

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC006000000012723

Pranav Sunil Dokania	...	Complainant.
Versus		
M/s. Monarch & Qureshi Builders (Cosmic)	...	Respondents.


MahaRERA Regn: P51800009046

**Coram:**  
Hon'ble Shri B.D. KAPADNIS.

**Appearance:**  
Complainant: In person.  
Respondent: Adv. Krishna Agarwal

**Final Order.**  
28<sup>th</sup> March 2018

The complainant contends that he booked Flat No.2504, C Wing of respondents registered Project known as Evershine Cosmic situated at Oshiwara, Andheri (West). The respondents agreed to deliver its possession on or before May, 2017. But they failed to deliver the possession on the agreed date. The complainant wants to withdraw from the project and claims refund of his amount with interest under Section 18 of the Real Estate (Regulation & Development) Act, 2016 (RERA).

  
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2. The respondents have filed the reply to admit that they agreed to deliver the possession of the complainant's booked flat on or before May, 2017, but they have not delivered it. They contend that 17 floors of the building have been constructed. The complainant's booked flat is on 25<sup>th</sup> floor. The Competent Authorities have not given permission for constructing upper 18 to 30 floors. They further contend that because of the lack of money flow and less response for sale they could not generate the money for completing the project and therefore they could not complete the project in time. They have shown their readiness to refund Rs.1,65,12,009/- within 12 to 15 months and therefore request to dismiss the complaint.

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

**POINTS.**

**FINDINGS.**

- |  |              |
|--|--------------|
| 1. Whether the respondents are failed to deliver the possession of the flat on agreed date?                              | Affirmative. |
| 2. Whether the respondents have been prevented by the causes beyond their control from completing their project in time? | Negative.    |



### **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 withdraw from the project, to return the amount received by him with interest at prescribed rate and compensation also. 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 8.05%. Hence, the allottee is entitled to get simple interest @ 10.05%.

#### **Delayed Possession:**

5. The respondents have not disputed the fact that they have agreed to deliver the possession of complainant's booked flat on or before May, 2017 but they have not handed over its possession. Therefore, this fact has been proved.

#### **Reasons for Delay:**

6. The respondents contend that after construction of 17 floors they seek approval for constructing 18 to 30 floors but they could not receive the approval/permission from the concerned authorities. They further contend

that because of lack of money flow and less response for sale they could not complete the project in time. These reasons do not appear to be genuine reasons to hold that they were beyond the control of the respondents. I record my finding to this effect.

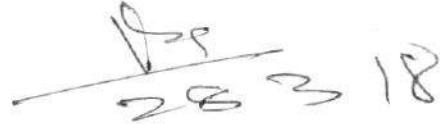
**Entitlement of the Complainants.**

7. The complainants have filed the particulars of the claim marked Exhibit- 'A'. The respondents have denied their liability to pay Rs. 25,000/- shown by the complainant towards legal charge and Rs. 12,000/- towards registration charges. I find that the parties have executed agreement for sale and it is registered also. The complainant has to withdraw from the project because the respondents do not have approval for constructing 25<sup>th</sup> floor on which the booked flat of the complainant is proposed to be constructed. Therefore, the respondents are liable to reimburse Rs. 12,000/- spent by the complainant on account of registration charges on 19.09.2015. So far as legal charges of Rs. 25,000/- are concerned, the learned Advocate of the complainant does not press the same for want of evidence. Except legal charges amounting to Rs. 25,000/-, the complainant is entitled to get all other amount mentioned in his statement marked Exhibit - 'A' with simple interest @ 10.05% p.a. from the respective dates of payments till they are refunded. 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 amount mentioned in the statement market Exhibit – 'A' except the amount of Rs. 25,000/- of legal charges. Statement market Exhibit – 'A' shall form the part of the order.
2. The respondent shall pay the complainants Rs. 20,000/- towards the cost of the complaint.
3. On the satisfaction of their claim, the complainants shall execute the deed of cancellation of agreement for sale in respondent 's favour at respondent 's cost.
4. The charge of aforesaid amount shall be on the flat booked by the complainant till they are refunded.



(B.D. Kapadnis)

Mumbai  
Date: 28.03.2018.

(Member & Adjudicating Officer)  
MahaRERA, Mumbai

*Exh A*  
*1/3*  
*Member -*

**PARTICULARS OF CLAIM MADE TO THE BUILDER**

Sr.no.	Date of Payment	Amount paid/ principal amount (P)	Mode of Payment	Payment towards	Number of days calculated from date of payment till 12/2/2018	Interest calculated till 12/2/2018 @ 9% pa (I)	Total amount (P + I)
1	10.8.2013	10,00,000/-	By Cheque bearing no.796900 dated 5th August,2013 drawn on SBI Bank, Malad(east) branch.	Flat consderation	1652	4,07,343/-	14,07,343/-
2	21.9.2013	65,00,000/-	By RTGS dated 21st September,2013 of SBI Bank - Malad(east)	Flat consideration	1605	25,72,397/-	90,72,397/-

3	26.9.2013	50,00,000/-	By RTGS dated 26th September, 2013 of SBI Bank, Malad(East).	Flat consideration	1600	19,72,603/-	69,72,603/-
4	17.10.2013	32,32,000/-	By RTGS	Flat consideration	1579	12,58,355/-	44,90,355/-
5	23.10.2013	4,86,118/-	By RTGS dated 23rd october, 2010	Service Tax	1573	1,88,547/-	6,74,665/-
6	25.8.2015	2,18,020/-	By Cheque drawn on SBI A/c. no. 33568058053	VAT	902	48,490/-	2,66,510/-
7	25.8.2015	75,871/-	By Cheque Bearing no. 927910 dated 19th August, 2015 of SBI Bank, Malad(east)	Service Tax	902	16,875/-	92,746/-



8	19.8.2015	12,000/-	By Cash	Registration charges towards OPE	908	2,687/-	14,687/-
9	20.2.2016	25000/-	By Cash	Legal charges	723	4,457/-	29,457/-
	<b>TOTAL</b>	<b>1,65,49,009/-</b>				<b>64,71,754/-</b>	<b>2,30,20,763/-</b>
10	Compensation towards mental agony and pain.					5,00,000/-	5,00,000/-
	<b>GRAND TOTAL</b>						<b>2,35,20,763/-</b>

SRM  
Adv. For Complainants