

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000054571

Shatrughan Parsram Chhabria ... Complainant.

Versus

M/s. Monarch & Qureshi Builders ... Respondent.
(Cosmic)

MahaRERA Regn: P51800009046

Coram:

Hon'ble Shri B.D. KAPADNIS.

Appearance:

Complainant: Adv. Shweta.Merchant.

Respondent: Miss Jinam Shah

Final Order.

8th August 2018.

The complainant contends that he booked Flat No.2304, C Wing of respondents registered Project known as Evershine Cosmic situated at Oshiwara, Andheri (West). The respondents executed agreement for sale in his favour on 21.06.2011 and agreed to deliver its possession within two years from the agreement but kept the date of the possession blank in it. Respondents 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).


8.8.18

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 31st December 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 23rd 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.1,08,77,500/- within 12 to 15 months with 9% interest 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 have 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.



3. Whether the complainant is entitled to

get refund of his amount with interest?

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 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 8.5%. Hence, the allottee is entitled to get simple interest @ 10.5% p.a.

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 December, 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 admitted their liability to repay Rs. 1,00,000/- paid on 21.06.2011 and Rs. 1,07,77,500/-/- paid on 23.06.2011 shown by the complainant in payment statement marked Exh 'A'. The complainant has to withdraw from the project because the respondents do not have approval for constructing 23rd floor on which the booked flat of the complainant is proposed to be constructed. Therefore, the respondents are liable to refund entire amount paid by the complainant with simple interest @ 10.5% 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 Rs. 1,00,000/- and Rs. 1,07,77,500/-/- with simple interest at the rate of 10.5% per annum from 21.06.2011 and from 23.06.2011 respectively.
2. The respondent shall pay the complainant Rs. 20,000/- towards the cost of the complaint.
3. On the satisfaction of claim, the complainant shall execute the deed of cancellation of agreement for sale in respondents' favour at respondent's cost.
4. The charge of aforesaid amount shall be on the respondents' project till they are refunded.



(B.D. Kapadnis)

Mumbai
Date: 08.08.2018.

(Member & Adjudicating Officer)
MahaRERA, Mumbai.