

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.153 OF 2023**

MahaRERA on its own Motion	Complainant
Versus		
Himanshu Builders & Construction	Respondent
'Himanshu Luxuria'		
Unregistered Project.		

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

Appearance :- Mr. Himanshu Chavan, A.R. for the promoter.

ORDER

2nd April, 2024

(Through Video Conferencing)

1. Maharashtra Real Estate Regulatory Authority has issued show-cause notice, dated 17.11.2023 to the respondent-promoter for publishing an advertisement in daily newspaper "Lokmat", dated 23.10.2023 in respect of his real estate project "Himanshu Luxuria" situated at Chhatrapati Sambhaji Nagar without registering the same with MahaRERA, and thereby violating the provision of Section 3 of the Real Estate (R & D) Act, 2016 (hereinafter called as "Act 2016").
2. In response to the said show cause notice, dated 17.11.2023, the respondent-promoter has filed his reply dated 04.01.2024 and contended that RERA is applicable if plot size is more than 5000 sq. mtr. and salable units are 8 and above. It is further contended by the respondent-promoter that his project land area is 328.25 sq. mtrs. having 7 units and therefore, he has not applied for MahaRERA for this building.

3. Mr. Himanshu Chavan has reiterated the contentions raised out in his reply. He has submitted that the project land is below 500 sq. mtrs. and total units in the project are seven only and therefore, the project is exempted from registration. In support of his submissions, the respondent-promoter has furnished on record the documents viz. (1) Site Plan, (2) Transfer Order, dated 14.10.2022 issued by the Administrator, City and Industrial Development Corporation of Maharashtra Limited (CIDCO), New Aurangabad, (3) sanctioned building plan of the said real estate project.
4. The site plan shows the area of the project land bearing Plot No.19, Sector No. P-11(Town Centre) is 328.25 sq.mtrs. The Transfer Order, dated 14.10.2022 shows that the CIDCO has transferred the leasehold rights in respect of R+C Plot No.9, Tow Centre/P-1, CIDCO, New Aurangabad from Sau. Sangeetha Manoj Jain in favour of Mr. Himanshu Mohan Chavan on payment of necessary transfer charges. The said Transfer Order further states that the principal allotment of plot was allotted with FSI 1.00 and it is extended from 1.00 to 1.10. The said building plan shows that the building is having Ground floor + 3 floors and on each floor there are two units.
5. At this juncture Section 3(2)(a) is relevant for the purpose of issue involved in this matter which is reproduced hereunder for the sake of brevity.

"Section 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."

6. In this regard, the reference of Circular No. 25/2019 dated 11th Oct.2019 and Circular No.25A/2023, dated 09.06.2023 issued by MahaRERA Authority is necessary. Para I of the Circular No.25/2019 deals with Real Estate Projects that are excluded from MahaRERA Registration. Clause 1 of para 1 specifically states that the real estate projects where the area of land proposed to be developed is less than or equal to five hundred square meters and Clause 2 of para I specifically states that real estate projects where number of apartments proposed to be developed is less than or equal to eight apartments are exempted from registration with MahaRERA.
7. MahaRERA Appellate Tribunal in its majority judgment, as mentioned in Circular No. 25A/2023, held as under :-

"Keeping in view the settled law on interpretation of a statute and language of clause (a) of Section 3(2) of the Act of 2016, we are of the firm view that on the happening of any of the two contingencies i) the area of land proposed to be developed does not exceed 500 sq. mtrs. or ii) the number of apartments proposed to be developed does not exceed eight inclusive of all phases, project needs no registration under sub-section (1) of Section 3 of RER Act. The unambiguous language of clause (a) of Section 3(2) of the Act of 2016 makes it clear that "or" is to be read disjunctively and not conjunctively as conjunctive reading would make legislature intent redundant and would amount

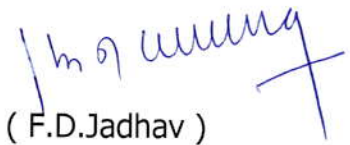
to changing the texture of the fabric which is not permissible in law."

8. The Hon'ble Appellate Tribunal, MahaRERA has issued further clarification in the above appeal, as under :-

- "1) Real Estate Projects where the area of land proposed to be developed is less or equal to five hundred square meters shall not require MahaRERA Project Registration irrespective whether the numbers of apartments/units proposed to be developed is less than or more than eight apartments/units as the case may be inclusive of all phases.**
- 2) Real Estate Projects where number of apartments/units proposed to be developed is less or equal to eight apartments/units inclusive of all phases shall not require MahaRERA Project Registration irrespective whether the area of the land proposed to be developed is less than or more than five hundred square meters."**

9. Considering Section 3(2)(a) of the Act, 2016 and circulars mentioned hereinabove issued by MahaRERA Authority and the ratio laid down by MahaRERA Appellate Tribunal (supra), it can be said that there is much substance in the defence of the promoter in regards to exemption from registration to his project. This promoter has sufficiently proved that there is/was no necessity to register his project with MahaRERA as the area of the plot of land is below 500 sq. mtr. and total number of units in the said project are less than or equal to eight apartments.

10. Considering the factual aspect of this matter as well as law and Circulars discussed hereinabove, there is no hesitation to hold that there was no necessity to register this project with MahaRERA as this project squarely falls within the scope of Section 3(2)(a) of the Act of 2016 and clause 2 of para I of Circular No.25/2019 issued by MahaRERA. In this backdrop, this is not a fit case to impose penalty under Section 59 of the Act, 2016. This matter is disposed of accordingly.



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