BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: **CC006000000000794**

Surinder Singh
Ambika Singh ..... Complainants.
V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg. No.1) ..... Respondents.

COMPLAINT NO: **CC006000000001460**

Seema Saini ..... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents.

COMPLAINT NO: **CC006000000001502**

Saroj Taneja ..... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents.

COMPLAINT NO: **CC006000000001523**

Abdul Razak ..... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents.

COMPLAINT NO: **CC006000000001567**

Syed Moehboob
Syed Tipoo ..... Complainant.
V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents

COMPLAINT NO: **CC006000000001574**

Abhijit Balkrishna Rane ..... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents

COMPLAINT NO: **CC006000000001578**

Ismail Baban Kazi ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents.

COMPLAINT NO: **CC006000000001583**

Premanand Shetty ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents.

COMPLAINT NO: **CC006000000001587**

Kameshwar Sabat ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents.

COMPLAINT NO: **CC006000000001595**

Suresh R. Patel ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) ..... Respondents.

COMPLAINT NO: **CC006000000001605**

Krishna Ojha ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001607.**

Vinay Gupta ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001610**

Vipul Saxena ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001615**

Bhagwani Devi Gupta ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001617**

Manoj Vijayan ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001619**

Ramprasad Lalman Gupta Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001622**

Jayessh Ruparel ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001625**

Cheraq Ruparel ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001629**

Vishal Singhania ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001631**

Kanwarlal Daga ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001638**

Vijayadevi Daga ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

COMPLAINT NO: **CC006000000001651**

Ritesh Ravi Sahu ... Complainant.

V/s.

JVPD Properties Pvt.Ltd.
(Serenity Bldg.No.1) .. Respondents.

MahaRERA Regn: - **P51800011181**

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:
Complainant: Adv. Vivek Singh.
Respondents: Adv. Alok Kumar Singh.

Common Final Order

23rd April 2018.

The complainants have filed their complaints contending that they booked flats in respondents' registered project Bhagtani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai.

2. Respondents issued the allotment letter contending therein that respondents shall complete the construction within the period of 42 months from the receipt of final commencement certificate from plinth level. The complainants complain that respondents have failed to bring the clearances within the period of 9 months + grace period of next 3 months from the date of booking and complete the construction till the date. Respondents by their letter dated 24th July 2017 showed their inability to

complete the construction and give possession as agreed. Respondents, made themselves liable to refund all the amounts paid by the complainants with interest and / or compensation under Section 12 of Real Estate (Regulation and Development) Act, 2016 (RERA).

Defence of respondents :

3. The respondents have filed the reply to contend that the complainants are the investors and they are not allottees because in Para 11 & 18 of the provisional allotment letter they have admitted that they are investors. The provisional letter for booking is subject to approvals and permissions to be granted by various authorities for construction. It is a contingent contract and therefore it cannot be enforced as the approvals and permissions required for construction have not been granted. Hence they request to dismiss the complaint.

4. Following points arise for my determination and findings thereof are as under:

Points.	**Findings.**
1.Whether the complainants are investors?	Negative.
2. Whether MahaRERA has jurisdiction to adjudicate these complaints?	Affirmative.
3. Whether the respondents made false statement that they shall complete the project within reasonable time and subsequently declared that they shall not complete it & thereby contravened section 12 of RERA?	Affirmative.

Reasons.

Point Nos. 1 &2 -

5. The respondents have taken a stand that the complainants are the investors, therefore, they are not entitled to file the complaints under Section 31 of RERA. It is pertinent to note that any aggrieved person can

file a complaint against the promoter of the registered project, if the promoter contravenes or violates any provisions of RERA or Rules or Regulations made thereunder. The learned Advocate of the respondents submits that the complainants did not insist on execution of agreement for sale only because, they are investors. I do not agree with him because they booked the Flats in the year 2013/2014, the respondents themselves have contended that they received IOD on 06.04.2016. IOD was required for registration of the agreement. The respondents delayed the IOD and they avoided to execute the agreement for sale. They cannot take undue advantage of their own wrong to say that the complainants are investors. Moreover, when one looks at the terms and conditions of the allotment letter, there remains no doubt in my mind that the complainants come under the purview of 'allottee' defined by Section 2 (d) of RERA.

6. The respondents have not mentioned while uploading the information of their project on the official website of MahaRERA that the complainants are the investors or they have financed them. Section 4(2)(k) of RERA provides that the names and addresses of the contractors, architect, structural engineer, if any and any other person concerned with the development of the proposed project must be put on the website. Therefore, they are estopped from denying the complainants' status as home buyers.

7. All the terms and conditions of the allotment letter clearly indicate that the complainants agreed to purchase the flats for consideration to be paid by them in instalments depending upon the stages of the construction and the last instalment payable was at the time of handing over the possession. It contains all necessary conditions of agreement of sale, they are signed by both the parties. So I treat it as concluded contract. Therefore, merely because it is mentioned in Clause 10 of the allotment letters that the complainants are investors that will not make them the investors in the real sense. A person who pays money to the promoter in anticipation of buying

a flat, in fact, invests his money for house and therefore, Section 12 of RERA also refers to such amount as investment. Only because the complainants have deposited their amount with the respondents, it does not mean that they become the investors interested in earning profits. The respondents have not produced any evidence to prove that the complainants are in habit of investing their funds for earning profit. Therefore, I hold that in the facts and circumstances of the case, the complainants do not appear to be investors but they are allottees. Hence MahaRERA has jurisdiction to adjudicate upon this complaint.

Point No.3

8. Section 12 of RERA provides that where any person makes an advance or deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

9. Its proviso provides that if the person affected by such, incorrect, false statement intends to withdraw from the proposed project, he shall be returned his entire investment along with interest as may be prescribed and the compensation in the manner provided under RERA.

10. The complainants have produced the advertisements, brochures and allotment letters issued by the respondents to show that when they deposited money with the respondents, they were made to believe that the respondents shall complete the project within 42 months from the date of the receipt of final commencement certificate from plinth level. However, the respondents have issued a letter dated 24.7. 2017 declaring that they would not proceed ahead with the project and asked the allottees either to collect their amount or to give consent for accommodating them in respondents another project. These facts based upon the documents issued by the respondents themselves have been established. These facts therefore

prove that the respondents made either incorrect or false statement at the time of collecting money from the complainants that they would complete the project. Hence, the respondents are liable to refund the amount of complainants with interest at prescribed rate as the very project is frustrated. The complainants have filed payment sheets showing the amount paid by them to the respondents and the dates thereof. The receipt of the payment mentioned therein has not been disputed.

11. Rule 18 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interests, penalty, compensation, fine payable, forms of complaint and appeal, etc.) Rules, 2017 provides that the interest shall be 2% above the SBI's highest marginal cost of lending rate which is currently 8.05%. Thus, the complainants are entitled to get the simple interest at the rate of 10.05% per annum from the date of payment till they are refunded. They are also entitled to get Rs. 20,000/- towards the cost of the complaint.

ORDER

1. The respondents shall refund the complainants' amount mentioned in payment sheet marked Exh. 'A' with simple interest at the rate of 10.05 % per annum from the dates of payment till they are refunded.
2. Payment sheet marked Exh. 'A' in each case shall form the part of the order.
3. The respondents shall pay complainants Rs. 20,000/- towards the cost of each complaint.
4. The charge of aforesaid amount shall be on the respondents' property under project bearing C.T.S. No. 63A/5 and 64D "S" ward of village Tirandaz, Taluka Kurla, Mumbai, till the complainants' claims are satisfied.

Mumbai.
Date: 23.04.2018.

(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

Exh 'A'

Member-II & Adjudicating officer.

13

TOTAL AMOUNT PAID BY THE COMPLAINANT

S.NO.	PARTICULARS	AMOUNT
1.	Amount paid on 01.06.2013 vide cheque bearing No. "441479" drawn on ICICI Bank	Rs. 15,00,000/-
2.	Amount paid on 15.06.2013 vide cheque bearing No. "441481" drawn on ICICI Bank	Rs. 5,00,000/-
3.	Amount paid on 05.07.2013 vide cheque bearing No. "441482" drawn on The Greater Bombay Co-operative Bank Ltd.	Rs. 22,30,000/-
4.	Amount paid on 07.08.2013 vide cheque bearing No. "441484" drawn on ICICI Bank	Rs. 3,00,000/-
5.	Amount paid on 24.08.2013 vide cheque bearing No. "441485" drawn on ICICI Bank	Rs. 2,00,000/-
6.	Amount paid towards service tax on 21.09.2013 vide cheque bearing No. "441487" drawn on Bank of India	Rs. 1,46,157/-
TOTAL AMOUNT PAID		**Rs. 48,76,157/-**

Mr. Ritesh Ravi Sahu

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: **CC006000000001651**

Ritesh Ravi Sahu, Complainant.

Versus

JVPD Properties Pvt Ltd ---Respondents.
(Serenity- Bldg 1)

MahaRERA Regn: **P51800011181**

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

ORDER ON THE RECOVERY APPLICATION FILED IN THE COMPLAINT.

None present when matter is called repeatedly. Hence, the application for non-compliance of the order stands disposed off.

18.3.19.

Mumbai. (B.D. Kapadnis)
Date:18.03.2019. Member & Adjudicating Officer,
MahaRERA, Mumbai