

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO. 71 OF 2024**

MahaRERA on its own Motion

.... Complainant

Versus

Rachana Lifespaces

.... Respondent-Promoter

**NAME OF THE PROJECT : Bellacasa Royale Tower A-Type "A"
MahaRERA Project Registration No.P52100027124**

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

Appearance :- Adv. A.B. Khandekar for Respondent-promoter.

ORDER

9th August, 2024
(Through Video Conferencing)

1. The Advertising Standards Council of India (ASCI) has issued an intimation letter, dated 21.05.2024 to the respondent and thereby informed that the advertisement published by the respondent on Website in respect of a real estate project under the name "Bellacasa Royale Tower Type "A"" does not contain 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 ASCI has further directed the respondent to ensure that the said advertisement has been modified or withdrawn no later than May 30, 2024.
2. Since the respondent has not complied with the directions issued by the ASCI vide intimation letter, dated 21.05.2024, the ASCI has sent mail, dated 14.06.2024 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 14.06.2024 sent by ASCI, a notice of hearing has been sent to the respondent on 25.06.2024 for attending the virtual hearing, dated 05.07.2024.
4. Respondent-promoter has filed his say, dated 16.07.2024. It is contended by the respondent that intimation letter dated 21.05.2024 is not served to the respondent and therefore, this complaint is premature. It is further contended by the respondent that the said project is lodged in 2021 and registered with MahaRERA in July, 2021. It is contended that on the date of lodging of the said project, the MahaRERA Order No.46/2023, dated 29.05.2023 and 46A/2023, dated 25.07.2023 were not in existence. It is also contended by the respondent that the Tower 'A' was sold out in the year December, 2022 and therefore, MahaRERA Order No. 46/2023, dated 29.05.2023 and 46A/2023, dated 25.07.2023 are not applicable. It is further contended by the respondent that the advertisement in question was posted on website prior to publication of the Order No.46A/2023, dated 25.06.2023 however, no QR Code was in existence at that time and there has been no violation of any Rules or Acts pertaining to the QR Code. The respondent has further contended that the respondent deeply regret the unintentional oversight of not ensuring the complete visibility of the QR Code in the advertisement.
5. Adv. A. B. Khandekar has appeared on behalf of the respondent. He has reiterated the contentions raised out by the respondent in his reply. Learned Adv. A.B. Khandekar has argued that the intimation letter from ASCI has not been received by the respondent and therefore, the present complaint is premature. He has further argued that the project is sold out prior to issuance of MahaRERA Order No.46/2023 and 46A/2023 and therefore, the said Orders are not applicable in the present case. Learned Adv. for the respondent has further submitted that the present complaint is premature. Lastly, learned Adv. for the respondent has submitted that in case this Authority comes to conclusion that there is violation on the part of the respondent, leniency may be shown while imposing the penalty.

6. The charges are leveled against the respondent-promoter for violation of directions issued in MahaRERA Order No.46/2023, dated 29.05.2023 and MahaRERA Order No.46A/2023, dated 25.07.2023.
7. Perused the impugned advertisement on record. From reading the said advertisement, it appears it does not contain QR Code. It certainly denotes violations of the said mandatory provisions by the respondent.
8. MahaRERA Order No.46/2023 and 46A/2023 is required to be discussed for deciding that whether there is violation of the same on the part of the respondent. By MahaRERA Order No. 46/2023, dated 29.05.2023, MahaRERA issued following directions to the promoters.
- 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.

9. MahaRERA has further issued directions vide MahaRERA Order No.46A/2023, dated 25.07.2023, whereby penalty which may be extended up to Rs. 50,000/- subject however to a minimum penalty which shall not be less than Rs. 10,000/- is to be imposed under Section 63 of the Act, 2016 against the promoter who fails to comply with the directions issued by MahaRERA Order No.46/2023.
10. Perusal of the impugned advertisement on record indicates, the QR Code doesn't appear therein. The ground taken by the respondent is that

he has not received the letter of intimation from ASCI and therefore, the present complaint is premature and liable to be dismissed. In support of his contention, respondent has filed on record copy of email dated 05.07.2024 sent from one Dhananjay Patil on behalf of respondent to ASCI and reply dated 15.07.2024 sent by ASCI to said Dhananjay Patil. If the email dated 05.07.2024 is perused it can be seen respondent has informed ASCI that he has not received the intimation letters dated 21.05.2024 and 22.05.2024 and requested to provide email record of the intimation letters issued or served by the ASCI on email addresses sales@rachanalifestyle.com and adminrera@rachanalifestyale.co, as mentioned therein. ASCI by email, dated 15.07.2024 replied the respondent and forwarded 8 complaints to the email addresses provided by the respondent in its email, dated 05.07.2024. The respondent has admitted to have received the said email dated 15.07.2024 sent by ASCI. Now if the intimation letter, dated 21.05.2024 sent by ASCI to the respondent by email is perused, it was sent to the respondent on the email address sales@rachanalifestyle.com and adminrera@rachanalifestyle.com. Therefore, it is clear that the intimation letter, dated 21.05.2024 sent to the respondent on email address sales@rachanalifestyle.com is the same email address to which the respondent by email dated 05.07.2024 has asked ASCI to provide the intimation letter, dated 21.05.2024, and which the respondent has admitted to have received on the same email address. The intimation letter, dated 21.05.2024 had also been sent by ASCI to the respondent on the another email address adminrera@rachanalifestyle.com, which the respondent alleges to have not received. The another email address provided by the respondent to ASCI is adminrera@rachanalifestyale.co, which seems to have created to create the ground of non-receipt of intimation letter from ASCI. This Authority has sent the notice of hearing, dated 25.06.2024 to the respondent on the email addresses provided by ASCI sales@rachanalifestyle.com and adminrera@rachanalifestyle.com. Respondent has admitted to have received the notice of hearing, dated 25.06.2024. In this backdrop it is to be presumed that the intimation letter dated 21.05.2024 sent by ASCI to the respondent on the said email

addresses ought to have been received by the respondent. In this circumstances, the ground taken by the respondent that he has not received the intimation letter, dated 21.05.2024 from ASCI holds no water. Rule 8 of Maharashtra Real Estate (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 deals with manner of service of notice and order. Sub rule 2 thereof states that –

“(2) A notice or an order issued under these rules shall be served in any of the following manner,—

(a) by delivering or tendering it to that person or person’s authorised agent in an electronic form provided that there is sufficient evidence of actual delivery of the electronic record to the concerned person ; or

(b) by sending it to the person by registered post with acknowledgement due to the address of his place of residence or the last known place or residence or business place ; or

(c) if it cannot be served under clause (a) or (b) above, then by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain.”

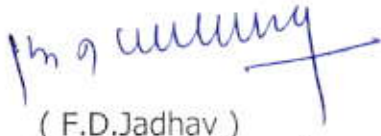
11. In this matter ASCI has stated that the notices sent to the respondent on his mail id are not bounced back. It means they are duly served to him. The notice of hearing issued by this Authority on the same mail id also duly served to the respondent which is an admitted fact, Considering these circumstances and facts it can be said there is no substance in the contention of respondent that the present complaint is premature.

12. Another ground taken by the respondent that the project in the present case has already been sold out in December, 2022 i.e. prior to issuance of MahaRERA Order No.46/2023 and 46A/2023 and therefore, the said Orders are not applicable to the present complaint. However, there is no any explanation from the respondent as to when the project is completely sold out in December 2022, and what is the necessity and purpose to publish the impugned advertisement of the said project in the year 2024. Moreover, the respondent has neither produced the completion certificate/occupation certificate nor uploaded Form 4 in the present matter. It can be seen from the MahaRERA record that this respondent has not uploaded the completion/occupancy certificate and form 4. The MahaRERA Record also shows that in the inventory uploaded by the respondent shows that 8 flats reserved in Tower A on dated 15.04.2024. If any flat is shown to be reserved in a real estate project, it amounts to unsold. Therefore, if really the said project was sold out in December, 2022, there was no need to show 8 flats as reserved in the inventory uploaded on the project registered with MahaRERA. Moreover, sub-rule 3(a) of rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on Website) Rules, 2017, inter alia, casts mandatory duty on the Promoters to disclose the number of the apartments sold or allotted to the allottees. The disclosure made by the respondent as per MahaRERA record do not show that all the flats are sold in the said project. Moreover, since the said project was ongoing at the time of its registration with MahaRERA, the provisions of the RERA Act and Rules made thereunder are binding on the respondent. As stated above, in the Disclosure of Sold inventory, dated 15.04.2024 the respondent has not shown that all the flats are sold out. On the contrary, he has shown 8 flats as reserved. As such, this ground of the respondent is also not having any substance and therefore, cannot be accepted.

13. The learned Advocate for the respondent has further submitted before the Authority that the QR Code was mentioned in the impugned

advertisement, but it was not detectable. As discussed above, the MahaRERA Order No.46/2023, dated 29.05.2023, clearly states that the QR Code must be published in a manner that is legible, readable and detectable with software application. Non-detectable QR Code itself sufficiently shows the violation of directions issued in the said Order no.46/2023. It certainly proves the violation of MahaRERA Order No. 46/2023 and Order No. 46A/2023 on the part of the respondent.

14. Considering the facts *vis-a-vis* law discussed hereinabove and the voluntary admission of the respondent-promoter, it can be said that it has been proved beyond reasonable doubt that the promoter has contravened the directions issued under MahaRERA Order No.46/2023 and 46A/2023, as stated hereinabove. Therefore, penalty will have to be imposed for contravention of the said directions. The order is as under.
15. Penalty of Rs.10,000/- under Section 63 of the Act, 2016 has been imposed against the respondent-promoter for contravention of the directions issued by the MahaRERA Authority by Order No.46/2023, dated 29.05.2023 read with Order No.46A/2023, dated 25.07.2023.
16. The aforesaid penalty shall be payable by the respondent within 15 days from the date of this order, failing which respondent shall be liable to penalty of Rs.1000/- per day, in addition, till the compliance.
17. The Technical and Finance Department of the MahaRERA Authority shall verify the payment of the said penalty before processing any applications by promoter for extension, corrections, change of name etc., with respect to the said project.


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