

REAL ESTATE APPELLATE TRIBUNAL JAIPUR, RAJASTHAN

(Designated vide Government Notification No.F.10(132)/UDH/3/2009 dated 15.05.2017)

APPEAL NO.RAJ-RERA-C-2017-2006

Rohit Modi, S/o Shri Virendra Modi, aged 31 years, C/o Adarsh Realtors, D-123, Grace Complex, Janpath, Shyam Nagar, Jaipur
---APPELLANT

VERSUS

Registrar RERA, Nagar Niyojan Bhawan, Near JDA, JLN Marg, Jaipur
---RESPONDENT

Present :-

Shri Rohit Modi, appellant in person
Shri Virendra Sharma, on behalf of respondent

JUDGMENT

Date – 21.08.2017

This appeal is preferred by appellant under Section 44 of the Real Estate (Regulation and Development) Act 2016 against order of Real Estate Regulatory Authority No.RAJ/A/2017/D-09 dated 25.07.2017 and order No.RAJ/A/2017/D-15 dated 08.08.2017.

2. On 21.06.2017, appellant made an online application for registration as a Real Estate Agent. It is stated by the appellant that in the prescribed format for registration as an Agent, there is no appropriate column for the proprietorship firm; therefore, he made an application in his name.
3. Registration Certification Number RAJ/A/2017/006 was issued in name of Rohit Modi, appellant by the RERA.
4. Thereafter, appellant made a request to the Registrar RERA that registration certificate may be issued in the name of 'ADARSH REALTORS'. Same was declined and appellant was advised to move fresh application in category of firm.
5. Appellant clarified that he works in the name of 'ADARSH REALTORS' which is a proprietorship firm, not a partnership firm.
6. Appellant was informed vide letter dated 08.08.2017 by the Registrar of the RERA that necessary guidance/ reply has already been sent vide letter dated 25.07.2017.

7. Aggrieved by orders of the authority, appellant has preferred this appeal.
8. It is stated that the Real Estate (Regulation and Development) Act 2016 (hereinafter will be referred as 'Act of 2016') does not define individual or firm. An individual can work in his own name or in name of other enterprise (proprietor).
9. In reply, it is stated that appellant never applied for registration in name of sole proprietorship firm; therefore, registration certificate was issued in name of Rohit Modi.
10. Arguments heard. Record of the case thoroughly scanned; meticulously analysed the relevant provisions of law.
11. Appellant Rohit Modi would reiterate the grounds taken in appeal.
12. Shri Pradeep Kapoor, Registrar and Shri Virendra Sharma, representative of the RERA, supported the impugned order.
13. **Point for determination**
Whether, RERA committed an error of law in refusing registration of Real Estate Agent in name of Enterprise?
14. **Decision**
Decided in favour of appellant.
15. **Reasons for decision**
Application for registration was made by the appellant in Form-H (Annexure R-1). Appellant has made signature as Proprietor for ADARSH REALTORS. Column no.2 of Annexure R-1 is blank.
16. Before processing this application, the RERA should have asked for the better particulars from the appellant. Instead of it, authorities relied upon the particulars mentioned in the column no.1 of Annexure R-1 and ignored the fact that applicant has signed the application as Proprietor for ADARSH REALTORS.
17. An individual can work in his own name or any other name. Legally an individual cannot be compelled to work as an agent in his own name. In the website of the RERA, there is option for the applicant as individual/ proprietor, which is confusing.
18. In these circumstances, the RERA should have allowed the request of the appellant.

19. RERA could have charged some extra fee for the modification of the registration certificate.
20. No other argument was advanced before me except the arguments discussed hereinabove.
21. Before parting, it is just and proper to mention here that appointment of Registrar, RERA is not in accordance with Section 28 of the Act of 2016.
22. Apart from it, many provisions of the Rajasthan Real Estate (Regulation and Development) Rules 2017 (hereinafter will be referred as 'Rules of 2017') are prima facie inconsistent/ contrary to the provisions of Act of 2016. Needless to say, the provisions of Act of 2016 shall prevail over the Rules of 2017.
23. From the aforesaid discussion, this appeal deserves to be allowed.

ORDER

24. Appeal is allowed. Appellant shall deposit Rupees Five Thousand in addition to the fee already paid within three working days. Respondent shall issue a revised certificate in name of ADARSH REALTORS, D-123, Grace Complex, Jan Path, Shyam Nagar, Jaipur- Proprietor Rohit Modi. Appellant is allowed to do business in the name of enterprise i.e. ADARSH REALTORS under the current Registration Certificate No.RAJ/A/2017/006.
25. It is informed by the appellant that there is no facility to make online additional payment. If it is so, Registrar RERA is directed to provide account number of the authority and thereafter appellant shall deposit the required additional fee at the earliest.
26. Appellants are directed to comply with the impugned order forthwith.
27. Provide certified copy of order to all concerned for compliance.
28. Pronounced on 21.08.2017.

(Umesh Kumar Sharma)
Presiding Officer