May,2019 along with final approval pertaining to the layout plan which was issued by the Sub-Divisional Officer, Panhala, District Kolhapur declaring use of the project land to be of Non-Agriculture (N.A.). As such the N.A. Certificate has already been received

almost 5 years back in this project. It has been further contended in the said reply that the project was legally completed prior to the date of the advertisement by virtue of receipt of N.A. Order.

3. The respondent has further contended in his reply that the N.A. order in respect of the project No.(2) i.e. "Nandini Jadhav Nagar" has been received on 26.12.2022. The said N.A. order has been issued by the Tahsildar, Karveer, Kolhapur. Furthermore, the final permission certificate, dated 17.03.2023 was issued by the Chief Executive Officer, Kolhapur Urban Area Development Authority, Kolhapur in this project No.(2). Final Permission Certificate indicates the project land to be fit for use of "residential purposes". In view of this, the respondent has contended that the said project No.(2) was also legally completed prior to the date of advertisement. The respondent has further referred the Circular No.25/2019, dated 11.10.2019 and Circular No. 25A/2023, dated 09.06.2023 issued by the MahaRERA. According to the respondent, in view of the said circulars issued by MahaRERA, there is no requirement to register the said projects with MahaRERA and as such according to him, there has been no violation of Section 3 of the Act, 2016. The respondent has further contended that according to Section 9(1) of the RERA, the real estate agent shall be a RERA registered agent in case he wishes to involve in facilitation of sale and purchase of any such inventory being a part of the real estate project that is registered under Section 3 of the Act. However, since the projects in this matter does not fall within the ambit of aforementioned Act, 2016 therefore, according to him, there exists no violation on the part of any such unregistered real estate agents.

4. Adv. Parth Chande and Adv. Sahil Parandwal appeared on behalf of the respondent-agent. They have reiterated the contentions made in the reply. According to the counsels for respondent, since the N.A. orders have already been received by the promoter from the competent Authority prior to publishing the impugned advertisement, there is no requirement of

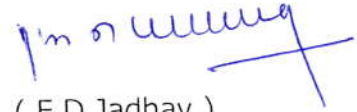
registering these projects with the MahaRERA Authority as per Circular No.25/2019.

5. The show cause notice in this matter was issued under Section 3 of the Act, 2016 as this respondent had not registered these projects with MahaRERA. It clearly indicates the main issue in this matter is registration of the projects with MahaRERA under Section 3. To be more specific, this Authority is examining the limited question as to whether registration of the projects with MahaRERA is necessary or not under Section 3. Therefore, the issue whether unregistered agent can make transaction of sale etc. of the projects which are exempted under Section 3 cannot be considered in this matter and thus it is left open. The learned counsel for respondent has argued that there is a judgment of Hon'ble High Court in this respect. However, the said counsel has failed to give citation of the judgment of the Hon'ble High Court.
6. Perused the documents submitted by the respondent in this matter. So far as regards the project No.1 i.e. Panorama Hills is concerned, the respondent has submitted N.A. order, dated 27.05.2019 in respect of Gat No. 124 of village Manoli, Shahuwadi, District Kolhapur under Section 44 of the Maharashtra Land Revenue Code, 1966 issued by the Sub-Divisional Officer, Panhala, District Kolhapur. Perusal of the said N.A. order clearly shows that N.A. permission has been granted by the competent authority on certain terms and conditions. The said N.A. permission was granted in the year 2019 i.e. much prior to publishing the impugned advertisement.
7. The respondent has also submitted N.A. order under Section 42-A(1)(a) of the Maharashtra Land Revenue Code, 1966 dated 26.12.2022 issued by the Tahsildar, Karveer, Kolhapur in respect of Survey No.473, Mouje Kalambe, Tal. Karveer, District Kolhapur. Respondent has also submitted final layout approval order dated 17.03.2023 issued by the Chief Executive Officer, Kolhapur Urban Area Development Authority, Kolhapur.

8. Considering the aforesaid N.A. orders issued by the competent authorities in respect of both projects manifestly indicates that the said orders have been issued prior to the issuance of advertisement in this matter. The MahaRERA Authority has issued Circular No.25/2019, dated 11.10.2019 in respect of clarification regarding registration of agreement for sale/sale-deed for real estate projects. 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 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. The MahaRERA has further issued Circular No.25A/2023, dated 09.06.2023 and thereby supplements Circular No.25/2019, dated 11.10.2019 regarding Serial No.1 and 2 enumerated therein under the heading 'real estate projects that are excluded from MahaRERA Project Registration'. However, Clause No.3 of para (1) of the Circular No.25/2019 remains as it is. On going through the said Clause No.3 of para (1), it is clear that the project which has received N.A. Certificate from the Competent Authority are excluded from MahaRERA Registration. In view of this, both these projects in this matter can be said to be exempted from the registration with MahaRERA. Besides, this respondent is not a promoter. He is unregistered real estate agent. Therefore, Section 3 of the Act will not attract in the matter.
9. Considering the documentary evidence on record adduced by the respondent-agent and the provisions of the Act, 2016 and also Clause No.3 of Para (1) of the Circular No.25/2019, it can be said that these projects squarely falls within the purview of Clause No.(3) of para (1) of the Circular No.25/2019 (supra). Resultantly, these projects needs no registration as it has already received N.A. permissions from the Competent Authority prior to publishing the impugned advertisement.
10. In view of the aforesaid discussion and the documentary evidence as well as circulars issued by MahaRERA, there is no case made out against the

respondent for violation of Section 3 of the Act, 2016. There is no iota of evidence to prove that this respondent has breached Section 3 of the Act, 2016. Under these circumstances, Section 59 of the Act, 2016 cannot be invoked in the matter. Consequently, penalty under Section 59 of the Act, 2016 cannot be imposed in the present matter.

11. The matter therefore, stands disposed off without imposing penalty.



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