

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.

COMPLAINT NO. CC006000000044273

Karina Sudarshan ... Complainant.

**VERSUS**

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

MahaRERA Regn: - P51800011181

**Coram.** Shri B.D. Kapadnis  
Hon'ble Member II  
MahaRERA, Mumbai

**Appearance:**

Complainant: Mrs. Sandhya V. Sondhi  
Respondents: Exparte.

**Final order**

14<sup>th</sup> June, 2018

The complainant claims refund of her amount with interest under Sections 7 & 12 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The complainant booked flat no.401, B wing in Respondents' registered Project "Bhagtani Serenity", situated at Tirandaz, Taluka Kurla Mumbai. Complainant contends that she booked flats on the Respondents' representation contained in allotment letters and advertisements that respondents shall complete the project. However, respondents by sending the letter dated 24<sup>th</sup> July, 2017 declared that they would not go ahead with the project and complete it. Therefore, the complainant alleges that the respondents made false statements, representations regarding the completion of their project. She deposited her money with the respondents on those statements/representations. Now, she has sustained loss and

  
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hence she claims her amount with interest under Section 12 of Real Estate (Regulation & Development) Act, 2016 (RERA)

3. The complainant contends that the respondents collected money from her projecting that they shall complete the project but now they have declined to complete it. Even thereafter respondents have failed to return her money. This amounts to unfair practice and fraudulent act within the meaning of Section 7 (1) (c) (d) of RERA.

4. Respondents have failed to appear and contest the matter even after notices were sent to them. Hence the matter proceeds ex parte against them.

5. Following points arise for determination. I record the findings thereon as under: -

<u>Points</u>	<u>Findings</u>
1. Whether the respondents' made false or incorrect statements regarding the completion of the project?	Affirmative.
2. Whether the respondents indulged in the fraudulent act or unfair practice?	Affirmative.
3. Whether the respondents are liable to refund complainant's amount with interest?	Affirmative.

#### REASONS:

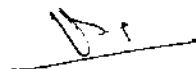
6. The complainant has relied upon her allotment letter issued by the respondents. The allotment letter clearly shows that the respondents agreed to complete the project and hand over the possession of the complainant's flat within 42 months from the receipt of the final



commencement certificate from plinth level. But by their letter dated 24.07.2017 they have claimed frustration, they are not going to complete the project. Hence, their statement contained in the allotment letters regarding completion of the project, handing over possession of the flats have been proved to be false statement within section 12 of the Act. Hence, I record my finding to this effect.

7. I have already referred to the facts that the respondents have collected money from the complainant by promising to hand over the possession of their booked flat within 42 months from the receipt of final commencement certificate from the plinth level which is mentioned in clause 7 of the allotment letter. Their letter dated 24.07.2017 makes it clear that they do not want to complete the project. The letter further shows that they would refund complainant' amount. However, the respondents have not refunded the amount of the complainant. These facts therefore show that the respondents are guilty under Section 7 (c) (d) of the Act.

8. Section 7(3) of RERA provides that the Real Estate Regulatory Authority has the authority to impose such terms and conditions to bind the promoter in the interest of justice. Section 12 of the Act allows the Authority to direct the promoter to refund the amount of the affected person with interest. In view of these two provisions, I find it necessary to direct the respondents to refund all the amount shown in the payment sheets marked as Exhibit 'A,' produced by the complainant. Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. v/s- Union of India, Writ Petition No. 2737 of 2017, particularly in para 259 of the judgement has observed that where the promoter is unable to complete or hand over possession for no fault of his own, it would be open to him to claim frustration in such a case and return the money to the allottee with interest. The receipt of the payments mentioned in the statements marked



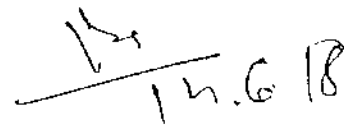
as Exhibit 'A,' has been acknowledged by the respondents themselves. Section 12 of RERA entitles the allottees to get refund of their amount with simple interest at the prescribed rate which is 2% above the marginal cost of lending rate of interest of State Bank of India which is currently 8.05%, from the date of the receipt of the amount by the promoter. Therefore, the respondents are liable to refund the said amount with interest at the rate of 10.05% from the date of their receipt by the promoter. The complainant is also entitled to get Rs. 20,000/- towards the cost of her complaint. Hence, the following order.

#### ORDER

- A. The respondents shall refund the amount mentioned in payment sheet Exh. "A" of the complaint to the complainant.
- B. The respondents shall pay the complainant Rs. 20,000/- towards the cost of each complaint.
- C. The respondents shall pay simple interest at the rate of 10.05% from the dates of receipt of the amount till they are refunded.
- D. 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 complainant's claim is satisfied.

Mumbai.

Date: 14.06.2018.



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

# JVPD PROPERTIES PRIVATE LIMITED

*Encl. A*  
*Member*

Annexure - I  
**RECEIPT**

Received with thanks from Mr./Mrs./M/s. KARINA SUDARSAN, an amount of Rs. 26,45,305/- (Rupees Twenty Six Lakhs Forty Five Thousand Three Hundred Five Only) as detailed here below towards the booking amount with service tax \* for Flat No. 401, Wing -B, "BHAGTANI SERENITY" constructed on land bearing C.T.S No. 63A/5 and 64 D, 'S' Ward of village Tirandaz, Taluka Kurla, Mumbai.

S.N	Bank Name	Cheque No.	Date	Amount (Rs.)
1	South Indian Bank	450221	25/06/2013	2,00,000/-
2	South Indian Bank	813207	02/07/2013	1,00,000/-
3	Citi Bank	016774	10/07/2013	2,66,000/-
4	Citi Bank	016771	04/06/2013	15,00,000/-
5	Citi Bank	016772	14/06/2013	5,00,000/-
6	Citi Bank	016775	10/07/2013	79,305/-(S.TAX)
<b>Total</b>				<b>26,45,305/-</b>

For J V P D Properties Pvt. Ltd.



Authorized Signatory

- \* Our Service Tax Registration No. AACCCJ5203HSD002
- \* Booking subject to the terms and conditions of allotment.
- \* Subject to realization of Cheque.
- \* Subject to Mumbai Jurisdiction.

Place : Mumbai  
Date : 28/07/2013

*Karina*  
*26 Sept '2013.*

Reg.Off : Panchratna, Panchmarg, Off Yari Road, Versova, Andheri (W), Mumbai - 400061

Corporate Off. - 501, Prime Plaza, Next To Asha Parekh Hospital, S V Road, Santacruz (W), Mumbai- 400 054  
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