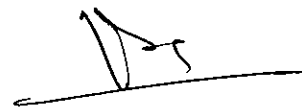


MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

- 1) COMPLAINT NO: CC006000000001358
NAIM KAMARUDDIN SHAIKH ...Complainants.
V/s
JVPD Properties Pvt.Ltd. ... Respondents.
- 2) COMPLAINT NO: CC006000000001440
Manjit Singh Dhaliwal ...Complainants.
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 3) COMPLAINT NO. CC006000000001505 ...Complainant.
Rajesh Joseph Dsouza
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 4) COMPLAINT NO: CC006000000001576 Complainant.
Colonel Tej Kohli
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 5) COMPLAINT NO: CC006000000001599 ...Complainant.
Ajit Nathuram Sagvekar
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 6) COMPLAINT NO: CC006000000001601 ...Complainant.
Sushil Kumar Choudhary
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 7) COMPLAINT NO: CC006000000001613 ...Complainant.
Alok Shah
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 8) COMPLAINT NO: CC006000000001621 ...Complainant.
Prasad Vithoba Vengurlekar
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 9) COMPLAINT NO: CC006000000001626 ...Complainant.
Vandana Yadav
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 10) COMPLAINT NO: CC006000000001700 ...Complainant.
Sukhdev Singh Gill



- V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 11)COMPLAINT NO: CC006000000001770 ...Complainant.
siba prasad dash
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 12)COMPLAINT NO CC006000000001758 ...Complainant.
Kushal Sen
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 13)COMPLAINT NO CC006000000001776 ...Complainant.
atul pant
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 14)COMPLAINT NO CC006000000001814 ...Complainant.
sheetal jitesh zanwar
V/s
JVPD Properties Pvt.Ltd. ... Respondents
- 15)COMPLAINT NO CC006000000001962 ...Complainant.
Mahesh Juttiyavar
V/s
JVPD Properties Pvt.Ltd. ... Respondent.

MahaRERA Regn. : **P51800011181**

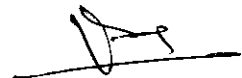
Hon'ble Shri B.D. KAPADNIS.
(Member & Adjudicating Officer)

Complainant: Represented by Mr.Rahul Singh,Adv. i/b Legal Catalyst.
Respondents: Represented by Ms. Sonam Singh Adv.

Final Order

29th December 2017

The complainants have filed these complaints for getting refund of the booking amount paid by them, as according to them the respondents have failed to deliver the possession of the flats booked by them in time and some of them received letters from the respondents to cancel the booking for the reasons mentioned in the letter.



2. I have heard the learned Advocate of the complainants Mr. Rahul Singh to know under which provision of law he has filed these complaints. He has taken his own time to read Real Estate Act, 2016. He submits that he has filed complaints under section 31 of the Act. Section 31 of Real Estate (Regulation and Development) Act, 2016 provides that any aggrieved person may complain with the authority or the adjudicating officer as the case may be for violation and contravention of provisions of this Act or the Rules or the Regulations made thereunder against any promoter/allottee or real estate agent as the case may be. Therefore, any aggrieved person can file the complaint only when provisions of either Act, rules or regulations framed thereunder are violated.

3. Thereafter the learned Advocate of the complainants submits that these complaints are filed under section 18, 19(3) & (4) of the said Act.

4. On perusal of section 18, it becomes clear if the promoter fails to complete or he is unable to give possession of apartment, plot or building in accordance with the terms of agreement for sale or as the case may be duly completed by the date specified therein, then he shall be liable on demand to the allottee, the amount paid by him with interest and / or compensation, if the allottee wishes to withdraw from the project.

5. After going through the provisions of Section 18, it becomes clear that the allottee is entitled to get the refund of his amount only when the promoter fails to complete or he is unable to give possession of the apartment either in accordance with the terms of the agreement for sale or duly completed on the date specified in the agreement. The learned advocate of the complainants submits that the words "as the case may be" appearing in section 18 should be interpreted to include other incidents relating to sale transactions. I do not agree with him. The plain words of Section 18 clearly indicate that there must be an agreement for sale for



invoking section 18. The allottee gets right to get refund of his money only when the promoter fails to complete apartment in accordance with the terms of agreement for sale or he is unable to give possession on the date specified in the agreement. Therefore, in the absence of any agreement for sale, section 18 has no role to play. It is necessary to bear in mind that issuance of allotment letter is first stage and execution of agreement for sale is subsequent stage.

6. The learned advocate for the complainants further relies upon Section 19 (3) which provides that it is the right of the allottee to claim the possession of the apartment, plot or building as the case may be and the association of allottee shall be entitled to claim possession of the common areas as per declaration given by the promoter under sub-clause (C) of clause (1) of sub-clause (2) of section 4. The complainants are not seeking possession, hence section 19(3) of the Act, is not attracted.

7. He also relies on clause (4) of section 19 which provides that allottee is entitled to claim refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the Rules or Regulations.

8. Section 19(4) co-relates with section 18 of the Act. Here in this case as I have mentioned earlier that the agreements have not been executed, therefore, even this clause cannot come into picture. In view of this, the complaints are not maintainable either under section 18 or section 19 of Real Estate Act, 2016. When this fact is disclosed to Mr. Singh, he invites the



order to that effect. Found in this situation, I have no alternative but to pass order.

The complaints are dismissed.

Mumbai.

Date: 29.12.2017.



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