

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

**SUO MOTU ADVERTISEMENT /
PUNE CASE NO. 108 OF 2024**

MahaRERA on its own Motion Complainant

Versus

Shrenik Nilesh Oswal (Balaji Group) Respondent-Promoter

NAME OF THE PROJECT : ORIANA NEST
MahaRERA Project Registration No.P52100052204

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

Appearance :- C.A. Mr. Govind Chevale for Respondent-promoter.

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 Website in respect of a real estate project under the name "Oriana Nest" does not contain 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 ASCI has further directed the respondent to ensure that the said advertisement has been modified or withdrawn no later than June, 07, 2024.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 and 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 filed his say on 06.08.2024, wherein he admitted to have published the advertisement of his project "Oriana Nest" on website without displaying 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 and Orders. 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 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 QR Code. However, he submitted that this is the first project of the promoter and promoter had no knowledge regarding the rules for publishing the advertisement of real estate project and on this count, Mr. Chevale prayed for leniency while imposing penalty.
6. The charges are leveled against the respondent-promoter for 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. Perused the impugned advertisement on record. On perusal of the said advertisement, it appears it does not contain QR Code. It certainly denotes violations of the said mandatory provisions by the respondent.
8. MahaRERA Order No.46/2023 and 46A/2023 is required to be discussed for deciding that whether there is violation of the same on the

part of the respondent. MahaRERA by MahaRERA Order No. 46/2023, dated 29.05.2023 has issued following directions to the promoters while publishing the advertisement of their project.

- 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.

9. 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 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.

10. 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

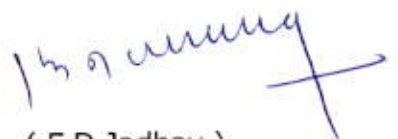
be less than Rs. 10,000/- is to be imposed under Section 63 of the Act, 2016 against the promoter who fails to comply with the directions issued by MahaRERA Order No.46/2023.

11. 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 issued by MahaRERA. C.A. Mr. Chevale prayed for lenient view while imposing penalty. The legal doctrine of "Ignorantia Facti Excusat" and "Ignorantia Juris Non Excusat" play an important role in the Indian legal system. These principles provide a legal defence for individuals who commit acts in good faith and under the belief that they are acting in accordance with the law. While mistake of fact is generally a valid defence, mistake of law is not considered to be a defence in India. Respondent though a new promoter, as per his submission, his project is duly registered as per Section 3 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 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.

12. 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) The aforestated penalty shall be payable by the respondent within 15 days from the date of this order.
- (3) 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