

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO. 58 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

DISHA GROUP
'DISHA NILGIRI'
Unregistered Project

.... Respondent

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

Appearance :- Adv. Mr. Anand Mamidwar for Respondent.

ORDER

7th Nov. 2023

(Through Video Conferencing)

1. Maharashtra Real Estate Regulatory Authority has delegated certain powers on me on dated 26.04.2023 under Section-81 of the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016"). The said powers, inter alia, contains imposing of penalty under Section 59 of the Act, 2016 for contravention of the provision of Section 3 by the promoter and to impose penalty under Section 61 of the Act for contravention of Section 11(2) of the Act. In exercise of the said powers delegated to me under Section 81 of the Act, 2016, notices were served to the Respondent-Promoter.
2. It has been noticed by the MahaRERA Authority that an advertisement in the daily newspaper 'Lokmat', dated 04.06.2023 without registering the project with MahaRERA has been published. On going through the record of MahaRERA Authority, it has been noticed that the said project is not registered with MahaRERA. Therefore, by show-cause notice, dated 07.06.2023, the Respondent-Promoter was called to show cause as to why penal action under Section 59 of the said Act should not be initiated against him. The notice of virtual hearing dated 27.07.2023 was issued to the

respondent-promoter and he was directed to attend the virtual hearing on 02.08.2023. At the request of the respondent-promoter, the hearing of the matter was adjourned from time to time to 11.08.2023, 22.08.2023, 29.08.2023, 10.10.2023, 25.10.2023 and 07.11.2023.

3. Respondent filed his reply, dated NIL, which is received by this Authority by post on 24.08.2023. It is contended by the respondent-promoter in his reply that the project is a plotted layout after obtaining valid sanction order under the provisions of Maharashtra Gunthewari Developments (Regularization, Upgradation and Control) Act from the competent authority and therefore, the respondent is not required to discharge any function towards the end buyer in respect of any of the beneficial use of the prospective plot purchaser. It is further contended that there is no compliance to be fulfilled or that has remained unfulfilled on the part of the respondent in respect of the proposed project. In support of its contentions, the respondent has relied upon ruling of this Hon'ble Authority in case of suo moto Advertisement Case No.31/2023, dated 26.04.2023, wherein it has been observed that plotted development compliance of Sec. 3 of the Act is not required and concerned developer is ordered to be exonerated from the liability to register under the Act.

4. Adv. Anand Mamidwar for respondent appeared. He has reiterated the contentions raised out by the promoter in his reply. Adv. Anand Mamidwar has argued that as the promoter has obtained regularization certificate from the planning authority under the provisions of Maharashtra Gunthewari Development (Amendment) Act, 2001, (hereinafter referred to as "Gunthewari Act"), the plots are converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966, (hereinafter referred to as "MLRC"), as enumerated in Section 5 of the said Gunthewari Act. Learned Adv. Mamidwar further argued that the said plots are having area less than 500 sq. mtr. and therefore, the same are covered under exemption under Section 3(2)(1)(a) of the Act, 2016 and as such there is no any violation of Section 3 of the Act, 2016 on the part of the respondent-

promoter. Adv. Mr. Mamidwar has further argued that an appeal is pending before the Hon'ble High Court in relation to the issue of exemption from registration of the plotting projects. Adv. Mamidwar however, has not furnished on record any copy of such appeal or any order passed in such appeal by the Hon'ble High Court.

5. At this stage, it is apt to reproduce Section 3(2)(a) and Section 59 of the Act 2016, which are as follows :-

Section 3 (2)(a) reads as under :-

3. (2) "Notwithstanding anything contained in sub-section (1) no registration of the real estate project shall be required –

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed, does not exceed eight, inclusive of all phases.

Section 59 reads as under :-

"If any promoter contravenes the provisions of Section 3, he shall be liable to a penalty, which may extend up to ten per cent of the estimated cost of the real estate project, as determined by the Authority."

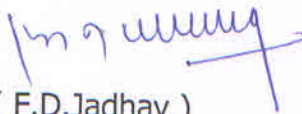
6. Perused the impugned advertisement. Also perused the documents filed by the respondent-promoter. The respondent-promoter has filed on record number of regularization certificates issued by Aurangabad Municipal Corporation in respect of number of plots from the land bearing City Survey No. 21(PT) of village Satara Parisar, Aurangabad, which area is mentioned in the impugned advertisement. The areas mentioned in all the said regularization certificates are less than 500 sq. mtrs.

7. Maharashtra Real Estate Regulatory Authority (hereinafter referred to as 'MahaRERA') has issued Circular No. 25/2019, dated 11.10.2019 regarding clarification in respect of registration of agreement for sale/sale-deed for real estate projects. It has been mentioned in the said circular in regards to real estate projects that are excluded from MahaRERA Registration. Serial No.3 in the said circular specifically 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. As such, real estate project where promoter has received N.A. order in relation to plotted development has been exempted from MahaRERA Registration. MahaRERA has issued another Circular No. 25A/2023, dated 09.06.2023 regarding real estate projects that are excluded from MahaRERA Registration. This circular supplements circular No.25/2019, dated 11.10.2019 regarding serial Nos.1 and 2 enumerated therein. Serial No.3 in the earlier circular, dated 11.10.2019 however remained in force till the date as it is.
8. In other words, it can be said Section 3(2)(a) of the Act of 2016 exempts the project from registration of which the area of the land is below 500 sq. mtrs. or the number of apartments proposed to be developed does not exceed eight, inclusive of all phases. Since in this matter, the area of the land proposed to be developed is below 500 sq. mtrs., I am of the view that this case squarely falls within the provision of Section 3(2)(a). Thus there is no any violation of Section 3 of the Act of 2016.
9. Section 3 of the Gunthewari Act, 2001 deal with Regularization of gunthewari developments. Sub-section (1) of Section 3 states that all Gunthewari developments existing as on the 1st January, 2001, shall, on an application being made in this behalf by the plot-holder, to the Planning Authority, as provided in Section 4 be eligible for being considered by the Planning Authority for regularization. Section 5 of the said Act 2001 deals with consequences of regularization. Sub-section (1) of Section 5 reads as under :-

"5. (1) Notwithstanding anything contained in any other law for the time being in force, on being regularized, the Gunthewari development shall be deemed to have been exempted under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 from the provisions of Chapter III of the said Act and converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966, subject to the payment of non-agricultural assessment and the other terms and conditions of such conversion and the provisions of the Development Plan or the Regional Plan, as the case may be, shall so far as such development is concerned, stand modified or relaxed, as may be required."

10. The aforestated sub-section (1) of Section 5 unequivocally states that on being regularized the Gunthewari development shall be deemed to have been exempted under Sec. 20 of the Urban Land (Ceiling & Regulation) Act, 1976 from the provisions of Chapter III of the said Act and converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966. (emphasis supplied).
11. Since, in this matter the plotted development scheme has been allowed by the concerned Planning Authority, the plots concerned are converted to non-agricultural use. It is submitted by the learned Adv. Mamidwar that, the facilities like drainage, roads, street lights in the said project will be provided by the Municipal Corporation.
12. It can be seen from the record that these plots are converted into use of N.A. prior to the advertisement given in the daily newspaper 'Lokmat'. Besides, the plot area of each plots is less than 500 sq. mtr. This manifestly shows that this case falls within the scope of Sec. 3(2)(a) of the Act, 2016 as well as Circular No.25/2019, dated 11.10.2019 and Circular No. 25A/2023, dated 09.06.2023.

13. In view of above, there appears no need to register this project with the MahaRERA. Consequently, this is not a fit case to impose any penalty on the promoter under Section 59 of the Act of 2016. The case is disposed off accordingly.



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