

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC0060000000044316

Vibhor Mishra

... Complainant.

Versus

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

... Respondents.

MahaRERA Regn: P51800011181.

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

Appearance:

Complainant: Adv. Tanuj Lodha.

Respondents: Absent.

FINAL ORDER

26th June 2018.

The complainant seeks refund of his amount paid to the respondents in the context of purchasing flat no. E-902 in Building No. 1 of respondents' project Bhagtani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai under Section 12 of Real Estate (Regulation and Development) Act, 2016.

2. The complainant contends that he paid Rs. 29,77,570/- towards consideration and Rs. 1,02,207/- towards taxes in the context of the purchasing the said flat as the respondents agreed to hand over its possession by December 2017. However, now the respondents have sent email dated 24.07.2017 conveying that they shall not construct the project.

3. The respondents have failed to appear despite the service of the notice marked Exh.'A'. Hence, the complaint proceeds exparte against them.



4. Complainant relies upon the respondents' letter dated 24.07.2017 which makes it clear that they do not want to complete the project. The letter further shows that they would refund Complainants' amount. However, the respondents have not refunded the amount of the Complainants. So the respondents made the complaint to deposit his money on false/ incorrect assurance contained in allotment letter that they shall construct the flat and shall hand over its possession within 42 months from receiving final commencement certificate.

5. 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 this provision, I find it necessary to direct the respondents to refund all the amount shown in the payment marked as Exhibit 'A,' produced by the Complainants. Hon'ble Bombay High Court also 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 not been disputed by the respondents. 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 8.5%, 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 10.5% from the date of their receipt by the promoter. Complainants are also entitled to get Rs. 20,000/- towards the cost of complaint. Hence, the following order.

ORDER


- A. The respondents shall refund the amount mentioned in payment sheet Exh. "A," to the Complainant.



- B. The respondents shall pay the Complainants Rs. 20,000/- towards the cost of complaint.
- C. The respondents shall pay simple interest at the rate of 10.5% p.a. from the dates of receipts 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 Complainants' claim is satisfied.

Mumbai.

Date: 26.06.2018.


26.6.18

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