

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

COMPLAINT NO: CC006000000001348

Nikhil Chopra. ... Complainant.
Versus
Dilpesh Laxman Bhagtani -
JVPD Properties Pvt.Ltd.
(Serenity - Bldg.-1) ... Respondents.

MahaRERA Regn: P51800011181

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

Appearance:
Complainant: In person
Respondents: Adv. Alok Kumar Singh

Final Order.
5th April 2018

The complainant has filed this complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA) to claim refund of his amount from the respondents with interest. The complainant contends that he booked flat no. 2701 of E-Wing in respondents' registered project Bhagtiani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai and respondents agreed to give their possession on or before 11th January 2018. However, the respondents issued a letter dated 24.07.2017 expressing their inability to complete the project and hence, the complainant seeks the refund of his amount.

2. The respondents have filed their reply. The relevant portion thereof demonstrates that the complainant is an investor and therefore, the



Authority has no jurisdiction to entertain this complaint. It is further contended that for the application under Section 18 of RERA, there must be agreement for sale and the complainant does not have it. Therefore, Section 18 is not applicable. Hence, they request to dismiss the complaint.

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

POINTS	FINDINGS
1. Whether the provisional letter of allotment issued by the respondents amounts to the agreement for sale?	Affirmative
2. Whether the complainant is an investor?	Negative.
3. Whether the respondents have discontinued their business as developer in respect of Bhagtiani Serenity project within the meaning of Section 18(1)(b) of RERA?	Affirmative.
4. Whether the respondents are liable to refund the amount of complainant with interest?	Affirmative.

REASONS

4. It is a fundamental principle of law of contract that once a proposal is accepted; it becomes a contract provided, it is coupled with lawful consideration and lawful object and it is not specifically barred by any statute. There can be oral agreement for sale or it can be also in written form. In this case the complainant has relied upon allotment letter, admittedly issued by the respondents on 11.07.2014. It is the contention of the respondents that there is no concluded contract. Hence, it is necessary to look at the allotment letter. On its perusal it becomes clear that the complainant agreed to purchase the flats and the respondents agreed to sell them for the consideration mentioned in the letter. It also clarifies that the consideration is to be paid in 10 instalments depending upon the various stages of the construction. There are other stipulations namely the

payment of instalments in time is the essence of contract, in case of delay, the interest shall be charged. There are other terms which clearly show that the purchaser / complainant has inspected the relevant documents and the plans which are subject to variation. The complainant agreed to sign all applications, papers and documents and to do all the deeds which may be required for safeguarding the interest of the project. The respondents have reserved their rights to modify their plans. They have agreed to refund the amount of the complainant with interest, in case of not obtaining requisite clearance and permissions. The complainant agreed to pay all the taxes and the consideration. He agreed not to assign his interest without the prior permission of the respondents within the period of twelve months of booking. The respondents agreed to deliver the possession of the flats within 42 months from receipt of final commencement certificate from plinth level. All these terms and conditions have been accepted and signed by both the parties. Therefore, there remains no doubt in my mind that it is a concluded contract which has taken place on 11.07.2014 when the Maharashtra Ownership Flats Act, 1963 was holding the field. The Section 4A of the said Act allows such document to be admitted in evidence in the absence of registration. Therefore, I find no difficulty to rely upon this document to hold that the respondents agreed to sell the flats to the complainant as per the terms and conditions mentioned in the provisional letter of allotment.

5. The respondents have taken a stand that the complainant is the investor, therefore, he is not entitled to file the complaint under Section 31 of RERA. It is pertinent to note that any aggrieved person can file a complaint against the promoter of the registered project, if the promoter contravenes or violates any provisions of RERA or Rules or Regulations made thereunder. The learned Advocate of the respondents submits that the complainant did not insist on execution of agreement for sale only because, he is investor. I do not agree with him, because he booked the



Flats on 11.07.2014 the respondents themselves have contended that they received IOD on 06.04.2016. IOD was required for registration of the agreement. The respondents delayed the IOD and they avoided to execute the agreement for sale. They cannot take undue advantage of their own wrong to say that the complainant is an investor. Moreover, when one looks at the terms and conditions of the allotment letter referred to above, there remains no doubt in my mind that the complainant comes under the purview of 'allottee' defined by Section 2 (d) of RERA.

6. The respondents have not mentioned while uploading the information of their project on the official website of MahaRERA that the complaint is the investor or he has financed them. Section 4(2)(k) provides that the names and addresses of the contractors, architect, structural engineer, if any and other person concerned with the development of the proposed project must be put on the website. Therefore, they are estopped from denying the complainant's status as a home buyer.

7. All the terms and conditions of the allotment letter clearly indicate that the complainant agreed to purchase the flat for consideration to be paid by him in instalments depending upon the stages of the construction and the last instalment payable was at the time of handing over the possession. Therefore, merely because it is mentioned in Clause 10 of the allotment letter that the complainant is an investor that itself will not make him the investor in the real sense. A person who pays money to the promoter in anticipation of getting 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 complainant has deposited below mentioned amount with the respondents, it does not mean that he becomes the investor interested to earn money by making profits. The respondents have not produced any evidence to prove that the complainant is in habit of investing his funds for earning profit. Therefore, I hold that in the facts and

circumstances of the case, the complainant does not appear to be investor but he is an allottee.

8. It is fact that this Authority has held that for application of Section 18(1)(a) of RERA, there must be agreement for sale. Now I want to deal with Section 18(1)(b) of RERA which provides that if the promoter fails to complete the project or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act (RERA) or for any other reason, he becomes liable to refund the amount paid to him by allottee under Section 18(1)(b) of the Act.

9. There is no dispute on the point that the respondents have issued a letter to the complainant 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. The Hon'ble High Court has also referred to such situation where the promoter can claim frustration when he is unable to complete the project for no fault of his 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 His Lordship mentions that even in such a situation promoter will have to return the allottees' amount with interest. After taking into consideration the observations of the Hon'ble High Court and provisions of Section 18(1)(b) of RERA, I find that the respondents have discontinued their business as a developer in relation to their project Bhagtiani Serenity and hence, they have made themselves liable to refund the amount of the complainant with interest. Section 18 of RERA entitles the allottee to get refund of his 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.

10. The complainant has filed the payment sheet marked Exhibit 'A' showing the payments made by him to the respondents in respect of flat

no. 2701. He paid the respondents Rs.9,00,000/- on 02.07.2014, Rs. 7,00,000/- & Rs. 8,00,000/- on 03.07.2014, Rs. 5,88,750/- & Rs. 92,352/- on 08.07.2014, Rs. 6,00,000/- on 12.04.2017, Rs. 3,25,275/- & Rs. 41,638/- on 03.05.2017. The respondents have not denied the receipt thereof. Therefore, the respondents are liable to refund the said amount with interest at the rate of 10.05% from the date of their receipt. The complainant is also entitled to get Rs. 20,000/- towards the cost of this complaint. Hence, the following order.

ORDER

1. The respondents shall refund the amount mentioned in Para-10 of this order.
2. The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.
3. The respondents shall pay simple interest at the rate of 10.05% from the dates of receipts of the amount till they are refunded.
4. 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 complainant's claim is satisfied.

Mumbai.

Date: 05.04.2018.



5-4-18

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