

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

COMPLAINTS NO: CC006000000001312

Mr. Ketan Gagra ... Complainant.

**VERSUS**

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

COMPLAINT NO. CC0060000000023014

Suchita Malakar ... Complainant.

**VERSUS**

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

COMPLAINT NO. CC006000000001731

Smt. Amuta S. Apte ... Complainant.

**VERSUS**

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

COMPLAINT NO. CC0060000000012250

Mr. Sarang Apte ... Complainant.

**VERSUS**

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

**Appearance:**

Complainants: Adv. Tanoj Lodha.

Respondents: ASD Associates.

**Coram:** Shri B.D. Kapadnis,

Hon'ble Member & Adjudicating Officer.



**Final Order.**

11<sup>th</sup> April 2018

The complainants have filed these complaints under Section 7, 12 & 14 of the Real Estate (Regulation and Development) Act, 2016 (RERA) to claim refund of their amount from the respondents with interest. The complainants contend that Mr. Ketan Gajara booked flat No.1306/B Wing, Ms. Suchita Malkar booked flat No.2702/E Wing, Ms. Amruta Sarang Apte booked flat No.2804, Mr. Sarang Apte booked flat No.2302/A Wing, in respondents' registered project Bhagtiani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai. The complainants complain that by relying on respondents' false representations contained in allotment letters, false advertisements that respondents shall complete the project, they booked their flats. However, the respondents by issuing a letter dated 24.07.2017 expressed their inability to complete the project and even thereafter the respondents have not returned their money and thus the respondents are guilty of practicing unfair practice and indulging in fraudulent act. Hence, the complainants seek the refund of their amount with interest. The complainants further allege that the respondents have changed the plan without previous written consent of at least 2/3<sup>rd</sup> allottees.

2. The respondents have filed their reply. The relevant portion thereof demonstrates that the complainants are investors and therefore, the Authority has no jurisdiction to entertain their complaints. The complainants were aware of the fact that the allotment letters were subject to approvals and permissions to be granted by the various authorities. The complainants are aware of the difficulties faced by the respondents in completing the project. They deny the allegations of indulgence into



fraudulent act or practising unfair practice. Hence, they request to dismiss the complaints.

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

POINTS	FINDINGS
1. Whether the complainants are investors?	Negative.
2. Whether the respondents made false statement regarding completion of the project?	Affirmative.
3. Whether the respondents have changed the sanctioned plan without previous written consent of at least 2/3 <sup>rd</sup> allottees?	Negative.
4. Whether the respondents have indulged in fraudulent act and practised unfair practice?	Affirmative.
5. Whether the respondents are liable to refund the amount of complainants with interest?	Affirmative.

#### REASONS

4. The respondents have taken a stand that the complainants are the investors, therefore, they are not entitled to file the complaints 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 complainants did not insist on execution of agreement for sale only because, they are investor. I do not agree with him, because he booked the Flats in the year 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 complainants are investors.

Moreover, when one looks at the terms and conditions of the allotment letters, there remains no doubt in my mind that the complainants come under the purview of 'allottee' defined by Section 2 (d) of RERA.

5. The respondents have not mentioned while uploading the information of their project on the official website of MahaRERA that the complainants are the investors or they have financed them. Section 4(2)(k) of RERA provides that the names and addresses of the contractors, architect, structural engineer, if any and any other person concerned with the development of the proposed project must be put on the website. Therefore, they are estopped from denying the complainants' status as home buyers.

6. All the terms and conditions of the allotment letters 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. Therefore, merely because it is mentioned in Clause 10 of the allotment letters 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. The respondents have not produced any evidence to prove that the complainants are in habit of investing their funds for earning profit. Therefore, I hold that in the facts and circumstances of the cases, the complainants do not appear to be investors but they are allottees.

7. 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. The Hon'ble High Court have also referred to such situation where the promoter 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 mention 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 12 of RERA, I find that the respondents have collected money from the complainants by making false statement regarding completion of their project Bhagtiani Serenity. These facts also indicate that they have indulged in fraudulent act and practised unfair practice. Hence, they have made themselves liable to refund the amount of the complainants 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.

8. Complainants have failed to prove that respondents have changed the sanctioned plan. Hence section 14 of the Act is not attracted.

9. The complainants have filed the payment sheet marked Exhibit 'A' in their complaints showing the payments made by them to the respondents. The receipt of the payment has not been disputed by the respondents. 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 complainants are also entitled to get Rs. 20,000/- towards the cost of their complaints. Hence, the following order.

#### ORDER

1. The respondents shall refund the complainants the amount mentioned in payment sheet marked Exh. 'A' in their respective complaints with simple interest at the rate of 10.05% from the date of their receipt till they are refunded.



2. Payment sheet marked Exh. 'A' in each case shall form the part of the order.
3. The respondents shall pay each 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 complainants' claims are satisfied.

Mumbai.

Date: 11.04.2018.

Handwritten signature and date 11-4-18.

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

**Complaint No.** CC006000000023014

*Advt A.*  
*24*  
*Member*

**Payment Format**

<b><u>Sr.No.</u></b>	<b><u>Date</u></b>	<b><u>Amount</u></b>	<b><u>Purpose</u></b>	<b><u>Cheque No. with Bank Name</u></b>
1.	11.04.2015	7,00,000/-	Payment for purchase of Flat No.2702 in Wing E of Building 1 of Project Bhagtani Serenity.	873459 HDFC Bank
2.	11.04.2015	1,11,000/-	Payment for purchase of Flat No.2702 in Wing E of Building 1 of Project Bhagtani Serenity.	00042 DCB Bank
3.	11.04.2015	68,320 /- (Service Tax)	Payment as in way of Service Tax for purchase of Flat No.2702 in Wing E of Building 1 of Project Bhagtani Serenity	00041 DCB Bank
4.	11.04.2015	14,00,000/-	Payment for purchase of Flat No.2702 in Wing E of Building 1 of Project Bhagtani Serenity.	140687 OBC Bank
5.	20.05.2016	7,37,000/-	Payment for purchase of Flat No.2702 in Wing E of Building 1 of Project Bhagtani Serenity.	679868 OBC Bank
6.	20.05.2016	26,716/- (Service Tax)	Payment as in way of Service Tax for purchase of Flat No.2702 in Wing E of Building 1 of Project Bhagtani Serenity	679868 OBC Bank

**Complainant Name & Signature**

Suchita Malakar

*Suchita Malakar*

**Respondents Remark:-**

**Respondents Name & Signature**

JVPD Properties Pvt. Ltd.