

**MAHARASHTRA REAL ESTATE**  
**APPELLATE TRIBUNAL UNDER RERA Act**

**No.AT006000000000017**

Manjit Singh Dhaliwal  
R/o. B-901,  
Marigold Meridian,  
Lake Road, Bhandup (West)  
Mumbai 400 078

.. Appellant/s

**V/s.**

JVPD Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s

**No.AT0060000000000422**

Naim Kamaruddin Shaikh  
R/o C-302. 3<sup>rd</sup> floor,  
Fressia-I, Navagaon,  
Dahisar (West),  
Mumbai 400 068.

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s

**No.AT006000000000027**

Rajesh Joseph D'souza..  
R/o. Green View, Wagholi,  
Behind Wageshwari Temple,  
Post Nirmal, Tal Vasai Dist,  
Thane.

Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s



Alok Shah  
R/o. A-902,  
Sunsrishti Complex,  
Saki Vihar Road,  
Near Guru Kripa Hotel,  
Powai, Mumbai 400 072.

**No.AT006000000000031**

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061. .. Respondent/s

Sushil Kumar Chaudhary  
R/O A-204, Vimal Deep  
Sarvodaya Paradise, Behind Balaji Hospital,  
Mira-Bhayander Road,  
Mira Road (East), Thane 401 107

**No.AT006000000000029**

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061. .. Respondent/s

Ajit Nathuram Sagvekar  
R/o. 105-Mahavir Gaurav,  
M.D. Keni Marg, Nahur (East),  
Mumbai 400 042.

**No.AT006000000000026**

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061. .. Respondent/s

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**No.AT006000000000098**

Prasad Vithoba Vengurlekar  
R/o.124. Om Sai C.H.S.  
Indira Nagar, Meghwadi,  
Jogeshwari (East),  
Mumbai 400 060.

..Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s

**No.AT006000000000099**

Atul Pant  
R/o. 223/224 Kadambari Society,  
Gulmohar Road No.6,  
J.V.P.D. Vile Parle (West),  
Mumbai 400 042.

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s

**No.AT006000000000100**

Mahesh Juttiyavar  
R/o. 1002 Panchavati  
A Wing, Panchashrusti Complex  
Chandivali, Mumbai 400 072

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s

**No.AT006000000000101**

Siba Prasad Dash  
R/o. A-2/6-5, Millennium Tower,  
Sector-9, Sanpada,  
Navi Mumbai - 400 705.

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s



**No.AT006000000000103**

Vandana Yadav  
R/o. A-902, Sunsrishiti Complex,  
Saki Vihar Road,  
Near Guru Kripa Hotel,  
Powai, Mumbai 400 072.

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s

**No.AT006000000000104**

Colonel Tej Kohli  
R/o. 604, Deep Apartments,  
Oshiwara, Andheri (West),  
Mumbai 400 053.

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s

**No.AT006000000000106**

Dr. Sukhdev Singh Gill  
R/o. .V.P.O.,Room Tahsil,  
Jagraon Dist.  
Ludhiana,  
Punjab – 142 026.

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061.

.. Respondent/s

*M*

**No.AT006000000000107**

Kushal Sen  
R/o. D-702, Lodha Paradise,  
Olympia, Majiwada,  
Thane (West),  
Maharashtra - 400 601.

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061. .. Respondent/s

**No.AT006000000000108**

Sheetal Jitesh Zanwar  
R/o. Naswala Chowk,  
Malkapur Dist.  
Buldhana - 443 101

.. Appellant/s

**V/s.**

M/s. J.V.P.D. Properties Pvt. Ltd.  
Panchratna, Panchmarg, Off Yari Road,  
Versova, Andheri (W), Mumbai 400 061. .. Respondent/s

Adv. Faheen Shah for Appellants in all the 15 appeals.

Adv. A.K. Singh, Adv. for M/s. JVPD Properties Pvt. Ltd. in all the 15 appeals.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.  
Heard on : 12<sup>th</sup> April, 2018  
Dictated/Pronounced on: 12<sup>th</sup> April, 2018  
Transcribed on : 13<sup>th</sup> April, 2018

**:-ORAL JUDGMENT:-**

Heard finally.

1. The 15 complainants have assailed common order dated 29<sup>th</sup> December, 2017 recorded by the Ld. Member & Adjudicating Officer, MahaRERA, whereby the complaints are rejected on the ground of want of inter se Agreement for Sale between the Appellants (allottees) and the Respondents (Promoter). The Project of the Promoter is duly registered with MahaRERA Registration no. P51800011181.



2. Each of the allottee based on Letter of Allotment, has released payments for purchase of flat in proposed residential building to be known as 'Bhagtani Serenity' being constructed on land bearing CTS No. 63A/5 and 64D, 'S' Ward of Village Tirandaz, Taluka, Kurla, Mumbai. The date of issue of Allotment Letter to each of the allottee differs, however the contents in the printed Allotment letter signed by authorized signatory of the promoter are identical. For the purpose of controversy in the respective appeal, an allotment letter dated 31.1.2014 (of Manjit Singh) and 27.9.2014 (of Naim Shaikh) are referred and taken note of.
3. The admitted position as reflected from the arguments and the record including communication by the Promoter to some of the allottees demonstrate that the project has not even started. The e-mail communication illustrate that the promoter does not wish to go on with the project. There is no controversy that each of the allottee has released 50% of the amount of the flat agreed to be purchased from the Promoter.
4. The Ld. Counsel for the appellant allottee says that the Ld. Member & Adjudicating Officer erred in drawing a wrong conclusion in respect of interpretation of allotment letter by saying that the allotment letter is the first stage followed by Agreement of Sale. He says, the Preamble of the RERA should not be obliterated as it is a welfare legislation and its paramount aspect is protection to the consumer. According to him the interpretation given to Section 18 (1) (a) of RERA, is incorrect. It was the advertisement campaign of the Promoter which has lured the allottees and induced them to purchase the flat and at such time the Promoter has adopted to deceive with fraudulent representations. To stress his point, the Ld. Counsel for the appellant has placed reliance to the judgement of Delhi High Court decided on 20<sup>th</sup> December, 2008 in the matter of Shikha Birla v/s. Ambience Developers. He has also relied to the judgement reported in 2016 (1) Mh.LJ Page 494 in the matter of Pius Varghese v/s. Neptune Ventures decided by Bombay High Court.
5. The Ld. Counsel for the Promoter canvassed that the complainant / allottee has to establish his case individually. There is no case of violation to Section 18,19,31 of RERA. The date of completion of project while registering it with MahaRERA was shown to be 2025, even otherwise it was 42 months after obtaining construction permission from the competent authorities. He says, no false picture was projected. Everything was disclosed to the allottees. To stress his point, Ld. Counsel dealt with the letter of Allotment and in particular clause 6,9,10 thereof. He reiterates that the complainant was not clear of his case and the Adjudicator has rightly held Section 19(3) of RERA is not attracted. He points that the encumbrances of financial assistance of Xander is disclosed appropriately, by Promoter.
6. After hearing both the Ld. Counsel, perusal of record coupled with the reported Judgements, following points arise for my consideration :-
  - a) Whether the complaint fails for want of a Agreement for Sale ?
  - b) What Orders ?



7. My findings to above points is :

- a) The complaint will not fail for want of Agreement for Sale.
- b) The Order dated 29<sup>th</sup> Dec. 2017 calls for interference and matter is remanded to the Ld. Adjudicating Officer, MahaRERA.

### **REASONS**

8. There is no contest that RERA in its Preamble disclosed to be welfare legislation to regulate proceedings between a Promoter and the flat purchaser / allottee.
9. The Hon'ble Lordships of Bombay High Court in the Group Writ Petitions, in particular, Writ Petition No. 2737 of 2017 decided on 6<sup>th</sup> December 2017 in Neelkamal v/s. Union of India, have observed "The Act encompassed with its beneficial provisions to all classes who are affected by the illegalities". "RERA Act relates to the development of buildings / projects and sale of flats therein. The statute does not interfere with any ownership rights of the owner or developer of the property. RERA regulates the development of Real Estate Project in respect of constructions which are not completed wherein Occupation Certificate have not been obtained on the date of commencement of provisions of RERA."

In para 108 it is observed, "the Authority could exercise its discretion while dealing with the cases under Sections 6,7,8 read with 37. It was further observed that harmonious and balanced construction of the provisions shall suffice the purpose.

In para 109 it is observed "The Authority shall examine each case in compelling circumstances and reasons for a Promoter in failing to complete the project. "Authorities / Tribunal can look into individual cases and mould their reliefs accordingly."

10. Sec. 18 (1)(a) of RERA indicate "In accordance with terms of Agreement for Sale or as the case maybe, duly completed by the date specified therein, the term "as the case may be", necessarily interdict to the agreement which is subject of controversy. It means, depending on circumstances. The statement in the Section equally applies to two or more alternatives. There cannot be a strict user of terminology of Agreement for sale necessarily to be entered into and for want of the same, the unfortunate allottees to suffer.
11. There are cases where suits for specific performance are filed based on oral agreements or oral terms and such suits even at its apex stage were not thrown away only on the ground of projection of oral terms. Now adverting to the present scenario, the parties are in agreement having a allotment letter referred to above which stipulates description of the property to be purchased by individual allottee, description of the payment schedule and the total cost, the necessary requisition of permissions, obligation to complete the projects, and getting clarity to the title.

The cumulative effect of Letter of Allotment will not be short of branding it to be the terms agreed upon between the parties.

12. Sec. 2(c) of RERA deals with Agreement for Sale means an agreement entered into between the promoter and the allottee. It is only the difference of nomenclature, one may brand it as letter of allotment or one may brand it as an Agreement or one may brand it as provisional agreement or define it is an acceptance letter. However, it will not dilute the terms settled between the parties of a purchaser, seller of property and price agreed upon in schedule, and details of the property.
13. Sec. 2 (d) of RERA contemplates definition of 'allottee' which includes in relation to the real estate project allotted or sold whether as freehold or leasehold or otherwise transferred by promoter and includes the persons who subsequently the said allotment. Broadly speaking the term 'allottee', put in juxtaposition with the letter of allotment meets the requirement of Agreement as indicated in Sec. 2(c) of RERA. It is not the case of Promoter that Letter of Allotment does not meet required details. On the contrary, the Promoter has not raised objection to contractual relations, nor agitated that complaints sans consideration for want of regular Agreement for Sale.
14. Basically, an agreement is meeting of minds even without legal obligations. The Agreement is a form of contract relating to offer, acceptance, consideration, time schedule, clarity of title, and as to essence of time. The Allotment letter incidentally is couched in such a fashion to incorporate all requisite terms. Hence Letter of Allotment will not scuttle rights of Allottees.
15. In the Judgement of Hon'ble Delhi High Court the point raised was about issuance of letter in respect of allotment of shop to the purchaser which specified charts of amount payable by purchaser in instalments. When a suit for specific performance was filed by the shop purchaser it was objected to by the seller for want of an Agreement for Sale. In para 20 of the said Judgement Hon'ble Lordships have observed "Faced with overwhelming admitted facts, the defendant has resorted to technical pleas that allotment agreement is an agreement to enter into an agreement in form of 'commercial space buyer's agreement' and therefore not enforceable and the allotment agreement, it was agreed, cannot be legally or specifically enforced in a Court of law. The Hon'ble Lordship has explained various situations and the effect of formal letter or formal agreement which contemplate entire terms between the parties. It was again quoted in para 22, "The letter is acceptance of the offer made to the plaintiff by the defendant. It refers to allotment of a particular shop to the plaintiff, instalment plan for making payment by the plaintiff and performance of obligations as contained in the application form and 'commercial space buyers' agreement. The plaintiff and defendants were under an obligation to comply with the terms contained in the application form and the 'commercial space buyers' agreement.
16. In the instant case, nothing was left to be negotiated and settled for future. Terms were agreed and Letter of Allotment was read and understood. It was a certain and a concluded bargain. A concluded contract therefore had come into existence.

17. In the matter of Pius Varghese the controversy was in respect of Agreement of flat purchase. The plaintiff had paid certain instalments for the flat. The defendant had unilaterally increased the price of the suit flat which the Plaintiff had not accepted. The plaintiff claimed specific performance of the initial agreement between the parties which is acted upon by both the parties. The payments were made by cheques. According to the defence raised, the initial contract with the plaintiff dated 23<sup>rd</sup> June 2009 had nothing to do with the printed terms and condition as shown in the payment schedule of the defendant nos. 1 to 4. It was observed in the said case in para 27 "In this case the terms and conditions in the payment chart are complied by not only the plaintiff, but also acted upon by defendant nos.1 to 4 and the contract between the parties under the allotment letter, which must be read along with the terms and conditions of the payment chart would bind the parties.
18. The aforesaid discussion coupled with effect of Section 18(1)(a) of RERA the case of the allottees / original complainants squarely comes within the jurisdiction of the Adjudicating Officer, MahaRERA.
19. One of the contentions raised was that the complainant<sup>nt M</sup> who has to establish his case simply quoted Sections 18,19, and 31 which has no enforceability against the promoter. It is tried to be argued that no false picture was projected by the promoter.
20. With the assistance of both the Ld. Counsels, I have adverted to the Registration of project with MahaRERA that the project did not commence till 31 August, 2017. There was no construction. The name of all the directors was not disclosed, the encumbrance of only Xander was informed without disclosing that the project was under litigation from Xander for recovery of sums advanced by the financier to the promoter.
21. The brochure which is annexed highlighted by the Ld. Counsel for the appellant indicate that 300 projects have been completed by the promoter however while registering he says none of the project is commenced nor completed. I do not wish to advert to the argument that since inception the approach of the promoter was dishonest and hence he succeeded in drafting unilateral terms and conditions of the Allotment Letter which according to the allottee is entirely unfair, unjust, inoperative, objectionable and one-sided.
22. The points of entitlement to the refund of the amount with interest otherwise for breach of terms of Sections 4, 12, 18 19(4) are left to be dealt with by the Ld. Adjudicating Officer based on the material that the parties would advance at the time of argument or otherwise. I have refrained from further dissecting the facts though repeated reference was given by both the Ld. Counsels and to some extent is indicated in their submissions hereinbefore.
23. In totality, I hold that the complaint of the allottees will not fail for want of Agreement for Sale and the complaints are maintainable.
24. Points are answered accordingly.

**:-ORDER:-**

1. The 15 appeal of the allottees are allowed. The common order dated 29<sup>th</sup> December, 2017 is set aside. The matter is remanded to the Ld. Adjudicating Officer, MahaRERA to be decided afresh on merits.
2. The Respondent to pay cost of Rs.15000/- to each of the allottee/appellant within 30 days.
3. The parties to the appeal / to the original complaint shall appear before the Ld. Member and Adjudicating Officer on 23rd April, 2018.

Dictated and pronounced in open Court today.

Place: Mumbai  
Dated: 12th March, 2018

  
(K. U. CHANDIWAL, J.)  
President,  
Maharashtra Revenue Tribunal,  
Mumbai  
& I/c. Maharashtra Real Estate  
Appellate Tribunal, (MahaRERA),  
Mumbai