

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO. CC006000000054590

Keya Bhattacharya Sharma & Shashank Sharma ... Complainants.

VERSUS

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

COMPLAINT NO. CC006000000054790

Dilshad Najmul Shaikh ... Complainant.

VERSUS

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

COMPLAINT NO. CC006000000054791

Kailashchandra M. Singhal &
Shailesh K. Singhal ... Complainants.

VERSUS

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

COMPLAINT NO. CC006000000054793

Gaurav Shamlal Khetan ... Complainant.

VERSUS

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

COMPLAINT NO. CC006000000054800

Praveen Mukim &
Praveen Mukim HUF ... Complainants.

VERSUS

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



COMPLAINT NO. CC006000000054802

Ravikant Gour

...

Complainant.

VERSUS

JVPD Properties Pvt. Ltd.

...

Respondents.

(Serenity - Bldg. 1)

MahaRERA Regn: - P51800011181

Coram.

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

Appearance:

Complainants: Adv. Tanuj Lodha

Respondents: Exparte.

Final order

28th June, 2018

Complainants have filed these complaints for claiming refund of their amount with interest under Section 12 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The complainants have booked following flats in Respondents' registered Project "Bhagtani Serenity", situated at Tirandaz, Taluka Kurla Mumbai.

Sr. Nos.	Names of the Complainants	Flat Nos.
1	Keya Bhattacharya Sharma & Shashank Sharma	B-2904, 3003,3004
2	Dilshad Najmul Shaikh	E-3202
3	Kailashchandra M. Singhal & Shailesh K. Singhal	B-2602
4	Gaurav Shamlal Khetan	B-2301, 2302
5	Praveen Mukim & Praveen Mukim HUF	C-2503 & B-2704
6	Ravikant Gour	A-303 & 304



Complainants contend that they 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 24th July, 2017 have declared that they would not go ahead with the project and complete it. Therefore, the complainants allege that the respondents made false statements, representations regarding the completion of their project. They deposited their money with the respondents on those statements/representations. Now, they have sustained loss and hence they claim their amount with interest under Section 12 of Real Estate (Regulation & Development) Act, 2016 (RERA)

3. Respondents have failed to appear and contest the matters even after notices were sent to them. Hence these matters proceed ex parte against them.

4. 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 are liable to refund complainants' amount with interest?	Affirmative.

REASONS:

5. The complainants have relied upon their allotment letters issued by the respondents. The allotment letters clearly show that the respondents agreed to complete the project and hand over the possession of the complainants' flats 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 and declared that 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 statements within section 12 of the Act. Hence, I record my finding to this effect.

6. 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 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,' have 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 simple interest at the rate of 10.5% from the date of their receipt by the promoter. The complainants are also entitled to get Rs. 20,000/- towards the cost of their complaints. Hence, the following order.

ORDER

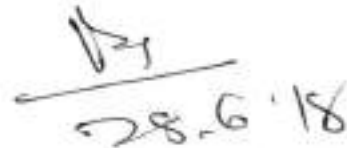
- A. The respondents shall refund the amount mentioned in payment sheet Exh. "A," of the complaints which shall form the part of the order, to the respective complainants.
- B. The respondents shall pay simple interest at the rate of 10.5% from the dates of receipts of the amount till they are refunded.



- C. The respondents shall pay the complainants Rs. 20,000/- towards the cost of each complaint.
- 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: 28.06.2018.



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

Def A
V. Munder

Payment Format

Sr. No.	Date	Amount	Purpose	Receipt No./ Cheque No. with Bank Name
Flat No. B- 3003, Bhagtani Serenity				
1	10-Sep-13	49,35,000	Payment to JVPD properties pvt ltd towards purchase of flat B 3003, Bhagtani Serenity.B-WING	Andhra Bank Matunga Branch
2	10-Sep-13	1,52,492	Payment towards service tax & VAT for JVPD properties against purchase of flat B-3003 , Bhagtani Serenity	Andhra Bank Matunga Branch
Flat No. B-3004 Bhagtani Serenity				
3	10-Sep-13	49,35,000	Payment to JVPD properties pvt ltd towards purchase of flat B 3004, Bhagtani Serenity.B-WING	Andhra Bank Matunga Branch
4	10-Sep-13	1,52,492	Payment towards service tax & VAT for JVPD properties against purchase of flat B-3004 , Bhagtani Serenity	Andhra Bank Matunga Branch
Flat No. B-2904 Bhagtani Serenity				
5	14-Dec-13	49,35,000	Payment to JVPD properties pvt ltd towards purchase of flat B 2904, Bhagtani Serenity.B-WING	Andhra Bank Matunga Branch
6	14-Dec-13	1,52,492	Payment towards service tax & VAT for JVPD properties against purchase of flat B-2904 , Bhagtani Serenity	Andhra Bank Matunga Branch
Total Paid		1,52,62,475		

Complainant Name & Sign



KEYA BHATTACHARYA SHARMA & SRASHANK SHARMA

Ext-A.
Member

Dilshad Najmul Shaikh (Flat No. E-3202)

CC006/54790

Sr No.	Date	Amount	Purpose	Reciept No./ Cheque No. with Bank Name
1.	02/02/2015	60,43,400/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	Receipt No./Cheque No. Bank Name Cheque No.000014 on Kotak Mahindra Bank, Andheri-E, Branch.
2.	02/02/2015	1,86,741/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	Receipt No./Cheque No. Bank Name Cheque No.000014 on Kotak Mahindra Bank, Andheri-E, Branch.
	Total	62,30,141/-		

Dilshad
Dilshad Shaikh
Complainant

11-6-18
Mumbai

Ex A
Member

Kailashchandra Singhal & Shailesh Singhal (Flat No. B-2602) C006/54791

Sr No.	Date	Amount	Purpose	Reciept No./ Cheque No. with Bank Name
1.	05-04-2013	5,00,000/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	SVC Bank CH NO 001568
2.	18-04-2013	14,45,800/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	SVC Bank CH NO 001569
3.	18-04-2013	2,55,000/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	SVC Bank CH NO 001570
4.	Total	22,00,800/-		
5.	03-06-2013	60,125/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	SVC Bank CH NO 028481
6.	10-03-2014	7,880/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	SVC Bank CH NO 028500
7.	Total	68,005/-		
8.	Grand Total	22,68,805/-		

Signature
Signature

Gaurav Khetan (Flat No. B-2301)

CC006/54793

Sr No.	Date	Amount	Purpose	Cheque No. with Bank Name
1.	05/03/2013	1,00,000	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI 024951
2.	20/04/2013	5,00,000	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI 024974
3.	02/05/2014	2,17,800	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI 048402
	Total	8,17,800		
4.	02/05/2014	25,270	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	ICICI 048402
	Total	25,270		
	Grand Total	8,43,070		



Ex-A
Member

Gaurav Khetan (Flat No. B-2302)

CC006/54793

Sr No.	Date	Amount	Purpose	Cheque No. with Bank Name
1.	20/04/2013	5,00,000/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI 024973
2.	24/01/2014	1,35,600/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI 048387
3.	24/01/2014	25,270/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI 048388
4	02/05/2014	1,56,930/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI 048401
	Total	8,17,800/-		
5.	24/01/2014	25,270/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	ICICI 048388
	Total	25,270/-		
	Grand Total	8,43,070/-		

[Signature]

Ex-A-11
member

Praveen Mukim (Flat No. C-2503)

CC006/54800

Sr No.	Date	Amount	Purpose	Reciept No./ Cheque No. with Bank Name
1.	20-01-13	2,00,000/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI Bank CH NO 35330
2.	01-03-2013	10,00,000/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI Bank CH NO 35354
3.	02-04-2013	7,45,800/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI Bank CH NO 35338
	Total	19,45,800/-		
4.	08-5-2013	60,125/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	ICICI Bank CH NO 41277
	Total	60,125/-		
	Grand Total	20,05,925/-		

Praveen Mukim

Praveen Mukim

Flat A (2)
Member

Praveen Mukim HUF (Flat No. B-2704)

C 0006/54800

Sr No.	Date	Amount	Purpose	Reciept No./ Cheque No. with Bank Name
1.	08-05-2013	19,45,800/-	Payment to JVPD Properties Pvt Ltd towards purchase of Flat Bhagtani serenity	ICICI Bank CH NO 161731
2.	08-05-2013	60,125/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	ICICI Bank CH NO 161732
	Total	20,05,925/-		

Praveen Mukim

Praveen Mukim

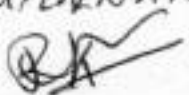
Ravikant Gour (Flat No. A-303)

CC006/54802

Exd. A.
September.

Sr No.	Date	Amount	Purpose	Receipt No/ Cheque No. with Bank Name
1.	10/05/2014	1,00,000/-	Payment for purchase of flat no 303 A wing Bhagtani Serenity	chq no 305569 Canara bank Powai
2.	10/05/2014	4,00,000/-	Payment for purchase of flat no 303 A wing Bhagtani Serenity	chq no 763794 Canara bank Powai
3.	12/05/2014	14,00,000/-	Payment for purchase of flat no 303 A wing Bhagtani Serenity	chq no 305570 Canara bank Powai
4.	26/05/2014	1,44,500/-	Payment for purchase of flat no 303 A wing Bhagtani Serenity	chq no 131601 Canara bank Powai
5.	02/06/2014	61,800/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	chq no 305573 Canara bank Powai
6.	02/06/2014	1,375/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	chq no 305572 Canara bank Powai
	Total	21,07,675/-		

COMPLAINANT



RAVIKANT GOUR

Ravikant Gour (Flat No. A-304)

CC006/54802

Sr No.	Date	Amount	Purpose	Reciept No./ Cheque No. with Bank
1.	12/05/2014	3,00,000/-	Payment for purchase of flat no 304 A wing Bhagtani Serenity	chq no 000006 Canara bank Powai
2.	12/05/2014	3,00,000/-	Payment for purchase of flat no 304 A wing Bhagtani Serenity	chq no 857531 Canara bank Powai
3.	12/05/2014	7,10,000/-	Payment for purchase of flat no 304 A wing Bhagtani Serenity	chq no 865658 Canara bank Powai
4.	12/05/2014	1,40,000/-	Payment for purchase of flat no 304 A wing Bhagtani Serenity	chq no 031178 Canara bank Powai
5.	26/05/2014	2,15,500/-	Payment for purchase of flat no 304 A wing Bhagtani Serenity	chq no 131601 Canara bank Powai
6.	02/09/2014	60,000/-	Payment for purchase of flat no 304 A wing Bhagtani Serenity	chq no 000003 Canara bank Powai
7.	02/09/2014	2,21,000/-	Payment for purchase of flat no 304 A wing Bhagtani Serenity	chq no 857539 Canara bank Powai
8.	02/09/2014	98,000/-	Payment for purchase of flat no 304 A wing Bhagtani Serenity	chq no 771723 Canara bank Powai
9.	02/06/2014	60,425/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	chq no 305572 Canara bank
10.	29/09/2014	2,930/-	Payment towards Service Tax demand for JVPD Properties Pvt Ltd of Flat Bhagtani serenity	chq no 771725 Canara bank Powai
	Total	21,07,855/-		

COMPLAINANT



RAVIKANT GOUR