

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.35 OF 2023**

MahaRERA on its own Motion Complainant
Versus
Mr. Mahesh Bhagwat
'Janki Rainbow' Respondent
MahaRERA Project Registration No.P52100017014

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

Appearance :- Absent.

ORDER

2nd August, 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 etc. In exercise of the said powers delegated to me under Section 81 of the Act, 2016, notices were served to the Respondent-Promoter. None present on behalf of promoter.
2. It has been noticed by the MahaRERA Authority that an advertisement in 'facebook' without mentioning the MahaRERA Registration number, in regards to the project "Janki Rainbow" has been published. On going through the record of MahaRERA, it has been found that the project "Janki Rainbow" is registered with MahaRERA vide Registration No. P52100017014. Therefore, by show-cause notice, dated 10.05.2023, the Respondent-Promoter was called upon to show cause as to why penal action under Section 11(2) r.w. 61 of the said Act should not be initiated against him. In spite of issuance of show cause notice, the

Promoter failed to file his reply to the said show cause notice, dated 10.05.2023. Notice of hearing was issued to the Respondent on 04.07.2023 and directed to attend the virtual hearing on 07.07.2023. Since on the date of hearing, the respondent remained absent, the matter was adjourned thrice to 14.07.2023 and 25.07.2023. Therefore, on 25.07.2023, the matter was scheduled as a last chance to the promoter and adjourned to 02.08.2023. However, today also the promoter remained absent and hence the matter was decided ex parte.

3. Perused the advertisement published in daily "facebook", by promoter of his project "Janki Rainbow", situated at Baner, Pune. The advertisement speaks that it is for ready possession apartments. The said advertisement does not reflect the MahaRERA Project Registration number. On going through MahaRERA Portal online regarding this project registration, it appears that this promoter has already received full occupancy certificate of the said project from Pune Municipal Corporation on 31.03.2023. Architect of this project has also issued Certificate, dated 01.04.2023 under Form-1, thereby stated the percentage of work done of the project is 100%.

4. Section 11(2) of the Act of 2016 reads as under :-

"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."

5. The occupancy certificate/completion certificate has been issued by Pune Municipal Corporation to the promoter under Section 263 of the Bombay Provincial Corporation Act, 1949 (hereinafter referred to as "BPMC Act").

6. Section 263 of the BPMC Act reads as under :-

"263 - Completion Certificates permission to occupy or use.

– (1) Every person shall, within one month after the completion of the erection of a building or the execution of any such work as is described in section 254, deliver or send or cause to be delivered or sent to the Commissioner at his office notice in writing of such completion, accompanied by a certificate in the form prescribed in the bye-laws signed and subscribed in the manner so prescribed, and shall give to the Commissioner all necessary facilities for the inspection of such building or of such work and shall apply for permission to occupy the building.

(2) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any work, until –

(a) permission has been received from the Commissioner in this behalf, or

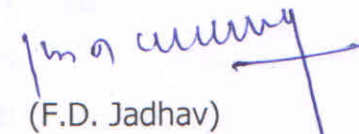
(b) the Commissioner has failed for twenty-one days after receipt of the notice of completion to intimate his refusal of the said permission.

7. At this juncture, it is relevant to mention some of the orders passed by Mumbai Office in similar matters. MahaRERA Authority, Mumbai in suo-motu Advertisement Case No. 9 of 2023 in the case of MahaRERA on its own motion v/s. Avi Constructions, has held that, "O.C. received on 03.11.2021. Since the promoter had prominently published "O.C. received" in the advertisement dated 05.03.2023 issued by it in the 'Lokmat' newspaper, the promoter is not in violation of Section 11(2) of the RERA." Similarly, in suo-motu Advertisement Case No. 42 of 2023, the MahaRERA

Mumbai Authority in the case of MahaRERA on its own motion v/s. A.K. Surana Developers has held that, "since the promoter had already obtained the occupancy certificate on 15.09.2020 for the said project before the advertisement was published on 01.04.2023 in 'Lokmat', the promoter is not in violation of Section 11(2) of RERA."

8. In the present case, as stated supra, the promoter has received the full occupancy certificate from the Pune Municipal Corporation on 31.03.2023. There is no specific date of publication of the impugned advertisement uploaded/published on 'facebook'. However, it can be said from the screenshot taken by the MahaRERA at its own, it is of dated 29.04.2023. Therefore, it can be presumed that the impugned advertisement has been published on 29.04.2023 i.e. after the receipt of full occupancy certificate by the promoter. Thus, the ratio laid down in aforesaid matter will be applicable to the facts of this case.

9. In view of the above circumstances, I am of the opinion that since the promoter has obtained full occupancy certificate prior to publishing the impugned advertisement, the provision of Section 11(2) of the Act of 2016 will not be attracted in this matter. As such, provision of penalty under Section 61 of the Act cannot be invoked in the matter.


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