

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

COMPLAINT NO: CC006000000001504

Kishore K. Gaurat.
Versus

... Complainant.

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

... Respondents.

MahaRERA Regn: P51800011181

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

Appearance:

Complainant: Adv. Tanuj Lodha.

Respondents: Adv. Alok Kumar Singh.

Final Order.

24th April 2018

The complainant has filed this complaint under Section 18 (3) of the Real Estate (Regulation and Development) Act, 2016 (RERA) to claim refund of his amount from the respondents with interest.

2. The complainant contends that he booked flat no. ³²⁰⁴~~2304~~ of A-^B~~B~~ Wing in respondents' registered project Bhagtiani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai. Respondents did not construct the project because they could not get approvals/sanctions. Respondents issued a letter dated 24.07.2017 expressing their inability to complete the project. In such circumstance, the respondents were liable to return his money with 15% interest as per Clause - 10 of allotment letter.

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+ corrected 4535 of RERA.
8.5.18

Respondents failed to return his amount with interest and hence, the complainant seeks the refund of his amount.

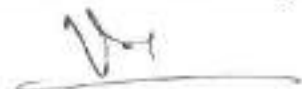
3. The respondents have filed their reply. The relevant portion thereof demonstrates that the complainant is an investor and therefore, the Authority has no jurisdiction to entertain this complaint. It is further contended that for the application under Section 18 of RERA, there must be agreement for sale and the complainant does not have it. Therefore, Section 18 is not applicable. Hence, they request to dismiss the complaint.

4. 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 failed to discharge their obligation to return the complainant's amount with 15% interest on their failure to obtain requisite clearance/ permission under Section 18(3) of RERA?	Affirmative.
4. Whether the respondents are liable to refund the amount of complainant with interest?	Affirmative.

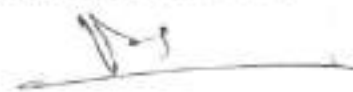
REASONS

5. 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 is for 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 15.03.2014. 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 flat and the respondents agreed to sell it 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 will 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 by both the parties and signed by respondents. Therefore, there remains no doubt in my mind that it is a concluded contract which has taken place on 15.03.2014 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 flat to the complainant as per the terms and conditions mentioned in the provisional letter of allotment.

6. 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 Flat on 15.03.2014, 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.

7. 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.

8. 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 consideration 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. Hence this complaint is maintainable u/s 18(3) of RERA and this Authority has jurisdiction to adjudicate upon it.

9. Section 18(3) of RERA provides that if the promoter fails to discharge any other obligation imposed on him in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under RERA. Clause 10 of the allotment letter clearly provides that the promoter shall pay the amount of the allottee with interest at the rate of 15% per annum from the date of payment of the respective amount till the date of termination and it would be refunded after 180 days. The respondents by their letter dated 24.07.2017 have asked the allottees to take refund of their amount because the necessary permissions and approvals have not been received by them as contended in the allotment letter. The respondents have not paid back the amount of the complainant and therefore, the complainant is entitled to get the interest at the rate of 15 % per annum by way of compensation on their amount from the date of its payment as agreed by respondents.

10. Another aspect of this issue is, there is no dispute on the point that the respondents have issued a letter on 24.07.2017 and disclosed that for various reasons mentioned in the said letter, it is not possible for them to proceed ahead with the project and complete it. Hon'ble Bombay 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.

11. The complainant has filed the payment sheet marked Exhibit 'A' showing the payments made by him to the respondents in respect of booked flat. The respondents have not denied the receipt thereof. Therefore, the respondents are liable to refund the said amount with interest at the rate of 15% from the date of their receipt. The respondents are bound to reimburse the amount of service tax collected from the complainant as they have failed to provide services to the complainant. On this ground the respondents can seek refund of the tax amount from the concerned authority, if they so choose. 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 payment sheet marked Exh. 'A' which shall form the part of this order.
2. The respondents shall pay simple interest at the rate of 15% from the dates of receipts of the amount till they are refunded.
3. The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.
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: 24.04.2018.


24-4-18

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

Exh: A

KISHORE. K. GAURAT

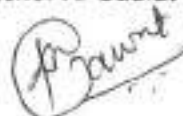
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Payment Format

Sr. No	Date	Amount	Purpose	Receipt Number / Cheque Number with Bank Name
1	21st Nov 2013	1,25,000.00	Payment made to Bhagtani Serenity Powai project for Purchase of Flat No A - 3204	Cheque Number : 076755, Bank Name : ICICI Bank, Branch : Daman, Pin Code : 396210
2	1st Dec 2013	3,75,000.00	Payment made to Bhagtani Serenity Powai project for Purchase of Flat No A - 3204	Cheque Number : 076756, Bank Name : ICICI Bank, Branch : Daman, Pin Code : 396210
3	18th Dec 2013	15,09,250.00	Payment made to Bhagtani Serenity Powai project for Purchase of Flat No A - 3204	Cheque Number : 076757, Bank Name : ICICI Bank, Branch : Daman, Pin Code : 396210
4	24th Feb 2014	62,088.00	Payment made to Bhagtani Serenity Powai project for Purchase of Flat No A - 3204 — Service Tax	Cheque Number : 076744, Bank Name : ICICI Bank, Branch : Daman, Pin Code : 396210
TOTAL		20,71,336.00		

Amount in Words : Rupees Twenty Lakhs Seventy One Thousand Three hundred and Thirty Six Only.

Complainant Name & Sign : Kishor K. Gaurat



Respondents Remarks :

Respondent Name & Sign