

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

COMPLAINT NO: CC006000000056278

1. Chandan Kailash Wadhawa
2. Mayur Narendra Taneja
3. Ashwini Rajendra Chavan Complainants.

COMPLAINT NO: CC006000000056279

1. Ashwini Rajendra Chavan Complainants.
2. Mayur Narendra Taneja
3. Chandan Kailash Wadhawa

COMPLAINT NO: CC006000000056413

Kavita Rupesh Dharade 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. Satish Dedhia.

Respondents: Exparte.

Final Order

12th October 2018.

The complainants have filed their complaint contending the following information:



Name of complainants	No. of flat	Consideration amount.
1. Chandan Kailash Wadhawa 2. Mayur Narendra Taneja 3. Ashwini Rajendra Chavan	803, C- Wing	Rs. 13,55,891/-
1. Ashwini Rajendra Chavan 2. Mayur Narendra Taneja 3. Chandan Kailash Wadhawa	1401, B- Wing	Rs. 13,55,891/-
Kavita Rupesh Dharade	1004, A-3 Wing	Rs. 27,90,000/-

The booked flats are in respondents' registered project Bhagtiani 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:

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



B. 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.

C. The complainants further contend that in the prospectus respondents represented that the project would be completed under the dynamic stewardship of Laxman 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 Laxman Bhagtani does not appear in the information uploaded on the website of MahaRERA and thereby respondents contravened Section 12 of RERA.

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

E. 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.

F. 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.



G. 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.

H. The complainants further complain that respondents collected money from them before purchasing the property in 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.

I. 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.

J. The complainants complain that the allotment letters disclose 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.

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

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

Points.	Findings.
1. Whether allotment letters are concluded agreement for sale?	Affirmative.



- | | |
|--|--------------|
| 2. Whether the respondents have failed to complete the flats due to discontinuance of their business as developer in respect of Bhagtani Serenity project within the meaning of Section 18(1)(b) of RERA? | Affirmative. |
| 3. 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. |
| 4. 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. |
| 5. 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. |
| 6. Whether the respondents collected money from the complainants without purchasing the property and thus, indulged in unfair practice? | Affirmative. |
| 7. Whether the respondents contravened Section 15 of RERA by mortgaging the property of the project without the consent / knowledge of the allottees? | Negative. |
| 8. Whether the respondents have failed to adhere to sanctioned plan and project specifications and thereby contravened Section 14 of the Act? | Redundant. |

Reasons.

4. Any aggrieved person can file a complaint against the promoter of the registered project under Section 31 of RERA, if the promoter contravenes or violates any provisions of RERA or Rules or Regulations made thereunder. 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. Therefore, 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. When one looks at the terms and conditions of the allotment letter, there remains no doubt in mind that the complainants come under the purview of 'allottee' defined by Section 2 (d) of RERA. 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.


5. 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.

6. 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.

7. 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. road. 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 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 9th 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) (c) 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 of the project.

8. 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.

9. 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 2/3rd of allottees. The complainants rely upon the plans contained in the brochures, area of the flat mentioned in the allotment letters 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:

10. I have held that the complainants are entitled to get back their amount. The complainants have produced the copy of the affidavit filed by Mr. Dipesh Bhagtani in Criminal Anticipatory Bail application nos. 1533,1935, 1725 of 2017 filed before the Hon'ble High Court showing the payments made by complainants to the respondents mentioned in Para-1 of the order. 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 and it is compensatory in nature. Hence, no separate compensation need to be awarded.

11. 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 10.55 % 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: 12.10.2018.


12 10 18

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

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

COMPLAINT NO: CC006000000056278.

Chandan Kailash Wadhwa,

---Complainants.

Versus

JVPD Properties Pvt Ltd
Laxman Bhagtani
Diipesh Laxman Bhagtani
Mukesh Laxman Bhagtani
Jaycee Homes Pvt Ltd
(Serenity- Bldg 1)

---Respondents.

MahaRERA Regn: **P51800011184**

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

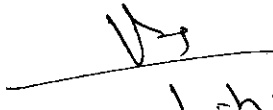
**ORDER ON THE RECOVERY APPLICATION FILED IN THE
COMPLAINT.**

The complainant represented through Ms. Kavita Dedhia who reports non-compliance of the order passed in the matter. The respondents are represented through Adv. Praveen Dhanawade for Adv. Alok Singh. He files reply to the show cause notice contending that their accounts are sealed. Respondents have done nothing ~~for~~ compliance of the order.

2. Hence, issue recovery warrant under Section 40(1) of RERA against the respondent.
3. The complainant to produce the statement showing the amount which has become due.

Mumbai.

Date: 01.04.2019.


1-4-19
(B.D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.