

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY, MUMBAI

Complaint No. CC006000000303056

1. Cosmopolis CHS
2. Anil Sethi

... Complainants

*Versus*

Cosmos Homes India Pvt. Ltd.

... Respondent

**MahaRERA Project Registration No. P51800012114**

**Coram: Shri. Mahesh Pathak, Hon'ble Member - I/MahaRERA.**

Ld. Adv. Sunil Kewalramani appeared for the complainants.

Ld. Adv. Karansingh Shekhawati appeared for the respondent.

**FINAL ORDER**

(Order Pronounced on Monday, 28<sup>th</sup> April 2025)

(Matter reserved for orders on 02-01-2025)

**(Through Video Conferencing)**

1. The complainants above named have filed this online complaint before the MahaRERA on 15-10-2022 mainly seeking directions from the MahaRERA, to the respondent, to undertake the corrective measures as suggested in the structural audit report; in the alternative, to pay to the complainants an amount as mentioned in the structural audit report; for compensation and legal cost as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA'), in respect of the respondent's registered project known as "Cosmopolis Phase 1" bearing MahaRERA registration No. **P51800012114**, located at CTS/Plot/S.No. 41 pt, 1 190A, Taluka Andheri, Dist. Mumbai (hereinafter referred to as the 'said

project').

2. This complaint was heard by MahaRERA on several occasions and the same was heard finally on 02-01-2025 as per the Standard Operating Procedure dated 15-01-2025 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing, and they were also informed to file their written submissions if any. On the said dates of hearing, both the parties appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the parties as per their appearances and also perused the available record.

3. After hearing the arguments of both the parties as per their appearances, the following Roznamas were recorded in this complaint:-

i) On 25-07-2024

*"Both the parties are present.*

*Both parties seek time for settling the matter amicably. In view of the above, the matter is adjourned to a suitable date in the interest of an amicable settlement in the complaint. List the matter for next hearing on 10-10-2024."*

ii) On 10-10-2024

*"The complainant is present. The respondent is absent.*

*The complainant has mentioned that although the parties met for an amicable settlement, they need further time for the same. Therefore, the matter is adjourned to a suitable date to enable such an amicable settlement and as a last chance to both the parties. In case the settlement is not possible, the respondent may file its reply to the complaint and the complainant may file a rejoinder to the said reply of the respondent. The matter is adjourned to a suitable date for further hearing. List the matter for next hearing on 02-01-2025."*

iii) On 02-01-2025

*The complainant is present. The respondent is absent.*

*Both parties have tried for an amicable settlement, however, neither the conciliation succeeded nor attempts of direct settlement were fruitful as can be seen from the previous 2 Roznama of 25-07-2024 as well as of 10-10-2024. However a last chance was given to both the parties for the same in the previous hearing. The respondent has neither filed any reply to the complaint except a copy of letter from the society dated 20-04-2023 nor has appeared for the hearing today. Therefore, the respondent may file its reply along with written submissions within a period of 2 weeks i.e. by 16-01-2025. The complainant contends that the structural audit report was received in April 2022 and the respondent has also attended a meeting in the society in July 2022, which dates are before the five year period for defect liability was over as the OC for the project was received on 7-10-2017. Although the respondent did some work in 2023 as mentioned in the letter from the society uploaded by the respondent in the complaint on 28-04-2023, in subsequent Monsoons of 2023 and 2024, the leakage issues have reappeared and because of the said leakage there is also issues with the lift and corrosion and erosion in various places of the building occurred. Hence, the complainant contends that according to the structural audit report, the respondent should either undertake the corrective measures or pay the complainant the amount required to complete the said corrective measures as quantified in the structural audit report. Therefore, the complainant may file a rejoinder to the reply of the respondent within a further period of 2 weeks i.e. by 30-01-2025, even if the respondent does not file any reply / written submissions. In case the respondent does not file any reply / written submissions, the MahaRERA will be constrained to decide this matter ex-parte against the respondent on merits. Accordingly, the matter is reserved for orders suitably after 30-01-2025 based on the arguments of the complainant as well as the reply, rejoinder and written submissions filed and the documents uploaded in the*

*complaint.*

4. Pursuant to the directions in the aforesaid hearing, the complainants have filed their written submissions on record of MahaRERA on 30-1-2025. The same has been accepted and taken on record. However, despite directions, the respondent has failed to upload any reply/written submissions on record of MahaRERA. Hence, the MahaRERA has perused the available record.
  
5. It is the case of the complainants that complainant no.1 is a registered society and complainant no.2 is a member of complainant no.1 society, while the respondent is a promoter of the said project by name of 'Cosmopolis'. Further, the said project was completed in the year 2017 and the OC was received in October 2017. The allottees of the said project then formed a registered society in December 2018 and since then the society is managing the affairs of the building. Further, since the day of possession of the flats there has been some or the other difficulty faced by the members of the society and the entire structure reeks of defective construction. The entire building is ground plus 3 podium levels plus 16 floors in total. The 16<sup>th</sup> floor terrace is still incomplete and has a chajja like structure which proves to be a danger to the physical well-being of the members of complainant no.1. It has caused massive leakages throughout the building and water seeps in the walls and lifts rendering them useless. The complainant had to spend an amount of Rs. 3,31,931/- towards the repair of the lifts due to rainwater leaking into the lift's pit. Moreover, the water has also seeped into individual units. The common bathrooms on every floor has water leakage problems which had to be repaired. This has caused rodent infestation in the building rendering the premises unsafe for human habitation. The entire building is showing signs of various structural defects and is proving to be unfit for residing in the same. In light of the above facts, the complainant no.1 has carried out structural audit of the building and the report has come out to be extremely unsatisfactory, and various corrective

measures are suggested by the engineer costing over Rs. 70 lakhs plus 18% GST (Ex.'H'). The respondent has to refund back unpaid amounts to the complainant which still remains outstanding till date and moreover, the conveyance of the land has still not been executed in favour of the complainant. The respondent was issued an advocate's notice on 11-9-2022 however it failed to reply to the same. In view of the aforesaid the complainants pray to direct the respondents to undertake corrective measures as suggested in the structural audit report; in the alternative, to pay to the complainant the amount mentioned in the structural audit report; compensation and legal expenses. In the interim, the complainants pray to restrain the respondent from creating third party rights in respect of B wing of the said project.

6. The complainants have filed their written submissions on 14-12-2024 and 30-01-2025 respectively stating the respondent has received part OC in respect of the said project on 7-10-2017 and gave possession to the allottees of the said project between 17-10-2017 and 27-12-2017. The structural report is of April 2022 which shows that there were structural defects in the project within 5 years from the date of handing over possession on date of part occupancy certificate. On being sent the structural audit report, the Respondent's Director attended the society's Managing Committee Meeting held on 11-7-2022 and agreed to undertake the repair work as suggested in the said report. However, it failed to do so despite various reminders. Thereafter the respondent was served with a legal notice on 11-9-2022 which it has failed to reply. As per section 14(3) of the RERA the complainants have brought the structural defects to the respondent's notice in time but the respondent have till date, failed to carry out repair work. Hence, the present complaint is filed u/s 14(3) of the RERA. After filing the present complaint, the respondent carried out a few repair works in the first quarter of 2023 however in subsequent monsoons of

2023 and 2024 the leakage issues reappeared. In this regard, the complainants have relied upon the order dated 23-3-2022 passed by Ld. Member-1/MahaRERA, in the case of Vasant Fiona F Wing CHS vs Sheth Developers in complaint no. CC006000000196160 holding that, keeping aside the technicalities whether the complainant has locus standi to file the complaint seeking reliefs u/s 14(3) or otherwise. the respondent was directed to rectify the structural defects. Hence, the complainants have prayed to allow the reliefs as claimed for in their complaint.

7. The respondent has not filed any reply to this complaint, despite directions . However, the respondent has uploaded a letter dated 17-4-2023 on record on 20-4-2023. The said letter is addressed by the society confirming the completion of repairs work for A Wing society building as per the meetings held. The society has also stated in the said letter that remaining other repair work is yet to be completed as per their letter/structural audit survey report.
8. The MahaRERA has examined the submissions made by both the parties and also perused the available record. In the present case, the complainant, is a registered society formed in the said project registered by the respondent promoter on the MahaRERA website. The complainant by filing this complaint has sought following reliefs under the provisions of the RERA:-
  - a) That the Respondents be ordered and directed to undertake the corrective measures as suggested in the structural audit report within a period of 30 days.*
  - b) In the alternative, to pay to the Complainant an amount of Rs. 70,37,500/- plus 18% GST as mentioned in the structural audit report, so as to allow the Complainant to undertake the corrective measures.*
  - c) That the Complainants be compensated to the tune of Rs. 1,00,00,000/- for mental stress and agony.*
  - d) That the Complainants should also be compensated for the legal expense to*

*the tune of Rs. 1,00,000/- which they have incurred in filing the present complaint.*

*e) Any other and further order in the interest of justice”.*

9. The complainant society has mainly contended that there is structural audit report which was received in April 2022 (however, in the pleadings it has mentioned the date of said report as 06-05-2022) and the respondent has also attended a meeting convened in the society in July 2022, which was prior to the said defect liability period (5 years) got over. However, although it has done certain repair work, the said respondent has failed to rectify all such defects as mentioned in the said report submitted by the architect. Hence, the complainant has prayed for direction to the respondent as sought for in this complaint. It has also contended that although the respondent has done certain repair work in the year 2023 as mentioned by it in its letter dated 17-04-2023, however, during the subsequent monsoons of 2023 and 2024 again the leakage have happened. Hence, they prayed to allow this complaint and grant the reliefs as sought for in the same.
10. The respondent although has appeared for the hearing held in this complaint, it has failed to file any detailed reply to this complaint despite direction. However, it has submitted a copy of letter dated 17-04-2023 issued by the complainant society on record of MahaRERA on 20-04-2023, whereby the complainant has acknowledged the fact that the respondent has done certain repair work in Wing A of the said building.
11. Be that as it may, in the present case, on bare perusal of the aforesaid submissions made by both the parties, the following observations are noteworthy in this complaint:-
  - a) The respondent herein admittedly, has completed the said project by obtaining OC on 7-10-2017. Thereafter, a registered society (complainant herein) has also been formed in the said project on 20-12-2018.
  - b) The complainant society by filing this complaint has approached the

MahaRERA mainly seeking reliefs under section 14(3) of the RERA towards directions to the respondent promoter to rectify the structural defects as pointed out in the Structural Audit Report obtained by it in the month of April, 2022. Admittedly, this complaint is filed seeking reliefs under section 14(3) of the RERA beyond the stipulated time period of 5 years of the defect liability period contemplated under RERA (as the OC was obtained for the said project on 7-10-2017 and this complaint was filed on 15-10-2022). However, the record shows that after obtaining the said Structural Audit Report in the month of April, 2022, the complainant society has issued legal notice to the respondent on 11-09-2022 and it has called upon the respondent to rectify the said defects mentioned in the said report. However, it seems that the respondent has failed to do so. Hence, it has filed this complaint before the MahaRERA on 15-10-2022 seeking such reliefs.

- c) Be that as it may, in the present case, as stated hereinabove, the respondent although has tried to settle the matter amicably with the complainant, both the parties could not arrive at any mutually agreeable terms. Hence, the MahaRERA heard this matter on its own merits.
- d) Furthermore, despite directions being given to the respondent promoter, it has failed to file any reply to this complaint. Moreso, the respondent although has claimed that it has done certain repair work in the said building by relying upon the letter dated 17-04-2023 issued by the complainant however, on bare perusal of the said letter, it appears that even in the said letter dated 17-04-2023, the complainant has clarified that although certain work is done in wing A, the respondent has failed to complete the repair work as pointed out in the said Structural Audit Report. Hence, the MahaRERA prima facie feels that there is substance in the contentions raised by the complainant in this complaint that the leakage issues have re-appeared and because of the said leakage there are other

issues with the lift and corrosion and erosion in various places of the building according to the structural audit report. The said contentions has not been denied or rebutted by the respondent by submitting any cogent documentary proof on record of MahaRERA. Hence, being a promoter of the MahaRERA registered project, the respondent is under statutory obligation to rectify such structural defects in the said project as per the provisions of section 14(3) of the RERA.

12. In view of the above, the following order is passed:-

- a) The present complaint is hereby allowed in compliance of the principles of natural justice.
- b) The respondent is directed to take corrective measures and rectify all the structural defects mentioned in the Structural Audit Report of April , 2022 and rectify the said defects within a period of 2 months from the date of this order.
- c) The complainant is directed to co-operate with the respondent to get the aforesaid directions at (b) above complied with and provide all sort of assistance to the respondent.
- d) Any non-compliance of the aforesaid directions at para-no. (b) above would be viewed seriously and appropriate penal action would be taken against the respondent under section 63 of the RERA, if such non-compliance is brought to the notice of MahaRERA by the complainant.

13. With these directions , the present complaint stands disposed of.

  
(Mahesh Pathak)

**Member - 1/MahaRERA**