

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

COMPLAINT NO: CC006000000056077

Amit Jain and Pooja Jain

.....Complainants.

V/s.

Dilpesh Bhagtani of

JVPD Properties Pvt.Ltd.

..... Respondents.

(Serenity- Bldg.1)

COMPLAINT NO: CC006000000055738

Hitesh Porwal &

Prerana Porwal

.....Complainants.

V/s.

Dilpesh Bhagtani

..... Respondents.

(Bhagatani Serenity)

COMPLAINT NO: CC006000000055902

Mr. Bhaskar Ranjan Dutt

Mrs. Liza Dutt

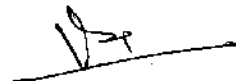
.....Complainants.

V/s.

JVPD Properties Pvt.Ltd.

..... Respondents.

(Serenity Bldg. 1)



COMPLAINT NO: CC006000000055940

Swarna Panigrahi

.....Complainant.

V/s.

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

..... Respondents.

COMPLAINT NO: CC006000000055939

Debashis Das

.....Complainant.

V/s.

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

..... Respondents.

MahaRERA Regn: - P51800011181.

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

Appearance:

For Complainants in: CC006000000056077-
Dinesh Rane.

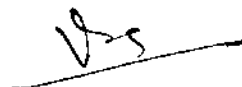
CC006000000055738- Hitesh Soni.

CC006000000055902- Shirish Deshpande.

CC006000000055940- Godfrey Pimenta.

CC006000000055939- Godfrey Pimenta.

Respondents: Exparte.



Final Order

10th October 2018.

The complainants have filed their complaints contending that they booked following flats in respondents' registered project Bhagtani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai.

Complainant/s	Flat No.	Amount paid.
Amit Jain and Pooja Jain	2301- A Wing	Rs. 14,31,765/-
Hitesh Porwal & Prerana Porwal	1501 - D - Wing	Rs. 32,63,250/-
Mr. Bhaskar Ranjan Dutt Mrs. Liza Dutt	202 - B Wing	Rs. 76,23,750/-
Swarna Panigrahi	2403 - B Wing	Rs. 30,65,690/-
Debashis Das	2404 - B Wing	Rs. 30,65,690/-

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. 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 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 and 18 of Real Estate (Regulation and Development) Act, 2016 (RERA).



2. The respondents have not appeared though the notices of appearance have been served on them as per Rule 8(2) (a) of Maharashtra Real Estate (Recovery of Interest, Penalty, etc.) Rules 2017. Hence, these matters proceed ex parte against them.

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

Points.	Findings.
1. Whether the respondents made false statement that they shall complete the project within reasonable time and subsequently declared that they shall not complete it & thereby contravened section 12 of RERA?	Affirmative.
2. In alternative, whether the respondents have failed to complete the project as agreed due to the reasons mentioned in the letter dated 24.07.2017?	Affirmative.
3. Whether the complainants are entitled to get refund of their amount with interest?	Affirmative.

Reasons.

Legal provisions:

4. Section 12 of RERA provides that where any person makes an advance or deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason



of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

5. Its proviso provides that if the person affected by such, incorrect, false statement intends to withdraw from the proposed project, he shall be returned his entire investment along with interest as may be prescribed and the compensation in the manner provided under RERA.

6. Section 18 of RERA provides that if the promoter fails to complete or he is unable to give possession of an apartment, plot or building -

- a) In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- b) Due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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 with interest at such rate as may be prescribed.

The complainants want to withdraw from the project.

Respondents' false/incorrect statement and failure to handover possession on agreed date.

7. The complainants have relied on the advertisements, brochures and allotment letters issued by the respondents to show that when they deposited money with the respondents, they were made to believe that the respondents shall complete the project within 42 months from the date of the receipt of final commencement certificate from plinth level. However, the respondents have issued a letter dated 24.07. 2017 declaring that they would not proceed ahead with the project and asked the allottees either to collect their amount or to give consent for accommodating them in respondents' another project. These facts, based upon the documents

issued by the respondents themselves have been established. These facts therefore prove that the respondents made either incorrect or false statement at the time of collecting money from the complainants that they would complete the project and would hand over the possession on agreed dates. Hence, the respondents are liable to refund the amount of complainants with interest at prescribed rate as the very project is frustrated. In Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India (W.P. No. 2737 of 2017 of original civil jurisdiction) Hon'ble Bombay High Court held in para 259 of the judgement that when promoter claims frustration, he is bound to return the money of allottee with interest.

Complainants' entitlement.

8. The complainants have filed payment sheets showing the amount paid by them to the respondents which are mentioned above and the dates thereof. The receipt of the payment mentioned therein has not been disputed. Respondents have to reimburse the complainants, the amount of taxes also as no services have been provided to complainants.

9. Rule 18 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interests, penalty, compensation, fine payable, forms of complaint and appeal, etc.) Rules, 2017 provides that the interest shall be 2% above the SBI's highest marginal cost of lending rate which is currently 8.55%. Thus, the complainants are entitled to get the simple interest at the rate of 10.55% per annum from the date of payment till they are refunded. They are also entitled to get Rs. 20,000/- towards the cost of the complaint.

Compensation

10. Advocate Mr. Shirish Deshpande insists to award compensation to his client by referring to Section 71 & 72 of RERA. According to him, the complainants have booked the flat four-five years ago and paid part of consideration to the respondents. The respondents are not going to construct the project and therefore, they have gained unfair advantage by utilizing the complainants' money. The complainants will have to pay

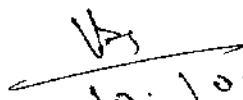


higher price while acquiring new properties in 2018. Therefore, he submits that this is a different case where the compensation must be awarded. In Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India Hon'ble Bombay High Court has held that the interest to be awarded under the Act is compensatory in nature. In the facts and the circumstances, of the cases, I do not find it necessary to award separate compensation because the prescribed rate of interest is 2% above the SBI's highest MCLR which is sufficient to satisfy complainant's claim for compensation. Hence, the order.

ORDER

1. The respondents shall refund the complainants' amount mentioned in para 1 of the order with simple interest at the rate of 10.55 % per annum from the dates of payment till they are refunded.
2. The respondents shall pay complainants Rs. 20,000/- towards the cost of their complaints.
3. 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: 10.10.2018.


10.10.18
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.