

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

**COMPLAINT NO: CC006000000056761**

Anil Manhorlal Sahlot

... Complainant.

**Versus**

Monarch & Qureshi Builders  
(COSMIC)

... Respondents.

MahaRERA Regn: P51800009046.

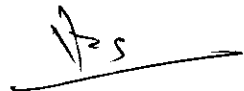
**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member & Adjudicating Officer.

**Appearance:**  
Complainant: Adv. Shailesh Parikh.  
Respondents: Adv. Krishna Agarwal &  
Adv. Raut.

**FINAL ORDER**  
**18<sup>th</sup> January 2019.**

**Factual Matrix.**

The respondents filed SC Suit No. 1945 of 2010 against the complainant herein in City Civil Court, Mumbai. The parties to the Suit arrived at the amicable settlement and filed the consent terms contending that in lieu of the complainant's room nos. 109 and 110 situated on the ground floor at Survey No. 44/5 corresponding to CTS No. 578(P) of village Oshiwara, the respondents herein agreed to allot to the complainant the flat no. 2401 of 24<sup>th</sup> floor, B-wing in the building known as Evershine Cosmic proposed to be constructed on the said land. Thereafter the parties have entered into agreement for sale of the said flat on 23.08.2011. The respondents left the date of possession blank in the said agreement. The complainant contends that the respondents orally agreed to hand over the



flat within 24 months of the agreement. The respondents failed to hand over the possession of the flat on the agreed date. The complainant contends that the market value of the flat at the time of execution of agreement for sale has been arrived at Rs. 1,31,94,500/-. Therefore, he claims the said amount with interest and/or compensation as he withdraws from the project.

2. The respondents have pleaded not guilty. They deny that they agreed to hand over the possession within 24 months from the date of the agreement for sale. According to them, their project is SRA project and the permission for constructing 17<sup>th</sup> floor was given in March 2010. Therefore, it was within the knowledge of the complainant that there was no commencement certificate for constructing the upper floors. The respondents reiterate that they never promised to give possession within 24 months of the agreement as alleged. They further contend that in the agreement, particularly in Clause "(y) pertaining to the consideration 'Rupees as per S.C. Suit No. 1945 dated 22.12.2010 only' is mentioned. However, it is mentioned in Para-17 of the agreement " the developer shall under normal circumstances give possession of the flat/shop to the flat/shop purchaser/s on or before ....day of.....200....." In Para-6 of the consent terms filed in the Suit, it is specifically mentioned that the respondents herein 'undertook to transfer, assign and hand over the vacant and peaceful possession of the flat no. 2401, Wing B admeasuring 966 sq.ft. carpet in the building Evershine Cosmic to the complainant in lieu of the suit premises after completion of the said building'. The respondents therefore, contend that the agreement should be read as whole and it indicates that the possession is to be handed over only after completion of the building. On the point of the price of the flat, the respondents contend that as per the consent terms dated 22.12.2010 in lieu of room nos. 109 and 110, the flat is allotted to the complainant. It is allotted under barter system



and the price of the flat in terms of money has not been determined. Therefore, the respondents request to dismiss the complaint.

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

POINTS	FINDINGS
1. Whether the respondents agreed to hand over the possession within the 24 months from the agreement for sale dated 23.08.2011?	Yes. But on 28 <sup>th</sup> February 2017.
2. Whether the value/price of the booked flats is Rs. 1,31,94,500/-?	Rs. 1,31,94,232/-
3. Whether the complainant is entitled to get the price of the flat with interest and/or compensation under Section 18 of RERA?	Affirmative.

#### REASONS

4. It is the matter of record that in the Para-6 of the consent terms filed in Suit No. 1945 of 2010, it is mentioned that the possession of the flat would be given on completion of the building. Thereafter, on 23.08.2011, the agreement for sale has been executed. The learned advocate of the respondents submits that the agreement should be read as whole and for this purpose he relies upon Vice Chairman and Managing Director, A.P. SIDC Ltd.-v/s-R Varaprasad (2003) 11 SCC 572 and Vimleshkumari Kulshrestha-v/s- Sambhajirao And Others (2008) 5 SCC 58. He further submits that the consent terms filed in the Suit were under the contemplation of the parties while executing agreement for sale, therefore, the date of possession is left blank by mutual understanding of the parties because in the consent terms the parties agreed that the possession would be given on completion of the building. I do not agree with the learned Counsel because the agreement shows that in column 'y', which relates to the consideration/price of the flat, it is specifically mentioned "as per SC



Suit No. 1945". Then in Para-3, they have mentioned about the price. "as per SC Suit No. 1945" and it is repeated in three places. It means that whenever the parties wanted to rely upon the consent terms of the Suit, they have specifically referred to the said fact in the agreement. Had there being the intention of the parties to rely upon the consent terms for the date of possession, it was possible for them to mention in the column of possession the same thing "as per SC Suit No. 1945, 22.12.2010." The omission to write this eloquently speaks that the parties did not want to adhere to Clause 6 of the consent terms i.e. the possession would be given on the completion of the building. I have taken a judicial notice of the fact that in many other cases also, the respondents have played the same mischief of keeping the date of possession blank. This is the factual aspect of the matter.

5. The legal aspect is; the agreement has been executed in the year 2011 when the Maharashtra Ownership Flats Act was in force. Section 4 (1A)(a)(ii) of MOFA, specifically provides that it is the duty of the Promoter to mention the date by which the possession of the flat is to be handed over to the purchaser, in the agreement. So this is the statutory duty of the respondents which they have not discharged. Therefore, they are estopped from denying the date suggested by the complainant. In this context, I find that the Supreme Court has held in *Fortune Infrastructure-v/s Trevor D'lima & Ors.* (2018) 5 SCC 442 that when no date for possession is mentioned in the agreement, the possession is to be given within reasonable time and the period of three years has been considered reasonable in that case.

6. The complainant contends that the respondents agreed to hand over the possession of the flats within twenty-four months from the agreement. A letter of the respondents dated 19.05.2015 has been placed on record to show that the respondents by addressing said letter to members of Evershine Cosmic informed that they would obtain approvals by end of

June 2015 and they shall commence construction activities of the project by 1<sup>st</sup> week of August 2015 and complete it within the period of 1 ½ year from the date of commencement. So this is the documentary proof to show that the respondents agreed to hand over the possession of the flat by completing the project within 1 ½ years from August 2015. In other words, they promised to complete the project by February, 2017. So, even after taking liberal view there is no option but to hold on safer side that the date of possession was 28<sup>th</sup> February 2017. Admittedly, the respondents have not handed over the possession on this date.

7. Section 18 of RERA gives option to the allottee to withdraw from the project and claim his refund on account of promoter's failure to hand over the possession of the apartment on agreed date. The complainant prefers to withdraw from the project.

8. Now, the next question that needs to be considered is the market value of the flat. The flat has been allotted by the respondents to the complainant in lieu of his room nos. 109 & 110 and therefore, in the agreement for sale, these consent terms have been referred to in the clauses of consideration. Fortunately, the agreement for sale has been registered on 08.02.2011 and for its registration the property has been valued by the office of the sub-registrar. The copy of the valuation has been placed on record to show that the market value of the flat has been valued to Rs. 1,31,94,232/-. Therefore, I hold that the value of the flat is Rs. 1,31,94,232/- and it appears to have been passed on 22.12.2010 when the consent terms have been filed and accepted by the Civil Court.

9. The complainant has paid Rs. 6,42,850/- on stamp duty, Rs. 32,500/- on registration charges and Rs. 12,500/- towards the legal charges at the time of registration of the agreement on 23.08.2011. Since more than five years from the agreement have passed, the complainant is not entitled to get refund of the stamp duty from the Sub-Registrar's Office on cancellation of the agreement in view of Section 48 of the Maharashtra Stamp Act. The



complainant will have to be restored to his original possession and hence, the complainant is entitled to get reimbursement of this amount with interest from 23.08.2011.

10. The complainant is entitled to get his amount with interest at prescribed rate. The prescribed rate is 2% above SBI's highest MCLR which is currently 8.55%.


11. The complainant has relied upon Mr. Sacchidanand Bhikaji Hatkar-v/s-M/s. Dharmesh Construction (C.No.CC/14/298 decided by the Consumer Dispute Redressal Commission, M.S. The commission awarded compensation of Rs. 5,00,000/- for the stress, inconvenience, harassment, mental agony etc. suffered by the allottee placed in similar circumstances. In this case also the complainant surrendered his rooms in the year 2010 and the flat has not been provided till the order 2019. After considering the trauma, mental agony suffered by the complaint, I find, in the facts and circumstances of the case, the complainant is entitled to get at least Rs. 5,00,000/- towards the compensation along with Rs. 25,000/- towards the cost of the complaint. Hence, the following order.

#### **ORDER**

The respondents shall pay Rs. 1,31,94,232/- to the complainant with simple interest at the rate of 10.55% per annum from 22.12.2010 till the refund.

The respondents shall pay the complainant Rs. 6,42,850/- amount of stamp duty, Rs. 32,500/- amount of registration charges and amount of Rs. 12,500/- paid towards the legal charges at the time of registration with simple interest at the rate of 10.55% per annum from 23.08.2011 till the refund.

The respondents shall pay Rs. 5,00,000/- towards compensation and Rs. 25,000/- towards the cost of the complaint.

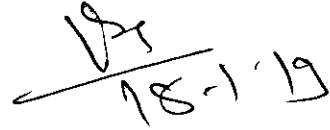


The charge of the complainant's claim is kept on his booked flat till its satisfaction.

The complainant shall execute the Deed of Cancellation of agreement of Sale at respondents' cost on satisfaction of his claim.

Mumbai.

Date: 18.01.2019.



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

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

**COMPLAINT NO: CC006000000056761**

Anil Manhorlal Sahlot

---Complainant.

**Versus**

Monarch & Qureshi Builders  
(COSMIC)

---Respondents.

MahaRERA Regn: P51800009046

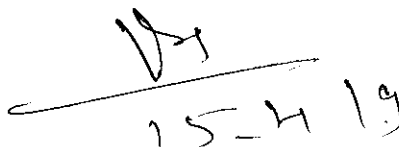
**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member & Adjudicating Officer.

**ORDER ON THE RECOVERY APPLICATION FILED IN THE COMPLAINT.**

The complainant reports non-compliance of the final order dated 22<sup>nd</sup> January 2019. Advocate for the respondents Mr. Krishana Agarwal submits that the respondents have challenged the order in Appeal. The Appellate Tribunal has not stayed the execution of the order. Mere filing of the Appeal will not operate as stay to the execution (Order 41 Rule 5 of CPC).

2. The complainant has submitted the statement of payment showing the interest accrued till the date of issuance of recovery warrant under Section 40(1) of RERA.

Mumbai.  
Date:15.04.2019.

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