

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

COMPLAINT NO: CC006000000001527

1.Neha Karmokar  
2.Meeta Kukreja ..... Complainants.  
V/s.

JVPD Properties Pvt.Ltd. .... Respondents.  
(Serenity Bldg. 1)  
MahaRERA Regn: -P51800011181

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

**Appearance:**

Complainant: Adv. Mr. Satish Dedhia.

Respondents: ASD Asso. Advocates & Solicitors.

**Final Order**

**17<sup>th</sup> April 2018.**

The complainants have filed their complaint contending that they booked flat No.2003/B in respondents' registered project Bhagtani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai. Complainants have levelled following allegations against respondents for getting refund of their amount with interest and/or compensation:

1. 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 and if the clearances are not obtained within the period of 9 months with the grace period of next 3 months, the allottees shall be entitled to terminate the allotment letter and claim refund. 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 deliberately caused delay in obtaining the approvals by non-complying the necessary requirements such as applicant's certificate, architect certificate, bore well etc. Respondents by their letter dated 24<sup>th</sup> 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 18 of Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The complainants further allege that respondents represented through their prospectus that the project is of Jaycee Homes Ltd. However, now respondents say that it is of JVPD Properties Pvt. Ltd. and thereby they made the false / incorrect statement causing loss and damage to the complainants and thereby contravened Section 12 of the Act.

3. The complainants further contend that in the prospectus respondents misrepresented that the project would be completed under the dynamic stewardship of Lakshman Bhagtani who has the credit of completing over 300 projects and best in quality construction, superlative design etc. However, the project is being developed by JVPD Properties but the name of Lakshaman Bhagtani does not appear in the information uploaded on the website of MahaRERA and thereby respondents contravened Section 12 of RERA.

4. Respondents contravened Section 4 of the Act by concealing name of Mr. Lakshaman Bhagtani.

5. In the prospectus respondents mentioned that 300 projects were completed and 7 projects were upcoming but while uploading the information of past experience respondents have mentioned that respondents do not have any past record. This shows that respondents



made the false and incorrect statements which resulted in causing loss and damage to the complainants and thus contravened Section 12 of the Act.

6. Since as per Clause 10 of the allotment letter, on respondents' failure to obtain the necessary clearances within the period of 9 months + grace period of next 3 months, respondents were required to refund the complainants' payment with interest at the rate of 15% per annum within the period of 180 days as agreed, but respondents failed to discharge this obligation and thereby contravened Section 18(3) of the Act.

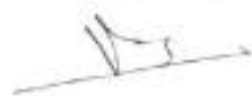
7. The complainants complain that respondents are guilty of unfair practice and fraudulent act by falsely mentioning the reasons in their letter dated 24.07.2017 regarding difficulties for completing the project, substantial changes in DCR, approvals of the plan etc.

8. The complainants complain that respondents are guilty of unfair practice and fraudulent acts mentioned in Para-O of the complaint contemplated by Section 7 of the Act.

9. The complainants further complain that respondents collected money from them from February 2014 to June 2014 whereas the property has been purchased on 9<sup>th</sup> July 2014 and they did not disclose the said fact to the complainants while booking their flat. This fact also amounts to unfair practice contemplated by Section 7.

10. The complainants allege that the respondents mortgaged property to Xandar Finance Pvt. Ltd. without the consent/knowledge of the allottees and thereby contravened Section 15 of the Act.

11. The complainants complain that the allotment letter dated 24<sup>th</sup> July 2014 discloses that there would be two podiums and there would be 39 stories in the building. However, while registering the project respondents have mentioned that the number of podiums is zero and number of slab super structure would be 21. These facts were disclosed by respondents



while registering the project. Similarly, the size of the flats to be constructed mentioned in the prospectus and IOD issued by the Municipal Corporation and the information furnished by respondents while registering the project with MahaRERA is different. Respondents have failed to adhere to sanctioned plan and project specification presented to the complainants and thereby contravened Section 14 of the Act.

**Defence of respondents:**

12. The respondents have filed the reply to contend that there is no agreement for sale, therefore Section 18 of RERA is not attracted. The respondents further 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.

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

<b>Points.</b>	<b>Findings.</b>
1. Whether the complainants are investors?	Negative.
2. Whether MahaRERA has jurisdiction to adjudicate this complaint?	Affirmative.
3. Whether there is concluded agreement for sale?	Affirmative.
4. Whether the respondents have failed to complete the flat due to discontinuance of their business as developer in respect of Bhagtani Serenity project within the meaning of Section 18(1)(b)	Affirmative.



of RERA?

- |   |              |
|---|--------------|
| 5. Whether the respondents failed to discharge their obligation in accordance with the terms and conditions of agreement for sale by not refunding the complainants' payment with 15% interest within the period of 180 days as agreed and thereby contravened Section 18(3) of RERA? | Affirmative. |
| 6. Whether the respondents falsely represented to the complainants that the project is of Jaycee homes and would be completed under the dynamic stewardship of Laxman Bhagtani and thereby contravened Section 12?  | Affirmative. |
| 7. Whether the respondents falsely mentioned to have the experience of completing 300 projects and 7 upcoming projects in their prospectus, advertisements and thereby contravened Section 12 of RERA?  | Affirmative. |
| 8. Whether the respondents contravened Section 4 by concealing the name of Laxman Bhagtani?   | Affirmative. |
| 9. Whether the respondents indulged in unfair practice and fraudulent act by mentioning false reasons for abandoning the project in their letter dated 24.07.2017?  | Negative.    |
| 10. Whether the respondents collected money from the complainants from February 2014 to June 2014 without purchasing the property and thus, indulged in unfair practice?  | Affirmative. |
| 11. Whether the respondents contravened Section 15 of RERA by mortgaging the property of the project without the consent / knowledge of the allottees?  | Negative.    |
| 12. Whether the respondents have failed to adhere to sanctioned plan and project  | Redundant.   |



specifications and thereby contravened  
Section 14 of the Act?

**Reasons.**

**Point Nos. 1 to 3-- Preliminary objections.**

14. 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 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.

15. 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.



16. 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. herefore, merely because it is mentioned in Clause 10 of the allotment letter 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.4**

17. Section 18(1) (b) of RERA provides that, if the promoter fails to complete or is unable to give possession of an apartment, plot or building- due to discontinuance of his business as a developer, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, to return the amount received by him in respect of that flat with interest at prescribed rate including the compensation. There is no dispute on the point that the respondents have issued a letter to the complainants on 24.07.2017 and disclosed the fact that for various reasons mentioned in the said letter, it is not possible for them to proceed ahead with the project and complete it. Therefore, so far as this project is concerned, the promoter has failed to complete the flat due to his abandonment of the project which



must be construed as discontinuance of his business as a promoter. Hon'ble High Court has also referred to such situation where the promoters can claim frustration when they are unable to complete the project for no fault of their own, in the case of Neelkamal Realtors Suburban Pvt. Ltd. - v/s- Union of India (W.P.No. 2737 of 2017). In para 259 of the judgment Their Lordships have mentioned that even in such a situation promoter will have to return the allottees' amount with interest. Hence, I find that the respondents are liable to refund the complainants' 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.

**Point no. 5:**

8. Section 18(3) of RERA provides that if the promoter fails to discharge any other obligation imposed on him in accordance with the terms and conditions of the agreement for sale he shall be liable to pay such compensation to the allottees, in the manner as provided under RERA. Clause 10 of the allotment letter clearly provides that the promoter shall pay the amount of the allottee with interest at the rate of 15% per annum from the date of payment of the respective amount till the date of termination and it would be refunded after 180 days. The respondents by their letter dated 24.07.2017 have asked the allottees to get refund of their amount because the necessary permissions and approvals have not been received by them as contended in the allotment letter. The respondents have not paid back the amount of the complainants and therefore, the complainants are entitled to get the interest at the rate of 15 % per annum by way of compensation on their amount from the date of its payments.

**Point Nos. 6 to 8 :**

9. The complainants have relied upon the prospectus issued by the respondents and the information loaded by them on the official website of



MahaRERA to prove that the respondents represented that the project shall be completed under the dynamic stewardship of Mr. Laxman Bhagtani and it would be completed by Jaycee Group having the experience of constructing 300 projects and 7 upcoming projects. However, the information uploaded by the respondents on the official website shows that the project is being developed by J.V.P.D. Properties Pvt. Ltd. and the experience of this company is shown nil. The name of Mr. Laxman Bhagtani does not appear in the information uploaded by the respondents. Therefore, the complainants have proved that the respondents made false / incorrect statements to attract the customers by misleading them. Hence, I find that the respondents are guilty under Section 12. Section 12 enable the complainants to claim their amount with interest. However, Section 61 of RERA is prospective and hence no penalty can be imposed u/s 61 of RERA.

10. So far as the concealment of the name of Mr. Laxman Bhagtani is concerned, the respondents have contravened Section 4 r/w Section 60 of RERA. However, in Subiya Masood Parvez Shaikh-v/s-JVPD Properties Pvt. Ltd. C.C. 006000000001730, a penalty of Rs. 25,000/- has already been imposed on the respondents for contravening section 4. Hence, no separate penalty is being imposed.

**Point Nos. 9 & 10:**

11. The complainants have produced the documents showing that the respondents did not apply for IOD and other approvals till 07.02.2015. They did not pursue their application for obtaining IOD till 06.04.2016. They did not pay the requisite amount till 21.04.2017 and did not take steps for handing over the proposed layout D.P.Raod. They submitted improper area certificate on 20.10.2011 and did not submit the correct certificate even thereafter. The respondents agreed to sell the flat to the complainants on 24<sup>th</sup> June 2014 when they did not have any title to the land. The title certificate shows that they got the title to the land by conveyance dated 9<sup>th</sup>



July 2014. They took the booking of almost 389 flats as submitted before Hon'ble High Court against 86 proposed flats that too without the approvals and sanctions of the Competent Authority. This amounts to unfair practice and fraudulent act as contemplated by Section 7 (1) © and (d) of RERA. Hence, it becomes necessary under Section 7 (3) of RERA to direct the respondents to refund the amount of all allottees who want to withdraw from the project with simple interest as per clause 10 of their allotment letters.

**Point No. 11:**

12. Section 15 (1) of RERA prohibits the promoter from transferring or assigning his majority rights in respect of real estate project to a third party without obtaining prior written consent from 2/3 allottees and without the prior written approval of the Authority. The complainants have relied upon the order passed by the learned Chief Metropolitan Magistrate, Explanade, Mumbai in Xander Finance Pvt. Ltd.-v/s- Jaycee Homes Pvt. Ltd. And JVPD Properties Pvt. Ltd.(Case No. 797/SA/2017) to show that Xander Finance Pvt. Ltd. obtained the order from the learned Metropolitan Magistrate to take possession of the respondents' property by appointing Commissioner under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities, Interest Act, 2002. It shows that the agreement for taking loan facility of forty crores had been executed on 19.06.2015. At that time Section 15 of RERA was not in force. Hence, I find that the complainants' allegation about contravention of Section 15 of RERA fails.

**Point no. 12:**

13. Section 14 of RERA imposes a duty on the promoter to develop the project and complete it in accordance with the sanctioned plans. It prohibits the addition and alteration in the sanctioned plans in respect of apartment without previous consent of the concerned allottee and other alterations and additions in the sanctioned plans and specifications of the



buildings and common areas without the previous written consent of at least 2/3<sup>rd</sup> of allottees. The complainants rely upon the plans contained in the brochures, area of the flat mentioned in the allotment letter etc. However, they have not produced any document to show that the sanctioned plans have been changed subsequently by the respondents. Since the respondents have decided not to construct the project and the complainants are also claiming their amount, this ground loses its field and becomes redundant.

**Entitlements of the complainants:**

14. While recording my findings on Point Nos. 4 & 5, I have held that the complainants are entitled to get back their amount. The complainants have filed the payment sheet marked Exhibit 'A' showing the payments made by them to the respondents. The receipt of the payment has not been disputed by the respondents. Therefore, the respondents are liable to refund the said amount.

15. The complainants are entitled to get interest at the prescribed rate under section 18 (1)(b) of RERA. However, they are entitled to get the interest at the rate of 15 % per annum by way of compensation on their amount from the date of its payments under Section 18(3) of RERA which is higher than the interest permissible under Section 18 (1)(b) of RERA. Hence, the complainants are entitled to get simple interest at the rate of 15 % per annum by way of compensation on their amount from the date of its payments. The complainants are also entitled to get Rs. 20,000/- towards the cost of their complaints. Hence, the following order.

**ORDER**

1. The respondents shall refund the complainants the amount mentioned in payment sheet marked Exh. 'A' simple interest at the rate of 15 % per annum by way of compensation on




their amount from the date of its payments till they are refunded.

2. Payment sheet marked Exh. 'A' shall form the part of the order.
3. The respondents shall pay complainants Rs. 20,000/- towards the cost of the 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.
5. The respondents shall refund the amount of all allottees who want to withdraw from the project with simple interest as per clause 10 of their allotment letters under Section 7 (3) of RERA.

Mumbai.

Date: 17.04.2018.

  
17-4-18  
( B. D. Kapadnis )  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.

BEFORE THE LD. ADJUDICATING OFFICER,  
HON'BLE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,  
MUMBAI

COMPLAINT (APPLICATION) NO. CC006000000001527

Neha Kamokar & Anr Applicants Complainants  
Vs  
JVPD Properties Private Limited Respondent

Particulars in brief

Details of flat

Flat No. 2003 admeasuring 454 square feet on the 20<sup>th</sup> floor (being 18<sup>th</sup> residential floor above 2 podiums) in of the proposed residential building of the Respondent to be known as "Bhagtani Serenity" Allotment Letter dated 24.06.2014 for Rs.63,45,000/-.


Details of payment made by the Complainants to the Respondent

Sr.	Date	Cheque No.	Amount	Bank
a)	13.02.2014	094956	500000	Shamrao Vital Bank
b)	15.02.2014	094952	500000	Shamrao Vital Bank
c)	17.02.2014	094955	538000	Shamrao Vital Bank
d)	20.02.2014	094957	500000	Shamrao Vital Bank
e)	15.03.2014	094958	500000	Shamrao Vital Bank
f)	18.06.2014	418381	78424	ICICI Bank
g)	29.04.2017	000011	450289	HDFC Bank
h)	29.04.2017	071679	47000	ICICI Bank
Total			3113713	

(Rupees Thirty One Lakhs Thirteen Thousand Seven Hundred Thirteen only)

  
Advocate for the Complainant

Seen  
  
23/3/18

my client has  
Received the above  
mentioned amount -  
i.e. Rs. 31,13,713/-  
  
Adv. A.K. Singh  
4/4/2018