

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

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO. 70 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Livience Lifespace Pvt.Ltd.

"Livience Aleenta"

.... Respondent

MahaRERA Project Registration No.P52100049795

Appearance :- Adv. Sandeep Dhumal for Respondent

ORDER

13th February, 2024

(Through Video Conferencing)

1. MahaRERA has issued show cause notice, dated 13.03.2023, 17.04.2023 and 23.08.2023 to the respondent-promoter calling upon him as to why penalty should not be imposed under Section 61 of the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016") against him for publishing an advertisement on social media 'facebook' of real estate project "Livience Aleenta" situated at Baner, Pune registered with MahaRERA under project registration number No. P52100049795 without including the said project registration number in the said advertisement, and thereby violating the provision of Section 11(2) of the Act, 2016.
2. The respondent-promoter has filed his reply, dated NIL, wherein it has been contended that the advertisement was published by third party who is never authorized by the promoter. It is further contended that despite of having clear details of the advertiser, the Authority has erred in serving the above mentioned notice to the promoter for the violation of the third party, especially when the act of this third party is way beyond the control of the promoter. It is further contended by the respondent that the erroneous actions of the third party cannot become a cause of action to any

penalty to be imposed on the promoter unless the violation is done by any authorized person of the promoter. The respondent has further contended that any act of third party acting erroneously, especially without authorization or beyond the authority, with reference to the project promoted by the promoter mentioned herein is nothing but misuse of position and privilege/freedom, hence such acts of third party are to be treated as deliberate act to defame the promoter and hence punishable by law. Lastly, the respondent has contended that the promoter has not violated any rules and regulations of the Authority hence is not liable to any penalty nor any corrective action.

3. Adv. Sandeep Dhumal appeared on behalf of respondent-promoter. He has reiterated the contentions raised out by the promoter in his reply. Adv. Dhumal has submitted that the impugned advertisement has not been published by the promoter, but it is published by third party, to whom the promoter has never authorized and it is beyond the control of the promoter. Adv. Dhumal has further submitted that the clear details of third party of the advertiser are in the impugned advertisement and insisted that the RERA Authority should take action against the said third party.
4. Perused the screenshot of the impugned advertisement on record. It is a sponsored facebook page by name "Sales Office", published prior to 13.03.2023. The Project Registration number has not been mentioned in the said advertisement. The advertisement on social media of a particular business suggests that it has been published by either the owner of that business or by his authorized person or any person who can derive benefit from publishing such advertisement. Though any person who publishes such advertisement and gets benefit from same, it is obvious that the owner of said business also gets customer for his business and he also gets benefit from such advertisement. Therefore, in the present case, the respondent-promoter can be one of beneficiaries of the impugned advertisement. Furthermore, if there are details of the publisher in the impugned advertisement, it is the legal responsibility of the promoter

himself to take legal action against the person who has published the advertisement without any authorization of the promoter and violated any legal provision. Further in case, according to the respondent, if it is published to defame the respondent-promoter, the respondent-promoter has to take legal action against such publisher. It is to be taken into consideration that MahaRERA is a regulatory authority established under the Real Estate (Regulation & Development) Act, 2016 with an object to regulate the activities in the real estate sector and entertains the cases wherein violation of the Act, 2016 is involved.

5. During the hearing of the present case, the respondent-promoter has submitted that he will lodge complaint with the police station against the person who has published the impugned advertisement on facebook without any authorization thereto by the promoter. Accordingly, the respondent-promoter has lodged Cyber Crime Incident with the police against anonymous channel partner who has published advertisement of this project on facebook and furnished copy of the same on record.
6. It is evident from the reply of the promoter coupled with the Cyber Crime Incident lodged with police that the promoter is not liable for publishing the impugned advertisement on 'facebook' of his project "Livience Aleenta". The complaint lodged by the promoter with the police station, Pune explicitly indicates that this promoter had no knowledge and was not aware of the advertisement published on 'facebook' of their project. This promoter had not given approval or consent to publish such advertisement. In this background, it is difficult to hold this promoter liable for violation of the provision of Section 11(2) of the Act, 2016.
7. As there is no prima facie evidence to prove the case it can be said, this promoter has not violated the provision of Section 11(2) of the Act, 2016. Consequently this is not a fit case to impose penalty in the matter under Section 61 of the Act of 2016.

8. This matter, therefore, stands disposed off without imposing any penalty.



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