

**THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW**

**Division Bench Court No. 1**

**APPEAL-267/2024**

**M/S SHREE KUNJ BIHARIJI INFRACON PVT. LTD.**

**.....Appellant**

**Versus**

**U.P. REAL ESTATE REGULATORY AUTHORITY**

**.....Respondent**

**Counsel for Appellant**

**SAURABH MISRA**

**KRISHNA KUMAR SINGH**

**Counsel for Respondent**

**SHIREESH KUMAR**

**Hon'ble Mr. Justice Suneet Kumar, Chairman**

**Hon'ble Mr. Sanjai Khare, Judicial Member**

**Hon'ble Mr. Devindar Singh Chaudhry, Technical Member**

1. Heard Sri Saurabh Misra, learned counsel for the appellant, and Sri Shireesh Kumar, learned counsel for the respondent and perused the records.
2. The appellant/promoter by the present appeal is raising challenge to the order dated 15.05.2024, passed by the learned Regulatory Authority in exercise of its power under 61 imposing penalty at Rs. Two lakhs for violating the mandate of Sub section (2) of Section 11 of the Real Estate (Regulation and Development) Act, 2016 (for short 'Act, 2016').
3. The short question that arises for consideration is, whether the learned Regulatory Authority was justified in imposing penalty on the appellant for non compliance of Section 11 of Act, 2016.
4. The facts *inter-se* parties are not in dispute. The appellant/promoter launched a real estate project in the name and style, 'KB MART', duly registered with U.P. RERA on 01.10.2022, at Greater Noida. The project was to be completed by 16.11.2026. It appears that an advertisement of the project came to be

published in the social media (Facebook) inviting investors to invest in the project. The details of the project, its location, official website and the centralized mobile number of the company was duly displayed in the social media post. Regulatory Authority noticed that the advertisement was issued in violation of the mandate of Section 11(2). The Section categorically mandates that the promoter shall disclose all the particulars including registration number of the project and the RERA official website. A notice dated 24.01.2024, came to be issued by the learned Regulatory Authority calling upon the appellant to show cause as to why penalty may not be imposed under Section 61 of the Act, 2016. The appellant/promoter responded to the notice by submitting its reply on 06.03.2024, thereafter, appellant was invited for personal hearing.

5. It is noted in the impugned order that appellant failed to disclose the mandatory requisite in the post pertaining to the project launched by the appellant. The stand taken by the appellant before the learned Regulatory Authority was that some person had unauthorizedly published the advertisement and upon receiving the notice, appellant had published notices in two daily i.e. “Pioneer” and “Dainik Jagran”, cautioning the people at large against the advertisement being published by an unauthorized person. It was further submitted that under Section 11(2) of the Act, 2016, penal consequence would flow upon the promoter on publishing the advertisement, however, it is submitted that since the advertisement was not published by the appellant, but by some unknown third party with whom the appellant company had no connection, therefore, penalty imposed upon them is not justified.

6. The learned Regulatory Authority having due regard to the submissions made by the appellant imposed penalty at Rs. two lakh under Section 61 of the Act, 2016 for breach of the mandate of Section 11(2) of the Act, 2016.
7. Learned counsel for the appellant has reiterated his submissions and has made an attempt to persuade us in accepting that since the author of the social media post is not known, therefore, appellant company cannot be penalized for act/omission of third party.
8. It would be apposite in the first instance, to refer to certain provisions of the Act 2016, which are relevant in the facts of the present case.
9. The appellant herein would fall within the definition of 'promoter' defined under Section 2(zk), which includes, a person who constructs/develops land into a project, for the purpose of selling all or some of the apartments to other persons and includes his assignees.
10. It is not in dispute that appellant-promoter launched a project in the name and style, 'KB MART', after registering the project with U.P. RERA. The expression 'project', has been defined under Section 2(j), which means 'real estate project' defined under Section 2(zn). The expression 'real estate project', *inter-alia* means the development of a building or a building consisting of apartments, for the purpose of selling the said apartments. Section 2(zm) defines 'real estate agent'. The 'real estate agent' means any person, who negotiates or acts on behalf of a person (promoter) in a transaction of transfer of an apartment in real estate project, by way of sale, with another person and receives remuneration or fees or any other charges for his services.

11. Section 3 mandates prior registration of real estate project by the promoter. The explanation to Sub-section (2) of Section 3 clarifies that for the purpose of Section 3, where the real estate project is to be developed in phases, every such phase shall be considered a ‘stand alone real estate project’, and the promoter shall obtain registration under this Act for each phase separately. The explanation to Sub-section (2) of Section 3 of Act 2016 is extracted:

*(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—*

*(a).....*

*(b).....*

*(c)....*

***Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.***

12. Section 9 provides for registration of real estate agents. Sub-section (1) of Section 9 mandates that no real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase, inter alia, of any apartment in a real estate project registered under Section 3, being sold by the promoter without obtaining registration under this Section. Sub-section (1) of Section 9 is extracted:

### **9. Registration of real estate agents.-**

9. (1) *No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may*

*be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.*

13. Every real estate agent, who is registered under the provisions of Act 2016, shall be granted a registration number by the Regulatory Authority, which shall be quoted by the real estate agent in every sale facilitated by him under this Act.
14. Section 10 provides for functions of real estate agents, which inter alia, mandates that the agent shall not facilitate the sale or purchase of any apartment in the real estate project, being sold by the promoter, which is not registered with the Regulatory Authority. The agent shall not involve himself in any unfair trade practices or false misleading representation concerning services, which include, permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered. Section 10 (a) (c) is extracted:

***10. Functions of real estate agents.-*** Every real estate agent registered under section 9 shall—

***(a)*** not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;

***(c)*** not involve himself in any unfair trade practices, namely:—

***(i)*** the practice of making any statement, whether orally or in writing or by visible representation which—

***(A)*** falsely represents that the services are of a particular standard or grade;

*(B) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;*

*(C) makes a false or misleading representation concerning the services;*

***(ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.***

15. Section 11 lays down the functions and duties of promoter. Sub-section (2) mandates that the advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority and details of the registered project, including, the registration number obtained from the Authority. Sub-section (4) mandates that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the rules and regulations, made thereunder. Sub-section (2) of Section 11 and Sub-section 4(a) is extracted:

*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.*

*11(4)(a). The promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

16. In other words, it is an obligation cast upon the promoter to ensure that the advertisement of the project prominently displayed the website address of the Authority and the registration number of the project. the expression 'issued' would mean "*to print and supply something formally and officially given out, distributed or released for sale or circulation*", whereas, the expression 'publish' inter-alia would mean "*to prepare and print- make it available to the public; advertised, circulated, divulged, printed, propagated- to make information available to people*". In other words, the promoter would issue the advertisement/prospectus or any other document pertaining to the project. The documents so issued must comply the mandate of Section 11(2) of the Act, 2016. The obligation has been cast upon the promoter for complying Section 11(2). The publication of advertisement/documents/prospectus etc. would thereafter follow to invite investment in the project from the public. The breach, if any, of the mandatory provision would fasten the promoter with penal consequence.
17. At this stage, it would be relevant to peruse Section 7, which provides for revocation of registration granted to a promoter under Section 5 by the Regulatory Authority. The Regulatory Authority can revoke the registration after being satisfied that the promoter makes default in doing anything required by or under this Act or the rules or the regulations, made thereunder. Further, promoter is involved in any kind of unfair practice or irregularities, for the purpose of promoting the sale or development of any real estate project, which includes that the promoter permits the publication of any advertisement or prospectus whether, in

any newspaper or otherwise of services, that are not intended to be offered. Section 7 (1), (a), (c), and (B) is extracted:

**7. *Revocation of registration.-*** (1) *The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—*

(a) *the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;*

(c) *the promoter is involved in any kind of unfair practice or irregularities.*

**(B)** *the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;*

18. Sub-section (3) of Section 7 provides that the Regulatory Authority may, instead of revoking the registration under Sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

19. Further, Section 34 provides functions of the Authority, which, inter alia, include to register and regulate real estate projects and real estate agents registered under the Act to ensure compliance of the obligations cast upon the promoters, the real estate agents under the Act, the rules and regulations framed thereunder. Section 34 (a), (f) and (g) is extracted:

**34. *Functions of Authority.-***

(a) *to register and regulate real estate projects and real estate agents registered under this Act;*



***(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;***

***(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;***

20. The legislature has explicitly cast upon the Regulatory Authority to ensure compliance of the obligations, inter alia, mandated upon the promoter and real estate agents, under Act, 2016, rules and regulations made thereunder.
21. Section 35 confers powers on the Regulatory Authority to call for information, conduct investigations either on a complaint or *suo motu*. The Regulatory Authority while exercising the powers under Section 35, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908, while trying a suit.
22. Section 38, further, confers powers on the Regulatory Authority, inter alia, to impose penalty in regard to any contravention of obligations cast upon the promoters and real estate agents under the Act or rules and regulations framed thereunder. The Regulatory Authority shall be guided by the principles of natural justice and shall have powers to regulate its own procedure. In other words, the rigours of Code of Civil Procedure has a limited application in proceedings before the Regulatory Authority.
23. Section 61 confers powers to impose penalty upon any promoter, who contravenes any provision of Act 2016, other than that provided under Section 3 or Section 4. The provision has to be read along with Section 11(4)(a)/34/38. In other words, for contravention of the statutory mandate imposed under Section 11(2) by the promoter would expose

such promoter alone and not the agent or third party to penalty in consonance with Section 61 of Act 2016.

24. In the backdrop of the provisions of Act, 2016, noted hereinabove, we are called upon to examine whether promoter would be liable for penal consequences under Act, 2016 for acts/omission of third party in publishing advertisement of the project in violation of Section 11(2) of the Act, 2016.
25. The case setup by the appellant/promoter before the Regulatory Authority was that a third person and not the appellant had published the advertisement of the project, hence, they are not liable for penal consequence under the Act. Section 11(2) provides that the advertisement or prospectus issued or published 'by the promoter' shall mention the registration number of the project and the website address of the U.P. RERA. The mandate of Section 11(2) is that the advertisement published of the project must prominently mention (i) registration number of the project, (ii) website address of U.P. RERA. The obligation to ensure compliance of Section 11(2) is cast upon the promoter and not upon his agent/real estate agent or third party. Chapter VIII of Act, 2016, does not impose any penalty on the agent or third party. Section 61 is confined to the promoter for breach of obligations imposed by the Act, 2016, rules and regulations made thereunder. Section 65, imposes penalty, *inter-alia*, on an agent for breach/non compliance of an order of the Regulatory Authority. Publication of an advertisement/prospectus by the promoter in breach of mandatory provision violating the statutory obligation imposed by the Act, 2016, is not an order of the Regulatory

Authority to warrant penal consequence upon such agent/third party under Section 65 of the Act, 2016.

26. In the given facts of the case in hand, appellant/promoter admits; (i) the advertisement published on the social media is of their project; (ii) the advertisement discloses the contact number/centralized number of the appellant/promoter; (iii) the advertisement solicits investment in the project; (iv) RERA registration number of the project is not disclosed; and (v) the website address of the U.P. RERA is not disclosed.
27. The stand of the appellant, on query, is that the person is not their agent but an unauthorized person. It is not disclosed whose handle was used to publish the advertisement of the promoter's project on social media (Facebook). It is not the case of appellant that the social media handle is not of any employee of the promoter-company or of an official connected with the marketing of the project. It is admitted that no FIR came to be lodged against the person publishing the advertisement of the project. Merely, an advertisement came to be issued in two dailies, cautioning the public of the misleading advertisement. The appellant maintained absolute silence and failed to disclose whose number (mobile) the advertisement disclosed for query and investment. The promoter cannot absolve itself from the consequence that would follow upon publication of the advertisement/prospectus issued by the promoter. It is immaterial as to who publishes the advertisement, the beneficiary, is the promoter, therefore the consequence of any such misleading advertisement/prospectus issued is of the promoter.

28. In the event, the submission of the appellant promoter is accepted then in that event:

- (i) promoter would adopt methods by publishing misleading advertisement and get away with the penal consequence;
- (ii) act/omission of the agent/third party is that of the principal (promoter), the promoter would not engage registered agent and issue/publish advertisement through unauthorized persons in that event liability is of the promoter;
- (iii) beneficiary of published advertisement/prospectus is the promoter, hence the consequence is of the promoter.

29. We are unable to persuade ourselves in accepting the submissions of learned counsel for the appellant for the reason that appellant has not denied the factum of the advertisement issued by them which pertains to their project. Further, the website, in the advertisement, pertains to the appellant company and the phone number thereon is of the appellant. It is though submitted that the number published in the advertisement does not belongs to the appellant company, is not acceptable for the reason that no action whatsoever was taken by the appellant against the person to whom the number belongs. By publishing a clarification or a notice cautioning the public not to invest pursuant to notice would not absolve the appellant of the consequences. It is not the case of the appellant that the advertisement does not pertain to their project. The penalty under Section 11(2) is to be imposed upon the promoter and not upon the third party/agent. Publication, at the best, is that of an agent/person duly appointed

by the appellant company and not for act, and/or, omission of such person, the appellant would be responsible. The question is accordingly answered.

30. On specific query, learned counsel for the appellant failed to point out any illegality, infirmity or jurisdictional error in the impugned order.

31. The appeal being devoid of merit is **dismissed**.

Registry to remit the amount deposited by the appellant in compliance of Section 43(5) of the Act, 2016, the balance amount towards penalty to be deposited by the appellant with the Regulatory Authority within 45 days from date the order is uploaded.

(Devindar Singh Chaudhry)

(Sanjai Khare)

(Suneet Kumar)

**Dated: 17.03.2025**  
PRADEEPKUMAR