

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO. 130 OF 2024**

MahaRERA on its own Motion

.... Complainant

Versus

1. New Shree Pawanputra Developers
2. Houssed Technologies Pvt.Ltd.

.. Respondent-Promoter
.. Respondent-Agent

Project – Shree Gajanan Residency

MahaRERA Real Estate Project Registration No. P51600050411

MahaRERA Real Estate Real Estate Agent Registration No.A51800043621

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

Appearance :- Kartiki Sagar, Sales Representative for promoter.
Adv. Krishna Agarwal for Real Estate Agent.
Mr. Utsav Ladiwala, director of Houssed Technology Pvt.Ltd.

ORDER

18th October, 2024
(Through Video Conferencing)

1. The Advertising Standards Council of India (ASCI) has issued an intimation letter, dated 19.06.2024 to the respondent and thereby informed that the advertisement published by the respondent on Property Portal in respect of a real estate project under the name "Shree Gajanan Residency" does not contain MahaRERA Website address and QR Code and the same is considered to be prima facie in contravention of Real Estate (Regulation & Development) Act, 2016. ASCI has further directed the respondent to ensure that the said advertisement has been modified or withdrawn no later than June 28, 2024.
2. Since the respondent has not complied with the directions issued by the ASCI vide intimation letter, dated 19.06.2024, the

ASCI has sent mail, dated 15.07.2024 and referred the matter to MahaRERA, Pune for initiating the suo-motu complaint/proceeding against the respondent for disposal according to law.

3. On the basis of mail dated 15.07.2024 sent by ASCI and on perusal of the impugned advertisement, it has been transpired that the impugned advertisement though contains RERA Registration number, it does not contain Maharera website address, and the QR Code. Therefore, it prima-facie discloses contravention of provisions of Section 11(2) of the RER Act, 2016 and also of the MahaRERA Order No.46/2023, dated 29.05.2023 and MahaRERA Order No.46A/2023, dated 25.07.2023 on the part of the respondent-promoter. In these set of facts, a notice of hearing has been sent to the respondent on 06.08.2024 for attending the virtual hearing, dated 16.08.2024 at 11.30 a.m. and also called upon to furnish his reply.
4. Respondent-promoter has appeared before this Authority and filed his reply on 12.08.2024. He has contended that he has checked the advertisement link and contacted the publisher of impugned advertisement and informed that the respondent-promoter has not given any advertisement to them nor made any payment for the same, so also no any idea has been given to the promoter before publishing the impugned advertisement. The respondent-promoter has also filed on record copy of a letter, dated 14.08.2024 issued by the Respondent-Agent in the name of promoter, wherein it has been contended by the respondent-agent that he confirms that M/s. New Pawanputra Developers Ltd. did not publish the advertisement and upon receiving intimation from promoter, the respondent-agent has promptly taken action to withdraw the advertisement from the advertisement link.
5. After perusing the reply, dated 12.08.2024 filed by the Respondent-promoter, a notice of hearing was issued to the Respondent-Agent on 28.08.2024 and directed to attend the virtual hearing, dated 13.09.2021.

Accordingly, respondent-agent appeared in the matter and filed his reply, dated 16.09.2024 and contended that the respondent-agent has promptly acted to remove the specific project identified in the notice on June 25, 2024 within the stipulated period.

6. Kartiki Sagar, Sales Representative of Respondent-promoter has appeared on behalf of promoter and submitted that the promoter has not published the impugned advertisement, but it is the respondent-agent, who has published it without the consent/approval of the promoter and therefore, the promoter is not liable for contravention of any of the provisions of Act, 2016 and also contravention of the MahaRERA Order No.46/2023.
7. Adv. Krishna Agarwal appeared on behalf of the respondent-agent and has reiterated the contentions made out by the respondent-agent in his reply. Adv. Agarwal has submitted that respondent-agent has promptly deleted the impugned advertisement within the timeline given by the ASCI, but fairly admitted that ASCI was not informed accordingly, but the respondent-agent has informed the respondent-promoter regarding immediate withdrawal of the impugned advertisement from its portal. Adv. Agarwal has further submitted that the respondent-agent was persistently facing a technical glitch for generating the QR Code in the impugned advertisement and therefore, made correspondence with the MahaRERA Helpdesk, but not been able to resolve the issue. Adv. Agarwal urged that since the impugned advertisement has been withdrawn within the timeline given by ASCI, the respondent-agent cannot be said to have contravened the provisions of Section 11(2) of the Act, 2016 and the MahaRERA Order No.46B/2023,dated 21.08.2023.
8. Perused the impugned advertisement. It does contain the MahaRERA Project Registration number, but does not contain the MahaRERA website address and also QR Code. The question of violation of provisions of Section 11(2) of the Act, 2016 and the MahaRERA Order No.46A/2023, dated 29.05.2023 and MahaRERA Order No. 46B/2023,dated 21.08.2023 are involved in the matter.

9. Section 11(2) of the RERA Act, 2016 is material while considering first charge in the matter. Section 11(2) of the Act, 2016 reads as under :-

"Section 11(2) :- The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto."

10. On careful perusal of the Section 11(2) manifestly shows it is imperative on the part of the promoter to mention the RERA Registration number of the project as well as MahaRERA website address prominently in the advertisement issued by him.
11. On perusal of Section 11(2), it palpably shows that it will come into play when the promoter has published the advertisement of his project. As per the said provision, it is incumbent on the promoter to mention prominently the website address of the Authority and include the registration number obtained from the Authority, when he published the advertisement. However, in this matter, this promoter has not published impugned advertisement. Respondent No.2-agent has also admitted that promoter has no role in publishing impugned advertisement. It is the respondent No.2 registered agent who has allegedly published advertisement. Therefore, this provision of Section 11(2) would not attract in this matter and promoter cannot be held liable for violation of Section 11(2) of the Act, 2016.
12. The further charge leveled against the respondent-promoter for not displaying the QR Code in the impugned advertisement and thereby contravening the directions issued in MahaRERA Order

No.46/2023, dated 29.05.2023 and MahaRERA Order No.46B/2023,dated 21.08.2023.

13. MahaRERA vide Order No.46/2023, dated 29.05.2023 issued following directions to the promoters in regard to QR Code.

- The promoter shall prominently display QR Code on each and every real estate project promotion/advertisement published after "1st August, 2023".
- The QR Code must be published in a manner that is legible, readable, and detectable with software application.
- The QR Code must be published besides the MahaRERA Registration Number and the Website address.

The mediums of the promotion/advertisement have also been described in the said Order.

14. MahaRERA has also issued Order No.46B/2023, dated 21.08.2023,wherein it has been made clear that the directions issued by the MahaRERA Order No. 46/2023, dated 29.05.2023 and MahaRERA Order No. 46A/2023, dated 25.07.2023 shall mutatis mutandis apply to all registered real estate agents.

15. Perused the impugned advertisement. Admittedly, it does not display QR Code as mandated under the MahaRERA Order No.46/2023 and 46B/2023. Thus it shows the advertisement is in contravention of the directions issued by MahaRERA vide Order No.46/2023, dated 29.05.2023 and 46B/2023, dated 21.08.2023. However, in view of the contentions made by the respondent-promoter, the impugned advertisement has not been published by him. The respondent-agent has also voluntarily admitted that the impugned advertisement has been published by him. In this

background this respondent-promoter cannot be said to be liable for such violation of QR Code.

16. Now, we have to consider whether the respondent-agent is liable for contravention of the directions issued in the MahaRERA Order No.46/2023 and 46B/2023 or not? The respondent-agent has contended in his reply that he has deleted the impugned advertisement within the timeline given by ASCI and therefore, the charges leveled cannot be attracted against him. In support of his contentions, he has filed on record letter, dated 25.06.2024 issued by him to the promoter, wherein he has informed the promoter that he has taken action to withdraw the advertisement from the advertisement link. The respondent-agent has further contended that he was persistently unable to generate QR Code due to technical glitch and seeking assistance from MahaRERA. In support of his contentions, respondent-agent has filed on record, the correspondence made by him with Helpdesk, MahaRERA by email, dated 31.07.2024, 12.08.2024, 20.08.2024.
17. It has not been mentioned specifically in the letter, dated 25.06.2024 issued by the respondent-agent to the promoter that he has withdrawn the impugned advertisement on or before 25.06.2024. No any proof has been produced by the respondent-agent that he has withdrawn the impugned advertisement on 25.06.2024 or no later than 28.06.2024 i.e. the timeline given by ASCI. On the contrary, the reply filed by the promoter dated 12.08.2024 speaks that they have checked the link of impugned advertisement etc. to which the respondent-agent has narrated him that he would inform after consulting with the seniors. Had the respondent-agent really withdrawn the impugned advertisement on 25.06.2024 or on or before 28.06.2024, the promoter would have certainly mentioned in his reply that the agent has withdrawn the impugned advertisement before its timeline. This clearly suggests

that till 12.08.2024 the respondent-agent has not withdrawn the impugned advertisement which was not displaying the QR Code. The promoter along with his reply, dated 12.08.2024 has filed on record letter, dated 14.08.2024 issued by the respondent-agent to their firm, mentioning the same contents in the alleged letter, dated 25.06.2024. This also clearly suggests that the letter, dated 25.06.2024 might have prepared with a view to defend the charges against the agent. Even during the course of hearing dated 04.10.2024 when the advertisement link was opened, the advertisement was still appearing there wherein the QR Code was also not displaying. Therefore, considering the evidence on record, it can be said there is sufficient evidence on record to prove that the respondent-agent has not withdrawn the impugned advertisement on or before 25.06.2024 or within the timeline given by ASCI.

18. The next defence taken by the respondent-agent in his reply and also during the arguments that he could not generate QR Code due to technical glitch and therefore, he has approached Helpdesk, MahaRERA seeking assistance time to time for the same also cannot be accepted because if the agent has any technical glitch to generate QR Code, he ought to have withdrawn the impugned advertisement immediately instead seeking assistance from Helpdesk, MahaRERA even after the timeline given by ASCI. When the promoter has contended that he has never given consent/permission to the agent to publish the impugned advertisement, it is not understood as to why the agent has sought assistance from MahaRERA without permission/consent of the promoter ? It is to be mentioned here that it is not the case of the agent that the promoter has thereafter given him permission/consent to publish the impugned advertisement and vice-versa.

19. Considering the facts and evidence on record, the contravention on the part of respondent-promoter for not displaying

QR Code as well as violation of Section 11(2) have not been proved. However, the evidence on record unequivocally shows the violation on the part of respondent-agent for not displaying the QR Code in the impugned advertisement has been proved beyond reasonable doubt. Therefore, penalty under Section 63 of the Act, 2016 has to be invoked against the respondent-agent for violation of QR Code only.

20. Penalty of Rs. 20,000/- under Section 63 of the Act, 2016 has been imposed on the respondent-agent for contravention of MahaRERA Order No. 46/2023, dated 29.05.2023 read with MahaRERA Order No.46B/2023, dated 21.08.2023.
21. The respondent-agent shall pay the aforesaid penalty within 15 days from the date of this order.
22. The Technical and Finance Department of the MahaRERA Authority shall verify the payment of the said penalty before processing any application by the respondent-agent for renewal, corrections, change of name etc., with respect to his registration as a real estate agent.
23. The matter stands disposed off accordingly.

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