

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

1. Complaint No. CC006000000161442

Mr. Vinod Thukral Complainants
Versus
M/s. Ayyappa Developers Pvt Ltd. Respondent

Along with

2. Complaint No. CC006000000161443

Mr. Dinesh V. Thukral & 2 Ors Complainants
Versus
M/s. Ayyappa Developers Pvt Ltd. Respondent
Project Registration No. P51800005812

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – 1/MahaRERA

Ms. Jyoti Agarwal appeared for the complainants.

Mr. Sagar Bekal representative appeared for the respondent.

ORDER

(10th January, 2020)

1. The complainants have filed these two separate complaints seeking directions from MahaRERA to the respondent to pay interest & compensation for the delayed possession as provided under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of two shops in the respondent's project known as "**Celestial Heights**" bearing MahaRERA registration No. P51800005812 at Borivli, Mumbai.
2. These complaints were clubbed together and the same were heard on several occasions and finally on 10-01-2020. During the hearings, both the parties sought time to settle the matter amicably and to file relevant documents on record of MahaRERA. However, inspite of several meetings the parties could

not reach at any mutually agreeable terms and hence, these complaints are heard on merits. The respondent has also filed its reply on record.

3. It is the case of the complainants that they have purchased their respective commercial shops in the respondent's project for a total consideration amount of Rs. 2,98,00,000/- and Rs. 2,67,00,000/- respectively. The respondent has executed registered agreements for sale with them on 19-12-2014. According to the said agreements, the respondent has agreed to handover possession of the said shops to them on or before February, 2017. However, though they have paid substantial amount to the respondent, the respondent has not completed the said project and not obtained occupancy certificate for their shops and therefore, they cannot resale their shops. The project is standstill as on date. Hence, they filed these complaints seeking interest/compensation for the delayed possession under section-18 of the RERA.
4. The respondent, on the other hand, resisted the claim of the complainants by raising various defenses in their reply. The respondent has stated that the present complaints are filed on the basis of false facts and by suppression of material facts that the complainants have already taken possession of their shops on 24-08-2015 before the agreed date of possession. At the time of purchase of the said shops, the respondent had given complete inspection of all permissions obtained from the competent authority including the plans and the agreed date of possession mentioned in the agreement for sale was tentative and the respondent has performed their part and handed over possession of the said shops to the complainants before the agreed date of possession.
5. Further, after taking possession of the same they started utilizing the said premises for commercial gains by offering the same on rental basis to Goregaon Sports Club's Gen-Next Group as its election office from the month of

November, 2016 to January 2017. Thereafter, they have offered the said premises to a Shoe-Mart for carrying out its exhibition cum sale 2017. The respondent submitted photographs of the commercial premises used for commercial gain. The respondent, therefore, prayed for dismissal of these complaints.

6. The respondent further stated that due to bad market condition in the real estate sector, it borrowed a loan of Rs. 1,00,00,000/- on 1-07-2016 against which it has issued promissory note and a security cheque bearing No. 12190 drawn by Cosmos Bank. However, the complainants intentionally deposited the security cheque and issued notice under section-138 of the Negotiable Instruments Act. The complainant in the complaints filed with MahaRERA has admitted that full payment and acknowledged the settlement of the loan. However, on the other hand they have issued notice of cheque bouncing of security cheque which was obligated to return to the respondent upon settlement of the loan amount. The respondent, therefore, prayed for dismissal on these complaints.
7. The MahaRERA has examined the arguments advanced by both the parties as well as the record. The complainants allottees in these complaints have approached MahaRERA seeking relief under section-18 of the RERA for grant of interest for the delayed possession of their respective shop premises. Admittedly, the possession of the said commercial shops have been given to the complainants and till date occupancy certificate has not been obtained for the commercial shops of the complainants. Still the same have been used for commercial purposes. The complainants have not submitted any cogent documentary proofs on record of MahaRERA to show that the said commercial premises have not been used for any commercial gain as alleged by the respondent.

8. Moreover, the conduct of the complainants shows that they are trying to get dual benefits under the provision of RERA by using the MahaRERA as a tool. Such a conduct of the complainants is highly objectionable and reasonable and the MahaRERA has taken serious note about it. They are not entitled to any relief under the provisions of RERA.
9. In view of the aforesaid facts and circumstances of the case, the MahaRERA does not find any merit in these complaints. Hence, both the complaints stands dismissed.



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

