BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, PUNE

SUO MOTU ADVERTISEMENT/
PUNE CASE NO.15 OF 2024

MahaRERA on its own Motion .... Complainant

Versus

Phoenix Landmark. .... Respondent
Lake Front Plots at Hadashi
Unregistered Projects

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

Appearance :- Mr.Sunil Rathod for Respondent.

ORDER
9th February,2024
(Through Video Conferencing)

1. MahaRERA has issued show cause notice on 13-09-2023 to the respondent-promoter for publishing advertisement on "Instagram" in respect of real estate project by name " Farmhouse Plots" situated at Pune without registering the same with MahaRERA, and thereby violated Section 3 of the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016").

2. The respondent-promoter has filed his reply on 08-02-2024 contending therein that the lands situated at Bhalgudi Taluka Mulshi bearing Gat No.1152, 1175, 1176 and 1500 are agricultural lands. He has sold out some agricultural lands to the extent of minimum 20R, 50R lands in size. The said lands are irrigated lands. Respondent promoter has further submitted that he has not received any N.A. permission

from the Competent Authority. In view of this the contention of the respondent is that RERA Act will not be applicable to the said project, as the said lands are agricultural lands. The respondent-promoter has furnished 7/12 extracts of the land Gat No.1152, 1175, 1176 and 1500 situated at Bhalgudi, Taluka Mulshi, District Pune. The respondent-promoter has also submitted zone certificates of the said land, sale deeds, of the aforestated lands and power of attorney in favour of the promoter Mr.Sunil Rathod.

3. Heard promoter and Power of Attorney holder Mr.Sunil Rathod. He has reiterated the contentions mentioned in his reply filed in this matter. According to him the land Gat No.1152, 1175, 1176 and 1500 are irrigated as well as agricultural lands. It is contended by him that it is a agricultural plotting scheme, therefore do not require registration under the Act, 2016. According to him this is not "Real Estate Project" being the plot of lands is agricultural lands and project of agricultural lands need not be registered under the Act, 2016.

4. 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 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. "

5. MahaRERA Authority in the complaint No.SC-10000227 has held that **"the subject plot purchased by the complainant is an agricultural and as no Competent Authority has granted any N.A. order or permission otherwise for development of the said land"**. It was further held 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 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."**

6. The Hon'ble 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."

7. The Hon'ble 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).**

8. Considering the documentary evidence adduced by the respondent viz. 7/12 extracts, zone certificates, power of attorney, sale deeds as well as ratio laid down in the judgment and order passed by the MahaRERA Authority and Appellate Tribunal in the aforesaid matter, it is crystal clear that the lands of this project are proved beyond reasonable doubt as agricultural lands and therefore these lands are not liable to be registered with MahaRERA. No N.A. Order or permission is received from Competent Authority in this matter. Therefore, the status of the lands as "agricultural lands" remained as such till the date. Therefore the said project do not fall within the four corners of the definition of the "Real Estate Project" as defined under Section-2(zn) of

the Act, 2016. Consequently, this project is not required to be registered with MahaRERA Authority.

9. In view of the above, it can be said that the case under Section-3 of the Act, 2016 against this respondent is not established. It implies, there is no violation of the Section-3 of the Act, 2016 in regards to this agricultural project by the respondent-promoter. 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.

10. The matter stands disposed off accordingly.

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