

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: CC006000000056541

Saba Mustafa Javied Sayed

... Complainant.

Versus

M/s. Monarch & Qureshi Builders

... Respondents.

Jayesh T. Shah

Ketan T. Shah

(Cosmic)

MahaRERA Regn: P51800009046

Coram:

Hon'ble Shri B.D. KAPADNIS.

Member & Adjudicating Officer.

Appearance:

Complainant: Adv.Mr. Shoaib I.Memon.

Respondents: Adv.Krishna Agarwal.

Final Order.

31st January 2019


The complainant contends that respondent nos. 2 & 3 had commercial relations with the complainant. Complainant had done land settlement for them and the respondent nos. 1 & 2 were liable to pay her Rs. 1,10,55,000/-. The respondents allotted flat No.1203 on the 12th floor of the building in respondents' registered Project known as Evershine Cosmic situated at Oshiwara, Andheri (West) by adjusting Rs. 99,49,500/- out of the said amount and executed registered agreement for sale to that effect. Thereafter the respondents allotted flat no. 2203 of the same carpet area to the complainant on 13.07.2010



situated on the 22nd floor of the said building and executed the deed of rectification dated 26.07.2011. Thereafter the respondents informed the complainant by their letter dated 02.03.2017 that the respondents' problem ended and the construction would start before April 2017 and possession of the flat would be handed over within 9 months from April 2017 i.e. on or before 31.12.2017 but they failed to deliver the possession on the agreed date. The complainant wants to continue in the project and claims interest on her investment for every month of delay till getting possession of the flat, under Section 18 of the Real Estate (Regulation & Development) Act, 2016 (RERA).

2. The respondents have filed the reply to deny that they agreed to deliver the possession of the complainant's booked flat on or before 31.12.2017. The date of possession was not mentioned in the agreement for sale and deed of rectification by consent of the parties. They have declared the date of completion on the official website of the Authority as 31.12.2023 and therefore, the complaint is not maintainable. They further contend that suit no. 1335 of 2010 relating to the project was filed in the Hon'ble High Court and the consent terms were filed in the said suit whereby the respondents are entitled to construct upper floors from 17th floor. The complainant's booked flat is on 22nd floor. They by their letter dated 02.03.2017 informed the complainant that the constructions of the flats situated on the floors between 18th to 22nd shall be handed over on or before 31.12.2017. They contend that the complainant has not paid any money towards the purchase of the flat. They have applied for C.C. and they propose to complete the project by December 2023. Hence, they request to dismiss the complaint.

3. Following points arise for determination. I record my findings thereon as under: -



POINTS.	FINDINGS.
1. Whether the respondents agreed to deliver the possession of the flat on or before 31.03.2017?	Affirmative.
2. Whether the respondents have failed to deliver the possession of the flat on agreed date?	Affirmative.
3. Whether the complainant is entitled to get interest on her investment for delayed possession?	Affirmative.

Reasons:

Legal Provision. -

4. Section 18 of RERA provides that when the promoter fails to complete or is unable to give possession of apartment in accordance with the terms of the agreement for sale or duly completed by the date specified therein, he shall be liable on demand to the allottees, in case allottee wishes to continue in the project, to pay the allottee interest on his investment at prescribed rate for every month of delay till the handing over of the possession. The rules framed under the Act have prescribed the rate of interest. It is 2% above State Bank of India's highest marginal cost of lending rate. The said rate is currently 8.55%. Hence, the allottee is entitled to get simple interest @ 10.55% per annum.

Delayed Possession:

5. The complainant denies that by consent of the parties while executing the agreement they have left the date of possession blank. The agreement has been executed when Maharashtra Ownership Flats Act was holding the field. Section 4 (1A) (a)(ii) provides that the promoters must mention the date in the



agreement by which the possession of the flat is to be handed over to the purchaser. This is the statutory obligation cast on the promoter. The respondents have failed to mention the date of possession in the agreement for sale though they were under the legal obligation to mention it. Therefore, they are estopped from denying the date suggested by the complainant, is one aspect of the matter. The other aspect is; the complainant has relied upon the respondents' letter addressed to her dated 02.03.2017. In the second para of the letter the respondents have mentioned that their problems ended and they would be able start construction before April 2017 and they would hand over the possession to her (complainant) within a period of nine months from April 2017 i.e. on or before 31.12.2017. After going through this letter there remains no doubt in my mind that the respondents promised the complainant that the possession of her flat would be given on 31.12.2017. Admittedly, the respondents have not handed over the possession of the flat on the agreed date. I record my finding to this effect.

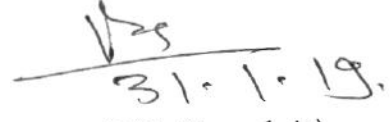
Entitlement of the Complainant.

6. Both the parties agree that the complainant did not pay the respondents' money as the consideration of the flat but the complainant was entitled to get some money from the respondents in the context of land dealing. Out of the said amount Rs. 99,49,500/- have been adjusted towards the consideration of the flat and the respondents have acknowledged the receipt thereof in the agreement for sale and in the receipt passed by them which is attached to the agreement. Hence, the respondents cannot deny the receipt of this consideration. The complainant wants to continue in the project and claims interest on her investment till getting the possession of the flat. She is entitled to get simple interest @ 10.55% p.a. from the date of default i.e from 31.12.2017 till getting the possession of the flat. The complainant is also entitled to get Rs. 20,000/- towards the cost of complaint. Hence, the following order.



ORDER

1. The respondent shall pay the complainant the simple interest at the rate of 10.55% p.a. on Rs. 99,49,500/- from 31.12.2017 till handing over the possession of the flat.
2. The respondent shall pay the complainant Rs. 20,000/- towards the cost of the complaint.


31.1.19.
(B.D. Kapadnis)

Mumbai

Date: 31.01.2019.

(Member & Adjudicating Officer)
MahaRERA, Mumbai.