

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

COMPLAINT NO: CC006000000056683

Varun Agarwal..... Complainant.

COMPLAINT NO: CC006000000056684

Vivek Ramvilas Agarwal..... Complainant.

COMPLAINT NO: CC006000000056685

Sagar Varma Complainant.

V/s.

JVPD Properties Pvt.Ltd. Respondents.

Bhagtiani Serenity

MahaRERA Regn: -P51800011181

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

Appearance:

Complainant: Adv. Mr..Tanuj Lodha.

Respondents: Exparte.

Final Order

4th December 2018.

The complainants have filed their complaints contending the following information:

Name of complainants	No. of flat	Consideration amount.
Varun Agarwal	1503, C-Wing	Rs. 10,40,436/-
Vivek Ramvilas Agarwal	403, B-Wing	Rs. 28,05,433/-



Sagar Varma	404, B- Wing	Rs. 28,05,433/-
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The booked flats are in respondents' registered project Bhagtiani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai. Complainants contend that respondents issued the allotment letters contending therein that respondents shall complete the construction within the period of 42 months from the receipt of final commencement certificate from plinth level 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 the respondents made them to believe through their false representations that they shall complete the project. Respondents deliberately caused delay in obtaining the approvals by non-complying the necessary requirements. 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).

2. Despite the service of the notices the respondents have failed to appear and contest the matters. Hence the complaints proceed exparte.

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

Points.	Findings.
1. Whether the respondents made false representation regarding completion of the project at the time of booking?	Affirmative.
2. Whether the complainants are entitled to get back their amount and tax amount with interest?	Affirmative.



Reasons.

4. Complainants have relied upon the prospectus, advertisement and allotment letters issued by the respondents. On their perusal it becomes clear that the respondents made false statement/representation that the project is viable and it would be completed. Complainants have brought to my notice that the respondents have issued a letter to some allottees of the project 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. Hence, the complainants have proved that the respondents made false statement at the time of booking of the flats that the project would be completed. Respondents have failed to complete the project due to their abandonment. 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.

Entitlement of the complainants:

5.. I have held that the complainants are entitled to get back their amount. They are entitled to get refund of those amount with the interest at prescribed rate from the date of payment till their refund. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.5% and it is compensatory in nature. Hence, no separate compensation need to be awarded.

6.. The complainants are also entitled to get Rs. 10,000/- towards the cost of their complaints. Hence, the following order.




ORDER

- a) The respondents shall refund the complainants' the amount mentioned in Para-1 of the order with simple interest at the rate of 10.5% per annum from the date of its payments till they are refunded.
- b) The respondents shall pay complainants Rs. 10,000/- towards the cost of the complaint.
- c) 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: 04.12.2018.


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