BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, PUNE

SUO MOTU ADVERTISEMENT/
PUNE CASE NO. 101 OF 2024

MahaRERA on its own Motion .... Complainant

Versus

Shrenik Nilesh Oswal (Balaji Builders) .. Respondent-Promoter
Project – Oriana Nest
Maharera Real Estate Project Registration No. P52100052204

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

Appearance :- C.A. Mr. Govind Chevale

ORDER
30th August, 2024
(Through Video Conferencing)

1. The Advertising Standards Council of India (ASCI) has issued an intimation letter, dated 29.05.2024 to the respondent and thereby informed that the advertisement published by the respondent on Instagram in respect of a real estate project under the name "Oriana Nest" does not contain MahaRERA Registration number, the MahaRERA website address and QR Code and the same is considered to be prima facie in contravention of Real Estate (Regulation & Development) Act, 2016. ASCI has further directed the respondent to ensure that the said advertisement has been modified or withdrawn no later than June 07, 2024.

2. Since the respondent has not complied with the directions issued by the ASCI vide intimation letter, dated 29.05.2024, the ASCI has sent mail, dated 14.06.2024 to MahaRERA, Pune and thereby referred the matter to MahaRERA, Pune for initiating the suo-motu complaint/proceeding against the respondent for disposal according to law.

3. On the basis of mail dated 14.06.2024 sent by ASCI, a notice of hearing has been sent to the respondent on 04.07.2024 for attending the virtual hearing, dated 12.07.2024 at 11.30 a.m.

4. Respondent-promoter has appeared in the matter and filed his say on 06.08.2024.In his reply, it is admitted by the respondent that he had published the advertisement of his project "Oriana Nest" on social media without containing MahaRERA Registration number and QR Code. It is contended by the respondent that this is his first project and he was not aware about the Rera rules and regulations. The respondent has further contended that he had immediately deleted all the advertisement which is published without QR Code and Rera registration number. According to the respondent, this was happened due to lack of information and due to not aware about RERA Act.

5. C.A. Mr. Govind Chevale appeared on behalf of the respondent-promoter. He has reiterated the same contentions raised out by the respondent in his say. Mr. Chevale has submitted that the respondent is a new promoter and was not having knowledge of mandatory provisions of RERA. Mr. Chevale has admitted that the impugned advertisement does not contain the MahaRERA Registration number and QR Code. However, he prayed for leniency in imposing penalty as this is first project of promoter and he had no knowledge about the RERA Rules in regard to the advertisement of project.

6. The charges are leveled against the respondent-promoter for not mentioning the MahaRERA registration number, MahaRERA website address in the advertisement and thereby violating provision of Section 11(2) of the Act, 2016 and for not displaying the QR Code in the impugned advertisement and thereby contravening the directions issued in MahaRERA Order No.46/2023, dated 29.05.2023 and MahaRERA Order No.46A/2023, dated 25.07.2023.

7. So far as first charge i.e. QR Code is concerned, it can be said MahaRERA Order No.46/2023 and 46A/2023 is required to be

discussed for deciding that whether there is violation of the QR Code on the part of the respondent. MahaRERA vide Order No. 46/2023, dated 29.05.2023, has issued following directions in respect of the QR Code.

- The promoter shall prominently display QR Code on each and every real estate project promotion/advertisement published after "1st August, 2023".
- The QR Code must be published in a manner that is legible, readable, and detectable with software application.
- The QR Code must be published besides the MahaRERA Registration Number and the Website address.

The mediums of the promotion/advertisement have also been described in the said Order.

8. The purpose and object for issuing directions by the MahaRERA Authority by MahaRERA Order No. 46/2023 is to bring greater transparency through disclosure of information on regular basis for public viewing, through online portal ensuring that maximum required information is available for public viewing in the most feasible manner, thereby empowering homebuyers/allottees to make informed choice/decisions in the ever-changing real estate market. Considering the aforesaid directions including second directions that the QR Code must be in a manner that is legible, readable and detectable with software application and the voluntary admission of promoter that he had not displayed QR Code in the impugned advertisement, it can be said contravention of said directions under Order No. 46/2023 appears to have been proved.

9. MahaRERA has further issued directions vide MahaRERA Order No.46A/2023, dated 25.07.2023, whereby penalty which may be extended up to Rs. 50,000/- subject however to a minimum penalty

which shall not be less than Rs. 10,000/- is to be imposed under Section 63 of the Act, 2016 against the promoter who fails to comply with the directions issued by MahaRERA Order No.46/2023.

10. Perusal of the impugned advertisement on record it can be seen that the QR Code is not displayed in the impugned advertisement. It certainly proves the violation of MahaRERA Order No. 46/2023 and Order No. 46A/2023 on the part of the respondent. Consequently this promoter is liable for violation of mandatory provision of QR Code.

11. The next charge against the respondent is that the impugned advertisement doesn't contain MahaRERA registration number and MahaRERA website address as required, and thereby he has violated the provision of Section 11(2) of the RERA Act, 2016. At this juncture, it is necessary to go through section 11(2) of the Act, 2016, which reads as under :-

> **"Section 11(2) :- The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto."**

12. On careful perusal of the Section 11(2) manifestly shows it is imperative on the part of the promoter to mention the RERA Registration number of the project as well as MahaRERA website address prominently in the advertisement of the project issued by him. On perusal of the impugned advertisement, it appears it does not contain MahaRERA Registration number as well as MahaRERA website address. Therefore, it has been explicitly proves that the respondent has violated the provision of Section 11(2) of the RERA Act, 2016 by publishing the impugned advertisement without

containing the MahaRERA registration number of his real estate project and MahaRERA website address. In view of this, provision of Section 61 of the Act, 2016 has to be invoked in the present matter.

13. Considering the facts of the case *vis-a-vis* law discussed hereinabove and the voluntary admission of the respondent-promoter, it can be said that it has been proved beyond reasonable doubt that the promoter has contravened the directions issued under MahaRERA Order No.46/2023 and 46A/2023 as well as provision of Section 11(2) of the RERA Act, 2016, as stated hereinabove. Therefore, penalty will have to be imposed for contravention of the said directions and violation of the said legal provision of the Act, 2016.

14. Heard C. A. Mr. Govind Chevale for the respondent-promoter on the point of imposing penalty. He has submitted that the respondent-promoter is new promoter and at the time of publishing the impugned advertisement, the promoter was not having knowledge of the mandatory provisions of the RERA Act, rules, regulations and Orders. C.A. Mr. Chevale prayed for lenient view to be taken while imposing penalty.

15. The legal principle of "Ignorantia Juris Non Excusat" places the responsibility on individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law. Respondent though a new promoter, as per his submission, he has duly registered his real estate project as per Section 3 of the RERA Act, 2016. This itself clearly shows that respondent-promoter has/had knowledge that it is mandatory to register the project with MahaRERA, as per the provisions of the RERA Act, 2016. Besides as per legal maxim "Ignorance of law is no excuse" as stated hereinabove, this promoter cannot escape from the wrong doing

committed by him on the basis that he was not knowing the law. As such, the defence of the respondent has no substance and therefore, cannot be accepted. However, considering the fact that the respondent is a new promoter, and this is his first project, I am of the view that it will be just and proper to take lenient view while imposing the penalty upon the respondent.

16. In view of the aforesaid facts and circumstances, the following order is passed in the matter.

ORDER

(1) Respondent-promoter shall pay penalty of Rs.10,000/- under Section 63 of the Act, 2016 for contravention of the directions issued by the MahaRERA Authority by Order No.46/2023, dated 29.05.2023 read with Order No.46A/2023, dated 25.07.2023.

(2) Respondent shall further pay penalty of Rs.10,000/- under Section 61 of the Act, 2016 for violation of Section 11(2) of the RERA Act, 2016.

(3) Both the aforestated penalties shall be payable by the respondent-promoter within 15 days from the date of this order.

(4) The Technical and Finance Department of the MahaRERA Authority shall verify the payment of the said penalty before processing any applications by promoter for extension, corrections, change of name etc., with respect to the said project.

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