



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 9/2023

**Present: Sri. P H Kurian, Chairman
Smt. Preetha P Menon, Member**

Dated 25th February 2025

Complainants

1. Fajar Sadiq,
Apartment No. E5, Fourth Floor,
Galaxy Midwinter,
A V John Alunkal Road,
Kizhupillypady Road,
Kadavanthra, Ernakulam

2. Febina Ismail,
Apartment No. E5, Fourth Floor,
Galaxy Midwinter,
A V John Alunkal Road,
Kizhupillypady Road,
Kadavanthra, Ernakulam
Present address at Kizhakadath,
Memana, Oachira P O,
Kollam, Kerala- 690526

[By Adv. Sandeep Sreekumar]



Respondents

1. Galaxy Homes Pvt Ltd,
A private limited company with office at Galaxy Square,
Sixth floor, Rajaji Road Junction,
M G Road, Ernakulam, Pin - 682035
2. P A Jinas,
Represented by its Managing Director
Residing at Galaxy House,
Sharaful Islam School Lane,
Deshabhimani Road,
Edapally South Village,
Pin - 682017
3. Mr. Shibu,
Represented by its Customer Care Representative (Point of
contact), Galaxy Square, Sixth Floor,
Rajaji Road Junction, M G Road,
Ernakulam, Pin – 682035

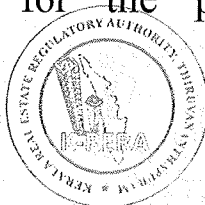
The above Complaint came up for hearing on 02/09/2024.
The Complainants along with his counsel Adv. Sandeep
Sreekumar and counsel for the Respondents Adv. Thomas John
attended the hearing.

ORDER

1. The Complainants are the allottees in the project
'Galaxy Midwinter'. The sales team of Galaxy Homes approached the
Complainants to buy one property in the proposed project under the
name Galaxy Midwinter and the Complainants showed their interest in



buying a flat for their personal needs. The Complainants booked the flat no. E5 in the fourth floor of the project Galaxy Midwinter, admeasuring the buildup area of 628 sq. ft. The Respondent/Builder issued an acceptance letter and an agreement for construction allotting the property. As per the agreement the total consideration for the property was agreed to Rs. 31,11,549/- and assured the timely completion of the construction and subsequent possession of the property. The said amount was paid to the Respondent which is admitted by them in the email dated 23/06/2022. It was submitted that a sum of Rs. 31,11,549/- was paid by the Complainants towards purchase of apartment, car parking and amenities in the manner as stated in the construction agreement dated 07.11.2016. The purchase price was inclusive of the registration charges payable for conveyance of sale deed as per clause 3 of the construction agreement. As per the final bill furnished to the Complainants on 11.03.2022, the amount payable by the Complainants was Rs. 7,77,549/- which was inclusive of registration expenses in tune to Rs. 1,39,800/-. The final bill and the email dated 11.03.2022 is produced. The Complainants have paid and cleared the aforementioned bill as per Respondent's email dated 11.03.2022 on 23.06.2022. The receipt dated 23.06.2022 issued by the Respondent confirming the payment of final bill is produced by way of separate compilation of documents. There is no dispute regarding payment of final bill. Thereafter, after continuous follow ups, the Respondent has emailed a draft sale deed on 19.07.2022 seeking Complainants' approval for the purpose of registration. The



outstanding details were provided by the Complainants telephonically and in-person and the draft deed was finalized as per Respondent's email dated 20.07.2022. However, to the surprise of the Complainants, the Respondents has demanded payment of registration charges and related expenses in tune to Rs. 1,92,650/- for the purpose of affecting conveyance.

2. The Complainants refused to pay the registration charges and expenses as the same was already paid as per the construction agreement and the expenses for the same were also covered in the break-up of the final bill issued by the Respondents by email dated 11.03.2022. The demand made by the Respondent subsequent to payment of the final bill for registration charges is produced herewith. The Respondent till date has not conveyed the flat in favour of the Complainants as agreed and de-jure possession of the flat is still with the Respondents. The demand for registration charges is unjustified and over and above what was agreed between the parties and was an attempt by the Respondents to exploit innocent allottees and to unjustly enrich itself at the cost of the allottees. The Respondent has failed to hand over the possession of the flat as per the law and as agreed in the agreement till date and the Complainants are entitled to delay interest as claimed as per Section 18 r/w Rule 18. Furthermore, evincing the lack of professionalism, the Respondent's representative by voice note forwarded to the WhatsApp of this Complainant no. 1 on 21.12.2022 informed the Respondent of its inability to provide the car

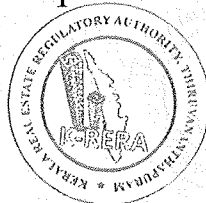


parking as agreed in Construction Agreement as all the parking lots in Galaxy Carlton was sold out. It was proposed that a parking lot in Galaxy Oxtan in the other side of Galaxy Midwinter could be provided instead. However, the Complainants have declined to the same since the same was not as per the construction agreement. As per the draft sale deed circulated and finalized by the Respondents on 20.07.2022, the Complainants were allotted with carparking bearing no. E-5 in Galaxy Carlton. The Complainants have agreed to a parking lot in Galaxy Carlton (though having purchased flat in Galaxy Midwinter) in the Construction Agreement since both Galaxy Carlton and Galaxy Midwinter were having shared basement and accessible through one ramp. The Complainants' states that it is entitled for car parking at parking no bearing E-5 in Galaxy Carlton. Without prejudice to the above, the Complainants states that it is aware that car parkings are still available in the basement of Galaxy Midwinter and Galaxy Carlton since as per RERA website as on 05.08.2023 there were aggregate of 10 unsold flats in Galaxy Midwinter (6 nos.) and Galaxy Carlton (4nos). The Respondents were not ready to give parking to the Complainants as it has reserved available car parkings for unsold flats in Galaxy Midwinter and Galaxy Carlton. The screen shot of RERA status of aforementioned projects as per RERA website as on 05.08.2023 is produced. The possession and handover as stated in the construction agreement is delayed on this count as well. The Complainants reasonably suspects that car parking bearing no. E-5 was wrongly sold by the Respondents to other allottees in the project in



detriment to the interest of this Complainants violating Section 1(a) of the Act. The Complainants are therefore entitled to reliefs for allotment for car parking as prayed and as agreed in the Construction agreement. The Respondent is also liable to pay the penalty in terms of Section 11(4).

3. Further it was submitted that the Respondents have promised amenities such as Health Club, Intercom Connection with Security Cabin, Common Toilet for Drivers and House maids, Modern Fire Fighting Equipment, Sewage Treatment Plant etc in the construction agreement and the brochure. It was submitted that said facilities has not been provided in the project as promised. Further, amenities like Landscaped Garden with Children's Play Area with Playing Equipment is not provided exclusively for Galaxy Midwinter as agreed in the Construction Agreement. The current play area provided is in a congested space between the compound wall and the building to be used among 166 apartments in Galaxy Midwinter (40), Galaxy Carlton (54) and Galaxy Oxtan (72) with meagre facilities. The children's play area was not provided in the manner as assured in the Construction Agreement and the brochure. The play area provided is for name sake and is not provided in a manner as advertised or as agreed. Hence, for all reasons stated above, it was submitted that project is not completed and handover in this aspect as well. It was further submitted that it is an admitted position that Complainants has not completed the project as promised in the agreement or in the brochure in time. The Respondent's own emails dated 20.09.2018,



27.12.2018, 24.07.2018, 27.08.2018, 22.02.2019, 22.02.2019, 21.03.2019, 25.04.2019, 22.05.2019, 27.06.2019, 23.07.2019, 24.09.2019, 26.09.2019, 25.02.2019, 25.01.2020, 25.02.2020 shows the admitted position regarding the delay. Further, in the RERA website the project is still showing as an ongoing project and the completion date given is different from the one mentioned in the Construction Agreement. The Construction activities are still ongoing, a picture of construction activities taken on 05.08.2023 showing ongoing construction work in the project is produced. The Complainants submitted that they have handed over a sum of Rs. 21,34,000 prior to the agreed completion date, which is 31st May, 2017. An amount of Rs. 9,77,549 was paid after the agreed completion date. The details are given in the Particulars of Claim. The Complainants were ready to handover the entire money on or before May, 2017, however, due to admitted delay as elaborated and admitted in the above email it has not done so. The work is still not completed and the completed work evinces lack of workmanship. It was therefore submitted that the Complainants are entitled to a sum of Rs. 25,82,724 as on 31st July, 2023 towards delay interest plus further interest till de-jure possession, completion and handing over the project in the manner as stated in the Construction Agreement. A particular of claim narrating the entitlement is produced. The Respondent has clearly failed to complete and handover the apartments on or before 31st May, 2017 as per clause 5 of the Construction agreement and therefore liable to pay delay interest as per the Act. Further, the Respondents have failed in its duty



to adhere to the requirements under Section 11, in terms of the following its contractual obligations under the Construction Agreement as narrated above as per Section 11(4)(a), in terms of formation of allottees association as per Section 11(4)(e), executing registered conveyance and handing over de-jure possession to the Complainants and the association as per Section 11(4)(f) and Section 17. Therefore, the Respondent is liable for penalty under Section 61 of the Act and this Hon'ble Authority may be pleased to impose the same in the interest of justice.

4. As per the agreement of construction the work was to be completed and handed over by 2017 with all the provisions mentioned. Unfortunately, the company has failed to complete the construction and the Complainants were able to receive the flat only on July 21st 2022. The parking space which the Company was supposed to hand over along with the keys has not yet been allotted. Even after waiting for long 5 years, they couldn't shift to the flat because of the delay in construction and handover from the Company. The Respondents have promised possession of the flat by 2017 the same has been mentioned in the construction agreement but added a clause upon paying the complete amount. Upon visiting the project site on 2017, it was found that there is no progress in the construction of the project and apprehending that the project may not get completed on time as promised by the builder. Hence, they refused to pay the full amount as agreed and asked them for a final date on which it will be ready for the handover. Despite several telephonic reminders and communications,

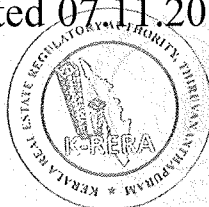


they have delayed the possession of the property and have been putting the matter off, on one pretext or the other. The customer care was sending false emails regarding the progress work. In one of the email dated 23rd June 2020 it was stated that the inside painting work progressing, CP & Sanitary fixing work progressing, electrical switch work progressing, etc.... but upon visiting the flat on June 2022 it was found that none of the work has been done. Upon making continuous phone calls, several calls were not answered by Respondent No. 4 and visiting the office, they rushed the work completion in a manner it shows the poor quality of workmanship. The Respondent No. 4 asked the Complainants to take the handover of the apartment and to sign some papers which mention that they are satisfied with their construction. When the Complainants refused to sign the same, the Respondent No.4 told that he would do/ repair all the works whatsoever it may be and would register the flat in the Complainant's name with no fees. The registration part is still pending, and the previous executive promised that the Complainants need to pay the amount of Rs. 3111549/- as per the agreement and the registration would be done. The Complainants have already paid this amount and now the company is demanding more money for registration which they are unable to pay. The other noted that the proposed underground parking was filled with groundwater due to the poor waterproofing system in the foundation. The building is constructed in a swamp with water bodies surrounding it. The underground water is pushing up heavily in the



parking garage, which is a huge threat to the entire building which affects its durability.

5. The Complainant submitted that they purchased the furniture's, appliances and household items and shipped from outside which is dumped as uninstalled which may get damaged by the time apartment gets ready. The Complainants have made some payments and made agreement for the interior furnishing which were stopped due to the pending works from the builder and pending electrical connection. The apartment will not get electricity unless the registration gets completed. When the Complainants raised the issue, the Respondent No.4 charged an extra amount of INR.5000/- towards the temporary electric connection. The reliefs sought by the Complainants are to (1) Direct the Respondent to pay interest for the amount of Rs. 31,11,549 collected from the Complainants at the prescribed rate as per Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 for every month of delay or the from the date of entrust, as applicable, till the date of completion and handing over of the apartment with amenities as promised. (2) To direct the Respondent to allot parking lot on the cellar floor of Galaxy Carlton of size 4m x 2.3m as promised in the Agreement. (3) to Direct the Respondent to execute the sale deed for land and building as per Agreement for sale dated 07.11.2016 and Agreement for construction dated 07.11.2016 and providing the Occupancy Certificate. (4) to Complete the construction of all amenities as mentioned in the project brochure and the construction agreement dated 07.11.2016. (5) to Direct Respondent to



form an association of allottees and to execute undivided proportionate title in the common areas to the association in the manner as set out in Section 17 of the Real Estate (Regulation and Development) Act, 2016. (5) Impose such penalty as this Authority may deem fit as per Section 61 of the Real Estate (Regulation and Development) Act, 2016 for violation of Section 11 read with Section 17 of the Act.

6. The Respondents filed **preliminary objection** and submitted that the above Complaint is not maintainable before this Authority, as the relief claimed in the Complaint is compensation for delay in handing over the property. Hence the Authority is not having jurisdiction to entertain the above Complaint. The Complaint is also not maintainable for the further reason that the Complainants have also filed an application on the same date before the Adjudicating Officer of Kerala Real Estate Regulatory Authority claiming similar reliefs as against the declaration given in Paragraph No.6 of the Complaint. The said application filed before the Adjudicating Officer is numbered as CCP No. 7 of 2023. Copy of CCP No. 7 of 2023 is produced. Hence it was prayed to decide the question of maintainability as a preliminary issue and dismiss the Complaint filed by the Complainants with costs to the Respondent.

7. When the Complaint came up for initial hearing on 06/03/2023, it was noticed that the relief sought in the original Complainant was for direction for completion and compensation. The relief sought had many anomalies and the Authority insisted the Complainants to amend the Complaint. The Respondents filed

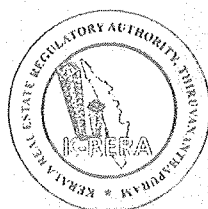


preliminary objection stating the same. The Complainant alleged that car parking has not been allotted, amenities as agreed in the agreement are not completed and association of allottees, has not been formed. The Complainants were directed amend the relief portion as there were many irregularities in the Complaint. Thereafter, the counsel for the Complainants filed I A 145/2023 to amend the Complaint and I A 130/23 to restrain the Respondents from executing sale deeds with regard to the car parking. During the hearing on 21.09.2023, the counsel for the Complainants submitted that they are not provided with any car parking spaces even though covered car parking spaces have been promised as per the agreements. It was also alleged that the Respondents are trying to allot space for car park to others and denying the Complainant to give so. The Authority also noted that the registration of the project has expired. It was also noted that the occupancy certificate has been obtained on 22/06/2020 but the sale deeds have not been executed in favour of the Complainants. The Authority vide interim order 21/09/2023 directed the Respondents to allot, earmark and hand over the covered car parking space to the Complainants as agreed in the Construction Agreement within 2 weeks from the date of receipt of the order. On 22/11/2023, the counsel for the Respondents submitted that without forming an association of allottees, car parking cannot be allotted. The Complainant himself submitted that the allottees themselves formed an association and only the registration is pending. It was noted that the Respondents have intentionally violated the direction given by this Authority vide interim



order dated 21/09/23 to earmark and allot a car parking space to the Complainants and the Respondent/Promoter are liable to be penalised as provided under Section 63 of the Act, 2016. From the copy of the final bill produced by the Complainant it was noticed that the Respondents had received deposits from the allottees for forming association also. It is evident from the documents that the total consideration for the apartment along with the registration expenses have already been paid by the complainants. But the sale deed has not been registered in favour of the Complainant and the common amenities as per the agreement are not completed by the Respondents except children's play area. The Authority decided to impose penalty for the violations and directed that Respondents vide interim order dated 22/11/2023 to remit penalty of an amount of Rs. 1,00,000/- to the penalty account of the Authority and also directed the Respondents to file counter statement to the amended Complaint before the next hearing date.

8. The Respondents **filed statement of objection** and submitted as follows:- The Complainant had booked a 2 BHK apartment on the 4th floor of the project 'Galaxy Midwinter' having 626 sq.ft super built up area along with a car park on the cellar floor of the building. The construction of Galaxy Midwinter apartment complex was completed on 24.04.2020 and the Occupancy Certificate was received on 22.06.2020. Copy of the Occupancy Certificate of the building is produced. Majority of the owners of Galaxy Midwinter have occupied their apartments and are residing happily. However, even

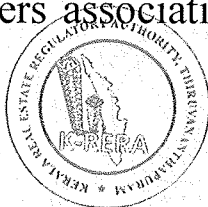


after obtaining Occupancy Certificate, the Complainants did not come forward to settle the balance amounts due from them. The Respondents sent communications asking the Complainants to remit the balance amounts and take possession of the apartment. Email dated 29.01.2021 & 11.03.2022 asking the Complainants to settle the balance amount of Rs. 7,77,549/- is produced. It was submitted that the Complainants settled the balance amounts only on 23.06.2022 and possession of the apartment was handed over to the Complainant on 21.07.2022. It is further submitted that even after obtaining possession of the apartment, the Complainant did not care to pay the Stamp duty, Registration fee and registration expenses so as to execute sale deed. Even though the Complainant had agreed in the Agreement for sale dated 07.11.2016 and Agreement for Construction dated 07.11.2016 executed between the Complainant and Respondents that “all expenses including Stamp duty, Registration fee and expenses for the preparation and registration of deeds connected with the said apartment and all service charges shall be exclusively met by the Complainant without making the Respondents in any way liable for the same”, the Complainants have not come forward to pay the Stamp duty, Registration fee and registration expenses till date. Hence the allegations of the Complainants to the contrary are baseless and without any merit. If the Complainants are paying the prevailing Stamp duty, Registration fee and expenses, the sale deed shall be executed at the earliest. The Respondents have not demanded more money than as agreed between the parties. The amounts demanded were amounts of Stamp duty,



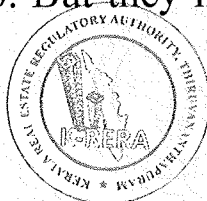
Registration fee and registration expenses to be paid to the Document writer for executing sale deed. It was submitted that the Complainants have not stated as to what are the amenities that have not been completed. As per the direction of this Authority in another Complaint No. 221 of 2021 relating to the same project, the Respondents had convened a meeting of allottees for the fourth time on 20.05.2023 at 3 p.m. Even though the Complainant and 9 others attended the meeting, they were not ready to form the Allottees Association. They had asked for a draft copy of Memorandum of Association which was sent by the Respondent to all allottees, however, till date the allottees have not formed the Association or intimated the Respondents about the same. The present Complaint is filed only as an experimental Complaint to harass the Respondents and was prayed to dismiss the Complaint with costs to the Respondents.

9. Heard both parties of the above complaint in detail. The documents produced from the part of the Complainants are marked as Exbts.A1 to A8. The documents produced from the part of the Respondents are marked as Exbts B1 to B4. **Exhibit A1** is the agreement for construction dated 07/11/2016 executed between the Complainants and the Respondent No. 1 represented by the Respondent No.2 for constructing a 2 bed room apartment on the fourth floor of the building along with car parking for a total construction cost of Rs. 27,26,516/- which included the service charges and the statutory expenses such as building tax, charge for change of registry, agreement execution fee, flat owners association deposit, workers welfare fund



and water and electricity connection charges and deposits. The completion date as per the agreement is on or before 31/05/2017 and the possession was to be handed over within 180 days from the date of paying the entire consideration including statutory charges. **Exhibit A2 series** are the email communications showing the various stages of the work completion. **Exhibit A3** is final bill issued by the Respondent to the Complainant. **Exhibit A4** is the receipt of payment dated 23/06/2022. **Exhibit A5** is the email dated 23/06/2022 from the Respondents forwarding the statement regarding receipt of payment made. **Exhibit A6** is the email dated 19/07/2022 forwarding draft sale agreement. **Exhibit A7** is the brochure of the project. **Exhibit A8** is the agreement for sale dated 07/11/2016 executed between the Complainants and the Respondent No. 1 represented by Respondent No. 2. The documents produced by the Complainant are marked as Exhibits B1 to B4. **Exhibit B1** is the order dated 19/07/2023 issued by the Adjudicating Officer. **Exhibit B2** is the occupancy certificate dated 22/06/2020. **Exhibit B3** is the email dated 29/01/2021. **Exhibit B4** is the email dated 11/03/2022.

10. The project is registered as “Galaxy Midwinter” before this Authority as per Section 3 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as the “Act 2016”] in which the proposed date of completion was shown as 16/03/2020. On perusal of the concerned web page, the Respondents have uploaded an occupancy certificate dated 22.06.2020 obtained for the project and Fire NOC dated 23.03.2020. But they have not yet uploaded Form-6



showing the completion of this project, or taken any steps for further extension of registration as provided under the Act, 2016.

11. The reliefs sought in this Complaint are for completion of common amenities, car parking allotment, sale deed execution, and interest for delay in handing over. During the hearing, the relief with regard to the car parking allotment was fulfilled by the Respondents upon direction from the Authority, vide interim order dated 21.09.2023. On 06/05/2024, the counsel for the Complainant submitted that they got the car parking as per the construction agreement. On that day, the counsel for the Respondents submitted that there is a chance for settlement and sought time for the same. The Authority decided to grant 2 months time. During the next hearing, the counsel for the Complainant prayed for an order with regard to the relief of interest for delay and sale deed execution, as the matter was not so far settled between the parties.

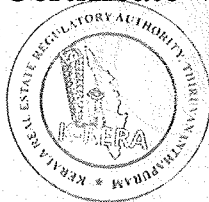
12. Regarding the relief of interest for delay, after hearing the counsels on either side and perusing the pleadings and documents placed on record, the following points are being considered and decided herewith:

- 1) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainants, with all the common amenities and facilities, in accordance with the terms of the agreement or duly completed by the date specified therein or not?



- 2) Whether the Complainants herein are entitled to get interest for delay in completion and handing over possession of the apartment as provided under Section 18(1) of the Act, 2016 or not?

13. **Points No. 1&2:** As per the Exbt. A1 agreement, Clause No. 5 is as follows: *"The First party shall construct the apartment as per the specifications attached hereto and try the utmost possible to finish the work on or before the 31st day of May, 2017 provided the entire amount due to the First Party from the Second Party including statutory charges has been paid by the Second Party. Possession will be handed over within 180 days from the date of paying the entire consideration including statutory charges."* Exhibit. A1 agreement is seen executed by the Complainant and the Respondents on 07/11/2016 as per which the promised date of completion and handing over was on 31/05/2017 with a grace period of 180 days. According to the learned counsel appeared for the Complainant, the Respondents handed over the key to the Complainant, and possession of the apartment was taken over only on 21/07/2022 which the Respondents admit. It was admitted by the Respondents that the Occupancy Certificate has been obtained for the project only on 22/06/2020. Even after receiving the Occupancy Certificate, the Respondent failed to hand over possession of the apartment. On perusal of the documents placed on record, it could be seen that the conveyance deed has not been executed in favour of the Complainants herein whereas the Occupancy Certificate was obtained only on 22/06/2020



for the said project. The Complainant admits that they have taken over possession on 21/07/2022. As per the agreement executed with the Complainant herein, which is marked as Exbt.A1, the Respondents/builder has assured that “the construction will be completed on or before 31/05/2017 and possession will be handed over within 180 days from the date of paying the entire consideration”. But here, the possession was handed over only on 21/07/2022 much after obtaining the Occupancy Certificate according to the Complainant and that too without completing the common amenities offered to them. It was also alleged by the learned counsel for the Complainant that the Respondents have not even taken any initiative to form an Association of allottees and hence the allottees themselves formed one and the Respondents have not yet transferred the common area/amenities or the documents related to the project to the Association so far as stipulated under the law. As per Section 11(4)(e) of the Act 2016, it is the duty of the Promoter to enable formation of an Association of allottees within a period of 3 months of the majority of allottees having booked their apartments in the project. Moreover, Section 11(4) (f) stipulates that the Promoter “*shall execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act.*” Section 17 of the Act specifies that “*conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this*



section shall be carried out by the promoter within three months from date of issue of occupancy certificate. After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand-over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate".

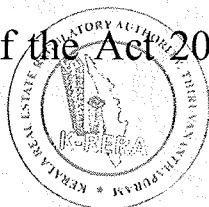
14. It is noticed that as per the terms of Exbt. A1 agreement, the Respondents/Promoter had promised to give the Complainant several amenities in the project. But such amenities are not seen given according to the Complainant. As per Exbt B3 & B4, the Respondent admits that the apartment was completed only in 2021 as they have asked for the balance amount for execution of the sale deed. But as per the Complainants, they have remitted the full amount including registration charges and statutory charges. Even after receiving the amount, they failed to complete the project and execute the sale deed in favour of the Complainants. Hence, it can be found that the Respondents herein have gravely failed to give possession of the apartment and complete the project along with common amenities, as promised in the Exbt. A1 agreement, as alleged by the Complainant. From the web portal of the Authority it is clear even after receiving the



Occupancy Certificate, they have failed to complete the whole project as they have not yet uploaded the Form 6 showing the completion of the project. While passing judgement in Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., the Hon'ble Supreme Court had done certain important observations on the same aspect as follows: "*The Developers sell dreams to home buyers. Implicit in their representations is that the facilities which will be developed by the developer will provide convenience of living and a certain lifestyle based on the existence of those amenities. Having sold the flats, the developer may find it economically unviable to provide the amenities. The flat purchasers cannot be left in the lurch or, as in the present case, be told that the absence of facilities which were to be provided by the developer is compensated by other amenities which are available in the area. The developer must be held accountable for its representation. A flat purchaser who invests in a flat does so on an assessment of its potential. The amenities which the builder has committed to provide impinge on the quality of life for the families of purchasers and the potential for appreciation in the value of the flat. The representation held out by the developer cannot be dismissed as chaff*".

15. At the time of the final hearing, the counsel for the Complainants kept on arguing that though the works were not completed in full respects as promised to them, they were compelled to take over possession of the apartment on 21/07/2022. From the Exbt A2 series email communication from the year 2018 to 2020 along with the photographs produced, it is clear that the project was not completed at the time promised in the agreement. And even after receiving the Occupancy Certificate, the Respondents have failed to execute the sale deed in favour of the Complainants.

16. While considering the claim of the Complainants for the interest for delay in handing over possession, we have to revisit the provisions concerned of the Act 2016, in which Section 18(1) of the



Act 2016 lays down that: “If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act- Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” It is apparent that Section 18(1) of the Act, 2016 applies only in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. Moreover, Section 18 (1) of the Act, 2016 clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. Here, the Complainant has opted to continue with the project and claimed interest for delay in handing over possession of the apartment to her.

17. The Exhibit. A1 agreement is executed by the Complainants and the Respondent No 1/Promoter Company



represented by Respondent No.2 on 07/11/2016 as per which the promised date of completion and handing over was on 31.05.2017 with a grace period of 180 days. As detailed in the forgoing paragraphs, the Respondents have failed to hand over the completed flat on the date promised in the agreement. According to the Respondents, they handed over possession to the Complainants on 21/07/2022 immediately upon receiving the balance amounts from the Complainants. As it is evident from the records that the Respondents could not hand over possession as per the terms of the agreement, the Complainant herein is eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. We would reproduce herein below, certain remarkable observations made in this regard by the Hon'ble Supreme Court of India in its Judgement dated 11/11/2021 of M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others: “ *If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*”.



18. Here, the learned counsel for the Respondents mainly raised arguments that the completion date was subject to the performance from the part of the Complainant but the Complainant failed to perform by making delay in the payments as per the agreement and hence delayed in handing over the property and executing the sale deed. Anyhow, on examination of Exhibit A4 & A5, reveals that the Complainant had made most of the payments before the promised date of completion. In view of this, the Respondents have no right to shift the burden on the shoulders of the Complainant by alleging any delay/irregularity in their payments. Nevertheless, the Respondents, being promoters of such a project, cannot run away from their obligations with respect to completion of the whole project with all the amenities and facilities because they are accountable to all the prompt paying allottees also in the project. Here, the promised date of completion and handing over was 31-05-2017, but possession of the apartment was handed over only on 21-07-2022 according to the Complainant. It can be seen that the delay in final payments occurred due to the non-completion of work as promised by the Respondents/Promoter.

19. It was observed by the Hon'ble Supreme Court in its judgement Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., as follows: *"Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the contractually stipulated date suffers consequences in terms of agony and hardship,*

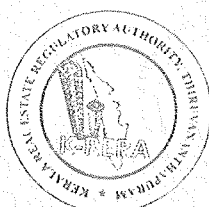


not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit the consequence of a delay in not handing over possession.”

20. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondents/Promoter has failed to complete and hand over possession of the apartment as promised to the Complainant herein and hence the Complainant is entitled to get interest for delay in handing over possession as provided under Section 18(1) of the Act 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainant.

21. In the instant case, the Complainant had remitted Rs. **31,11,549/-** to the Respondents which is supported by Exbt A4 & A5 documents. The said documents reveals that the Complainant has paid an amount of Rs.21,34,000/- before the promised date of completion, i.e. on 31.05.2017. As the Respondents/ Promoter is a defaulter, he is not entitled to get the benefit of the grace period mentioned in the Exhibit A1 agreement. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
14.05.2014	5,000/-
15.05.2014	20,000/-
23.05.2014	60,000/-
23.05.2014	3,40,000/-



30.06.2014	2,50,000/-
05.09.2014	29,000/-
05.09.2014	29,000/-
06.11.2014	58,000/-
08.01.2015	58,000/-
24.03.2015	58,000/-
28.04.2015	58,000/-
23.06.2015	58,000/-
29.08.2015	58,000/-
29.10.2015	58,000/-
09.03.2016	1,00,000/-
07.11.2016	5,00,000/-
02.12.2016	2,95,000/-
19.04.2017	1,00,000/-
19.07.2017	2,00,000/-
25.03.2022	5,00,000/-
16.06.2022	1,00,000/-
16.06.2022	1,00,000/-
23.06.2022	77,549/-
Total	31,11,549/-

22. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents are liable to pay interest to the Complainant as per the proviso to Section 18(1) of the



Act, 2016. Hence the Complainant is entitled to get interest for the period from 01/06/2017, the promised date for handing over till 21/07/2022, the date of handing over possession, on Rs. 21,34,000/- which is the amount paid by him before the promised date of completion and also, he is entitled to get interest from the dates of payment of each amount, as shown in the table inserted above, paid after the promised date of handing over till 21/07/2022, the actual date of handing over possession of the apartment. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI BPLR rate is 15.15% with effect from 15/06/2024. Hence, it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 17.15 % [15.15% (current BPLR rate) +2%].

23. On the basis of the above detailed facts and circumstances of the case and the documents submitted by the Complainants and Respondents, this Authority by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, directs the Respondents in the following manner:

- 1) The Respondents No. 1&2 /Promoters shall complete the pending works, if any, with respect to the Apartment No. E 5 in 'Galaxy Midwinter' and all the common amenities and facilities in the project as promised to the Complainants as per the



Exbt. A1 agreement executed with them, **within six months** from the date of receipt of this order. In the event of failure to comply with this direction, this Authority shall be constrained to initiate penal action against the Respondents, as provided under Section 63 of the Real estate (Regulation & Development) Act, 2016.

2) The Respondents No. 1&2 /Promoters shall execute the sale deed in favour of the Complainants within **one month** from the date of receipt of this order, failing which the Authority shall be constrained to proceed with execution of the sale deed by its own and also to initiate penal actions against Respondents No. 1&2 /Promoters for violation of the order.

3) The Respondents No. 1&2 shall pay to the Complainants, simple interest @ 17.15% per annum, (a)for Rs. 21,34,000/-, the amount paid before 31/05/2017, the promised date of completion and handing over, for every month from 1/06/2017 till 21/07/2022, the date of handing over possession of apartment to the Complainant and (b) for the amounts paid after 31/05/2017, from the date of each payment as mentioned in the table inserted above in para 21 till 21/07/2022, the date of handing over possession of the apartment to the complainant.

4) If the Respondents fail to pay the aforesaid amount of interest as directed above, within a period of 60 days from the date of receipt of this order, the Complainant are at liberty to recover the amount from the above Respondents and



their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/


Secretary (Legal)

APPENDIX

Exhibits on the side of the Complainant

- Exhibit A1 : Copy of the Agreement for construction.
- Exhibit A2 series : Copies of the email communications along with photographs.
- Exhibit A3 : Copy of the final bill
- Exhibit A4 : Copy of the payment receipt
- Exhibit A5 : Copy of the statement of payment receipts
- Exhibit A6 : copy of the email communications with sale deed draft.
- Exhibit A7 : copy of the brochure of the project.
- Exhibit A8 : copy of the sale agreement.

Exhibits on the side of the Respondents

- Exhibit B1 - copy of the order in CCP No. 07/2023
- Exhibit B2 - copy of the occupancy certificate dated 22/06/2020
- Exhibit B3 - copy of the email dated 29/01/2021
- Exhibit B4 - copy of the email dated 11/03/2022.