

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

**SUO MOTU ADVERTISEMENT/
PUNE CASE NO.42 OF 2023**

MahaRERA on its own Motion

.... Complainant

Versus

Sanjivane Developers

'Sonchapha'

Unregistered Project

.... Respondent

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

Appearance :-C.A. Brij Phule

ORDER

14th July, 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 59 of the Act for contravention of Section 3 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. C.A. Brij Phule appeared on behalf of promoter.
2. It has been noticed by the MahaRERA Authority that an advertisement in the daily newspaper 'Lokmat', dated 27.05.2023 without mentioning the MahaRERA Registration number, in regards to the project "Sonchapha" has been published. On going through the record of MahaRERA Authority, it has been noticed that the project "Sonchapha" is not registered with MahaRERA. Therefore, by show-cause notice, dated 30.05.2023, 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 for the contravention of Section-3. The promoter filed his reply on 03.06.2023. The notice of hearing, dated 04.07.2023 was issued to the promoter and promoter was asked to attend virtual hearing before this Authority on 14.07.2023.

3. The promoter by his reply, dated 03.06.2023, has admitted that he has published advertisement in the Lokmat newspaper regarding this project. He has contended that the said project has received its completion certificate on 30th April, 2016 from the Pimpri-Chinchwad Municipal Corporation (PCMC) and as per Section 3(2)(b) of the Act, "no registration of the real estate project shall be required – where the promoter has received completion certificate for a real estate project prior to commencement of this Act". He has further submitted in his reply that the commencement date for Section-3 is 1st May, 2017. The say filed by promoter further states that since the completion certificate of the said project is received prior to commencement of the Act of 2016, the said project is not eligible to get registered with MahaRERA and therefore, according to him there is no any violation of Section 3 of the Act, 2016. In support of his reply, the promoter has furnished copy of completion certificate from PCMC Authority, dated 30th April, 2016, the Gazette of India dated 19-04-2017 and copy of revised commencement certificate, dated 29.12.2015.
4. Perused the reply filed by the promoter along with copy of the completion certificate dated 30.04.2016 as well as the Gazette of India dated 19.04.2017. Heard C.A. Brij Phule for promoter who has reiterated the contentions raised out in the reply filed by promoter. C.A. Brij Phule submitted that the promoter has given advertisement of the said project in the daily newspaper "Lokmat" on dated 27th May, 2023 as some of the flats from the project were not sold out. He has further clarified that since last 7 years some of the flats are remained to be sold out from the said old project therefore the promoter was constrained to again invite the

public at large by way of advertisement which was given on 27th May, 2023 published in the daily newspaper "Lokmat". According to him this is neither a new project nor the promoter has revised the plan. He further argued that since the project of the promoter is completed prior to commencement of the Act, of 2016, there is no violation of Section-3 of RERA Act, 2016 and therefore he urged that no penalty be imposed on the promoter in the matter.

5. At this juncture it is necessary to go through Section-3(2)(b) and Section 59 of the Act of 2016 which reads as under:

Section 3 (2)(b) reads as under :-

"Section 3 - (2) Notwithstanding anything contained in sub-section (1) no registration of the real estate project shall be required –

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act."

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."

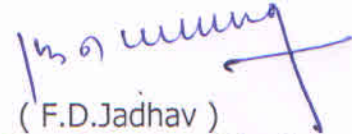
6. Likewise, it is also necessary to go through the notification issued by Ministry of Housing and Urban Poverty Alleviation dated 19th April, 2017 which is published in the Gazette of India dated 19th April, 2017. The said notification specifically states that in exercise of the powers conferred by Sub Section-3 of Section-1 of the Real Estate (Regulation and Development Act, 2016) (16 of 2016), the Central Government hereby

appoints the first day of May, 2017 as the date on which the following provisions of the said Act shall come into force, namely:-

Sl.No.	Section .
1.	Section 3 to 19
2.	-
3.	-
4.	-

7. On careful perusal of the notification issued by the Ministry of Housing and Urban Penalty Alleviation dated 19th April, 2017, it is abundantly clear that Section-3 of the Act comes into force on the 1st of May, 2017. In this matter it is the contention of the promoter that his project "Sonchapha" is completed prior to coming into force of the Act, 2016. He has submitted copy of full O.C. on record. Perusal of the final OC dated 30-04-2016 palpably shows that the project "Sonchapha" has got the completion certificate prior to commencement of the Act of 2016. The final OC issued by the Pimpri Chinchwad Municipal Corporation and the notification dated 19th April, 2017 issued by the Central Government published in the Gazette of India unequivocally shows that the provisions of the Act, 2016, more particularly Section-3 read with Section-59 of the Act, 2016 would not be applicable in this matter.
8. Considering the facts as well as law mentioned hereinabove it can be said that the contention of the C.A. Brij Phule that the Section-3 of the Act would not attract in this matter as the said project had received full O.C. much prior to the inception of the Section-3 of the Act, 2016 appears to be correct.
9. In view of above, I am of the opinion that since "Sonchapha" project was completed prior to the commencement of Act, 2016 this matter squarely falls within the 'exemption' as enunciated under Section-3 (2)(b) of the Act, 2016. In this backdrop, there appears to be no violation

of the provision of Section-3 of the Act, 2016. As such this is not a fit case to impose any penalty on the promoter under Section-59 of the Act, 2016. This case is disposed off accordingly.



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