

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.132 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

AAKAR BUILDCON

'AAKAR BLISS'

Unregistered Project

.... Respondent

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

Appearance :- Mr. Anand Ganore, A.R. for Respondent.

ORDER

2nd 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 'Maharashtra Times', dated 26.08.2023 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 13.09.2023, 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 promoter filed his reply on 31.10.2023. The notice of virtual hearing dated 02.11.2023 of the same project were issued in other matters to

the respondent-promoter. Therefore, the present matter has been taken on board today for hearing with the consent of the respondent. Mr. Anand Ganore, A.R. for respondent appeared in the matter.

3. The respondent-promoter by his reply, dated 31.10.2023, has contended that the area of the land of the project is 380 sq. mtr. and the total units are 8 only and therefore, the project is exempted from registration as per the provision of Section 3(2)(a) of the Act, 2016. In support of his contentions, the respondent-promoter has furnished on record, copy of 7/12 extract and the Sanction of Building Permission and Commencement Certificate along with sanctioned building plan issued by the Nashik Municipal Corporation, dated 27.03.2023.
4. Perused the reply filed by the respondent-promoter along with copy of the 7/12 extract and sanctioned plan. Heard Mr. Anand Ganore for respondent. He has reiterated the contentions raised out in the reply filed by him. He has argued that since the area of the land on which the project is being constructed as well as the number of apartments are less than as prescribed under Section 3(2)(a) of the Act of 2016, there is no violation of Section 3 of the RERA Act and hence no penalty can be imposed on the promoter under Section 59 of the Act, 2016.
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 :-

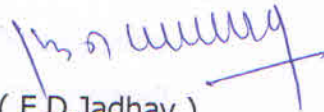
"If any promoter contravenes the provisions of Section 3, he shall be liable to a penalty, which may extend up to ten per cent of the estimated cost of the real estate project, as determined by the Authority."

6. Perused 7/12 extract of the land bearing Gat No. 106/1/106/7/4/2/Plot/5 to 6 of village Wadala, Tal. Nashik, District Nashik and the building plan sanctioned by Nashik Municipal Corporation. The 7/12 extract clearly indicates that area of the plot is 380 sq. mtrs. and the number of units/tenements shown in the sanctioned plan are eight. These facts unequivocally shows that this case squarely falls within the four corners of Section 3(2)(a) of the Act 2016 and thus there is no need to register this project under the provisions of RERA.

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 only 380 sq. mtrs. and number of apartments proposed to be developed are eight only, 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. In view of above, 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