

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO. 82 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Navrang Farms (JPL Associates)
"Navrang"
(Unregistered Project)

.... Respondent

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

Appearance :- C.A. Mr. Sumit Kapure

ORDER

19th January, 2024

(Through Video Conferencing)

1. MahaRERA Authority has issued show-cause notice on dated 24.07.2023 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") should not be imposed upon him for publishing the advertisement in daily newspaper "The Times of India" on 23.07.2023 in respect of real estate project by name "Navrang" situated near Khadakwasla Dam, Pune, without registering the same with MahaRERA, and thereby violating the provisions of Section 3 of the Act, 2016.
2. The respondent-promoter has submitted his initial reply, dated 18.08.2023 contending therein that the lands of the aforesaid project is agricultural land and N.A. is applied with the Competent Authority and necessary charges are paid by challan. The respondent-promoter has also contended that internal roads, wall compound, water connection, infrastructure for the electricity connection is done, club house is also done and only street light and actual electricity connection is remaining. The respondent has further contended that the advertisement was part of

the warm up procedure undertaken by its marketing team wherein a package of advertisement purchased for the media space. The respondent has further stated in his reply that the key partners of the promoter were out of station and the impugned advertisement for this project was given inadvertently and without realizing that it will result in breach of Section 3 of the Act and may attract penalty under Section 59 of the Act. The promoter has further contended that the project is already completed and certificate from the architect substantiates this fact. The respondent has contended that his act was out of ignorance and not intentional and the advertisement was not published with intent to defraud allottees or common people. Lastly, the promoter has requested to condone the breach of the Section 3 of the Act.

3. The respondent-promoter has further filed second reply, dated 18th January, 2024 whereby it is contended that the promoter has received approval from the Competent Authority i.e. Pune Metropolitan Region Development Authority as on 04.06.2023. The respondent has further mostly repeated the contentions raised in the earlier reply that the land was an agricultural land and the advertisement was given inadvertently.
4. C.A. Mr. Sumit Kapure appeared on behalf of the respondent-promoter. He has also reiterated the contentions raised out by the respondent in his replies. Mr. Sumit Kapure has submitted that the land is agricultural land. Mr. Sumit Kapure has further contended that the promoter has applied for N.A. permission from the competent authority and for which necessary development charges are paid.
5. Section 2 of the Act, 2016 deals with 'definitions'. Section 2(zn) of the said Act, 2016, defines the expression '**real estate project**', which reads as under :-

"2.(zn) - the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of

land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto."

6. MahaRERA Authority in the complaint No. SC10000227 has held that, "the subject plot purchased by the complainant is an agricultural land as no Competent Authority has granted any N.A. order or permission otherwise for development of the said land". It was further held by MahaRERA Authority that the subject project was not a real estate project and is therefore, not liable for registration under Section 3 of the Act." This order of MahaRERA Authority was challenged before the MahaRERA Appellate Tribunal. The Hon'ble Appellate Tribunal in the case of Mohammed Zain Khan v/s. Emnoy Properties India and others, has held *inter-alia*, as under :-

"Since the first project continues to be an agricultural land in the absence of any orders, there is no need to register the said projects with the MahaRERA Authority."

7. The Hon'ble MahaRERA Appellate Tribunal in the aforesaid matter, in para 13(v) has held as under :-

"In above circumstances, in agreement with the Authority and limited to the facts of this case, it is concluded that land pertaining to the First Project continues to be an agricultural land in the absence of any N.A. orders for its development. Therefore, we find no illegality or infirmity as such in the view taken by the Authority to hold that the First Project is

not a real estate project for the reasons stated in the impugned order and therefore, the same is not liable to be registered under the Act."

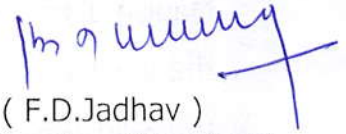
8. The Hon'ble MahaRERA Appellate Tribunal has further *inter-alia*, held in para 13(vii) as under :-

"The contention of the Complainant, that he has been denied reliefs under the Act by the Authority by taking erroneous view (in para 13 of the Order) that provisions of the Act are applicable to the registered projects only, itself appears to be erroneous. Simply put, in our view, provisions of the Act shall apply to i) Registered projects, being liable to be registered and ii) projects liable to be registered but not registered (unregistered). However, in case a project is unregistered being not liable to be registered, as is the case in this appeal, provisions of the Act shall not apply to such a project. (Emphasis supplied).

9. C.A. Mr. Sumit Kapure though incorrectly submitted that the promoter has received approval from PMRDA on 04.06.2023, in fact the development permission and commencement certificate indicates it has been issued by PMRDA on dated 04.09.2023. Perused the Development permission and Commencement Certificate, dated 04.09.2023 thereby the layout of Resort (Commercial) and building construction permission has been approved for land admeasuring 22900 sq. mtrs. from land Gat No.534 and others of village Osade, Tal. Velha, District Pune on certain terms and conditions. This development permission has been granted after the impugned advertisement published in respect of this project. It manifestly shows that there was no such development permission by Competent Authority at the time of publishing impugned advertisement.

10. Respondent has filed 7/12 extracts of the lands bearing Gat Nos. 534, 536, 537, 541, 543 and 544 of village Osade, Tal. Velha, District Pune. The said lands owners are Suresh Pallod, Madhusudan Laddha and Manish Jakhotiya. On perusal of the 7/12 extracts explicitly shows that the lands are agricultural lands and the owners thereof are taking crops in the said lands. This sufficiently proves that these lands are agricultural lands.
11. Considering the documentary evidence adduced by the respondent viz. the 7/12 extracts of the lands, layout approval from the Competent Authority, as well as judgment and order passed by the MahaRERA Authority as well as MahaRERA Appellate Tribunal in the aforesaid matter, it is crystal clear that the lands of this project were/are agricultural lands till the date of impugned advertisement therefore, do not fall within the four corners of the definition of the 'real estate project', as defined under Section 2(zn) of the Act of 2016. Consequently, it cannot be said that the respondent has breached Section 3 of the Act, 2016.
12. In view of the above, it can be said that since there is no prima facie evidence to prove that respondent has contravened the Section 3 of the Act, it can be said that the case against the respondent is not established. As such there is no violation of Section 3 of the Act of 2016 in regards to this project so long as the lands in question remained agricultural lands and no development permission is obtained to develop the said lands. If development permission is received from Competent Authority to develop the said lands, then the project has to be registered with MahaRERA. This promoter has to take into considerations this fact and take suitable action accordingly for the purpose of registering the project. Since in this matter, development permission was not received at the time of impugned advertisement and lands are/were agricultural lands, therefore, this case will not fall within the scope of Section 3 of the Act, 2016. Considering this, the penalty provision of Section 59 of the Act of 2016 for the purpose of imposing penalty would not attract in this matter.

13. The matter stands disposed off accordingly.



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