

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI**

COMPLAINT No: CC005000000011505

Mr. Virendra M. Deshpande

..... Complainant

Versus

M/s. Creative–Royal Associates & 5 Ors
MahaRERA Registration No. P52100003477

..... Respondents.

Coram: Hon'ble Dr. Vijay Satbir Singh, Member -I

Adv. Pandurang Chore appeared for the complainant.
Mr. Nicky Milani, CA appeared for the respondents.

ORDER

(4th October, 2018)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondents to handover possession of the flat to him and also to pay interest and compensation for the delayed possession under section-18 of the RERA Act, 2016 in respect of booking of a flat No. 402 in the project of the respondents known as "**Polite Castellum**" bearing MahaRERA Registration No. P52100003477 at Pune.
2. The matter was heard finally today. During the hearing, the complainant has argued that in spite of full payment made by him to the respondents, he has not been given possession of the flat. Even the respondents are asking for additional payment of Rs. 5 Lakhs from the complainant, which is not as per the agreement executed between him and the respondents. The complainant is, therefore, seeking possession of the flat with interest and compensation towards mental and financial loss.
3. However, the respondents have disputed the claim of the complainant and argued that the project is completed on site. He has applied for occupancy certificate to PCMC, on 20-06-2018 and the same has been uploaded on the website of the competent authority viz., PCMC. Further, the Architect has submitted Form-4 for completion of the said project and

the same has also been uploaded on MahaRERA website. He argued that the complainant booked the said flat for an amount of Rs. 50.96 Lakhs excluding other statutory charges towards taxes, stamp duty and registration charges, which the complainant was not ready to pay. He further argued that according to clause No. 19 of the registered agreement for sale executed with the complainant, he was liable to handover possession of the flat to the complainant within 45 days from the date of last payment.

4. Accordingly, the complainant has made last payment in the month of June, 2018 and since he has already applied for occupancy certificate to the concerned competent authority on 20-06-2018, he is ready to handover possession of the said flat to the complainant at that time itself. However, the complainant refused to accept the same. The respondents further argued that for same issue, the complainant has also filed Criminal Writ Petition bearing No.3442 of 2018 before the Hon'ble High Court at Bombay. Therefore, he can't agitate his case before this Authority. The respondents, therefore, requested for dismissal of this complaint.
5. The MahaRERA has examined the arguments of both the side as well as the record. In the present case, admittedly, there is a registered agreement for sale executed between the complainant and the respondents which stipulates the date of possession as 45 days from the last payment date by the complainant and admittedly, the last payment has been done by the complainant in the month of 4th April, 2018. Therefore, the respondents were liable to handover possession of the said flat to the complainant after 45 days from the said payment. However, the possession has not been handed over to the complainant. The contention of the respondents that the project is completed and they have already applied for occupancy certificate. Therefore, the complainant is not entitled for interest at all since the final occupancy certificate is ^{being awaited} awaiting from the concerned competent authority. Therefore, the complainant is liable to seek interest for the

delayed possession from 19th May, **2018** till the actual possession of the flat to the complainant with occupancy certificate.

6. With regard to the contention raised by the respondents about the parallel proceeding filed before the Hon'ble High Court for identical reliefs, the MahaRERA has observed that the complainant has already withdrawn the said petition on 21-09-2018 from the Hon'ble High Court and therefore, as on date there is no other pending proceeding before any other court of Law and the MahaRERA has jurisdiction to decide this complaint.
7. With regard to the issue of payment towards the booking of the said flat, the MahaRERA feels that there is an agreement for sale executed between the complainant and the respondents, wherein the payment schedule is already mentioned. The said agreement has binding effect on both the parties and therefore, both the parties are required to act accordingly.
8. In view of above facts and discussion, the respondents are directed to pay interest to the complainant from **19th May, 2018** till the actual date of possession at the rate of Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under.
9. With these directions, the complaint stands disposed of.



(Dr. Vijay Satbir Singh)
Member-1/MahaRERA