

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO. CC006000000044317

Sanjay Jagannath Masurkar ... Complainant.

VERSUS

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

COMPLAINT NO. CC006000000044247

Govind Sahu ... Complainants.

Dayanidhi Sahu

Usharani Sahu

Gopal Krishna Sahu

Sipra Sahu

Archana Upadhyay

Dilip Sahu

VERSUS

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

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

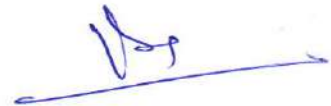
Appearance:

Complainants: Adv.Tanuj Lodha

Respondents: Exparte.

Final order
4th June, 2018

Complainants have filed these complaints for claiming refund of their amount with interest under Sections 7 & 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. No.	Name of the Complainant	Flat No.
1	Sanjay Jagannath Masurkar	A-3, 2502
2	Govind Sahu	B-604
3	Dayanidhi Sahu	B-304
4	Usharani Sahu	B-303
5	Gopal Krishna Sahu	B-602
6	Sipra Sahu	B-601
7	Archana Upadhyay	B-502
8	Dilip Sahu	B-402

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 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. The complainants contend that the respondents collected money from them projecting that they shall complete the project but now they have declined to complete it. Even thereafter respondents have failed to return their money. This amounts to unfair practice and fraudulent act within the meaning of Section 7 (1) (c) (d) of RERA.



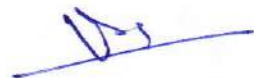
4. Respondents have failed to appear and contest the matters even after notices were sent to them. Hence these matters proceed ex parte against them.

5. 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 indulged in the fraudulent act or unfair practice?	Affirmative.
3. Whether the respondents are liable to refund complainants' amount with interest?	Affirmative.

REASONS:

6. 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 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.



7. I have already referred to the facts that the respondents have collected money from the complainants by promising to hand over the possession of their booked flat within 42 months from the receipt of final commencement certificate from the plinth level which is mentioned in clause 7 of the allotment letters. Their letter dated 24.07.2017 makes it clear that they do not want to complete the project. The letter further shows that they would refund complainants' amount. However, the respondents have not refunded the amount of the complainants. These facts therefore show that the respondents are guilty under Section 7 (c) (d) of the Act.

8. Section 7(3) of RERA provides that the Real Estate Regulatory Authority has the authority to impose such terms and conditions to bind the promoter in the interest of justice. 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 these two provisions, I find it necessary to direct the respondents to refund all the amount shown in the payment marked as Exhibit 'A, A1 to A8" 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, A1 to A8" 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 8.05%, from the date of the receipt of the amount by the promoter. Therefore, the respondents are liable to refund the said amount with interest at the rate of 10.05% 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, A1 to A8" of the complaints to the respective complainants.
- B. The respondents shall pay the complainants Rs. 20,000/- towards the cost of each complaint.
- C. The respondents shall pay simple interest at the rate of 10.05% from the dates of receipts of the amount till they are refunded.
- 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: 04.06.2018.


21.6.18

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

