



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 118/2024

Dated 23rd April 2025

Present: Smt. Preetha P Menon, Member

Complainants

1. Kiran
Flat No. 61, Ambady Chambers
Kochi- 682011,
Presently residing at
Al Hawaii Twin Tower,
A-Block, 901, Amman Street,
Al Nahda 2, Dubai
2. Varsha
Flat No. 61, Ambady Chambers,
Kochi- 682011,
Presently residing at
Al Hawaii Twin Tower,
A-Block, 901, Amman Street,
Al Nahda 2, Dubai

Respondents

1. M/s Galaxy Homes Pvt Ltd.
Galaxy Square 6th Floor,



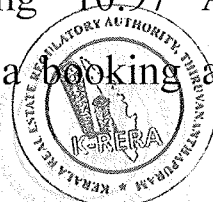
Rajaji Road Jn, M G Road,
Kochi- 638035

2. Managing Director,
M/s Galaxy Homes Pvt Ltd.
Galaxy Homes,
Sharaful Islam School Lane,
Desabhimani Road,
Edappally south village
Kaloor P O – 682017

The above Complaint came up for virtual hearing. The counsel for the Complainants attended the hearing. The counsel for the Respondents was present in the first two postings. Thereafter Respondents were absent in all the hearings. The exparte notice was issued on 5/11/2024. Hence the Respondents were set exparte.

ORDER

1. The facts of the case are as follows: - The Complainants are the allottees of the project Galaxy Emerald developed by the Respondents. The Complainants booked a Flat No. D-5 along with the specified car parking area on the first floor of the multi-storied building named Galaxy Emerald, which includes residential buildings, common areas, and amenities for residential apartments, together with undivided share of 423/77500 in the property totaling 10.97 Ares (27.107 cents). The Complainants had paid a booking advance of Rs. 25,000/- on



05/10/2018 against the total agreed value of Rs. 20,30,603/- including GST, building tax, one-time tax, association deposit, registration, welfare fund, and other miscellaneous expenses. The Complainants and Respondents on 05/10/2018 executed an agreement for sale with respect to the undivided share in land viz 423/77500 out of the total extent of 10.97 Ares. Further, on 05/10/2018, an agreement for the construction of apartment No. D5 on the Fifth floor of the apartment complex was also entered into by the Complainants and the Respondents. The Respondents had agreed to deliver the Apartment No. D5 on 30/09/2020 and the total consideration payable is Rs. 20,30,603/- and as on 17/11/2022, the Complainants have paid a sum of Rs. 19,29,073/- to the Respondents which is commensurate with the construction progress which constitutes 95% of the total value of the construction. The balance consideration was only Rs. 1,01,530/- and the Complainants were forced to withhold the said payment as the Respondents neglected the completion of the apartment as agreed. The Respondents have not completed the construction of the apartment along with the amenities as agreed. The occupancy certificate has not been issued by the authorities concerned for the reason that the building is incomplete. There is an inexplicable delay in completing the project as agreed. Till today, the apartment has not been completed and handed over to the Complainants by the Respondents.



2. The Complainants and other similarly placed allottees who were deprived of their apartments due to the inexplicable delay of 20 months in handing over the apartment raised their protest and indignation over the same. Therefore, the Respondents organized a meeting for the allottees of the apartment complex Galaxy Emerald on 11/6/2022 to discuss the final date of the completion of construction as well as the date of handing over the apartments to the respective allottees. The meeting was attended by most of the allottees of the apartment complex Galaxy Emerald and the General Manager and Assistant General Manager of the Respondents. The said meeting was also attended by Mr. Shiju Nair and Mr. Abin Jose from M/s Primetech who are the consultants appointed for monitoring the speedy completion of the project as mutually agreed by the allottees/owners of the apartments and the Respondents. The consultants were appointed to monitor the project as there was dereliction, laches, and default on the part of the Respondents in handing over the apartment as agreed. The said consultants also, after 3 months of monitoring stopped the said task as no payment was made to them. Further it was decided and agreed in the meeting that the final revised date of completion of the project, along with all amenities, would be on 30.11.2022. It was further agreed that rentals would be paid to the allottees with effect from 01.12.2022 at the rate of 18% of the invested amount if the project is not completed on the said date. The Complainants submit that the apartment was not completed



and delivered on 30.11.2022 as per the agreed terms of the revised schedule. Subsequently, another conciliation talk was held, and it was agreed by the Respondents that they will complete and deliver the possession of the apartment on 31.03.2023, with the assurance that the rental will be calculated at 18% of the paid amount with effect from 01.12.2022. As per the agreement for construction, in case there is any default on the part of the Respondent, then the Respondent is liable to pay all the amounts received from the Complainants along with the penalty of 10% per annum over and above the interest and rentals agreed to be paid.

3. It was submitted that despite all the undertakings by the Respondents, the apartment has not been delivered to the Complainants till date. Hence the Complainants are entitled to receive rentals at 18% per annum from the amount invested, in addition to the interest for the amount given to the Respondents from the date of payments. There is negligence and dereliction on the part of the Respondents in not adhering to the revised date of completion, which was unequivocally agreed by the Respondents. The failure to construct, complete and deliver the apartment establishes callousness on the part of Respondents. It is reiterated that despite the Respondents receiving substantial amount from the Complainants, they failed to complete and deliver the apartment. The fact-finding report in respect of the Respondent apartment complex called for by the Hon'ble RERA from the Cochin Municipal Corporation establishes that the Respondents have not

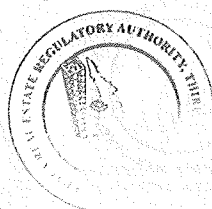


completed project as per the agreement and there violation of various KMBR provisions. The report further clarifies that there are grave deficiencies and defects and non-completion as per the agreed terms. The Complainants submit that the 1st Complainant had availed a housing loan from the Emirates NBD which was repaid with interest despite the fact that the apartment was not completed and handed over. The said circumstance had also led to substantial monetary loss to the Complainant The reliefs sought by the Complainants (1) To direct the Respondents to hand over the possession of apartment No.D-5 on the fifth floor of the apartment complex with designated car parking lot as contained in the agreement dated 05/10/2018.(2) To direct the Respondents to pay rentals entitled to the Complainants as agreed i.e, 18% of the total amount of Rs. 19,29,073/- paid for Apartment No.D-5 (ie, Rs. 3,47,233/- per month) with effect from 01.12.2022 upto the date of handing over of possession of the apartments to the Complainants. (3)To direct the Respondents to pay monthly interest over Rs.19,29,073/- from 30/09/2020 till handing over possession of the apartments along with car parking space, allied amenities together with occupancy certificate and Corporation one time building Tax remittance receipt with corporation assigned door number to the Complainants. (4) To direct the Respondents to pay costs of the proceedings before this Authority.



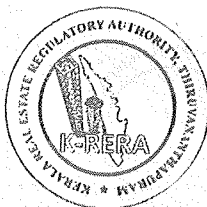
4. Even though one counsel appeared for the Respondents in the first two hearings, the Respondents have neither appeared nor represented anybody during the further hearings. Hence, the ex parte notice was issued on 5/11/2024. The Respondents have neither filed any written statement nor submitted any documents even after giving ample time. So the Respondents herein were set ex-parte.

5. The project in question is a registered project before this Authority under Section 3 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as the "Act 2016"] in which the proposed date of completion is shown as 19.11.2022. On perusal of the web page concerned, it is seen that the Respondents have not so far uploaded the occupancy certificate obtained for the project and Form -6 showing completion of the project. Hence, it is clear that the project is still not completed and the occupancy certificate has not been obtained for the project till date. At the same time, the Respondent have not initiated any steps for extending the registration as prescribed under the law which is a clear violation of Sec 6 of the Act, 2016 read with Rule 8 of the Rules, 2018. The Authority issued a notice dated 08.07.2024 to the Respondent/Promoter on the lapse of the registration and non -observance of the post-registration/ completion requirements in respect of the project as prescribed under the law. In suo-moto proceedings initiated by this Authority with regard to the abovesaid violation of the



promoter was called upon for a direct hearing seeking explanation for the same. In the hearing held on 23.07.2024, the Promoter submitted that the outbreak of pandemic and the resultant restrictions delayed the completion of the project. The registration of the project expired on 19.11.2022, but the Respondent/Promoter has not filed the Occupancy Certificate and the Quarterly report for the second Quarter. The Respondent/Promoter submitted that the building permit expired 19.05.2022. Even though 90% of the work has been completed, the corporation of Kochi has not renewed the permit and hence, the Promoter approached the Hon'ble High Court. After hearing the Promoter, the Hon'ble Chairman of this Authority passed an order dated 30/07/2024 directing the Respondent/Promoter "to complete the project in all respects within six months from the date of renewal of the building permit and stipulating that the Respondent/Promoter shall not enter into any sale agreements for the unsold units and shall not receive any money from the allottees of the allotted apartment units from the date of the said order till the receipt of Occupancy certificate of the project from the Corporation of Kochi".

6. Here, the reliefs sought by the Complainants are for completion, handing over possession, sale deed execution and interest for delay. As far as the prayers for completion, the above said order dated 30/07/2024 for completion and handing over



shall be applicable to all the allottees of the Project in question including the Complainants herein.

7. Heard both parties in detail in the above Complaint on the other reliefs such as sale deed execution, handing over, and claim of interest for delay in handing over the apartment to the Complainants as per the terms of the agreement. After hearing on either side and perusing the pleadings and documents submitted with respect to the claim of the Complainants, the points arose for consideration are as follows:

- (i) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainants, in accordance with the terms of the agreement or duly completed by the date specified therein or not?
- (ii) Whether the Complainants herein is 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?
- (iii) What order as to costs?

8. **Points No. 1&2:** The documents produced by the Complainants are marked as **Exhibits A1 to A. Exhibit A1** is the sale agreement dated 05.10.2018 executed between the Complainants and the Respondent No.1 represented by its Managing Director for sale of 423/77500 undivided share having an extent of 10.97 Acres for a sale consideration of Rs. 1,35,360/-.



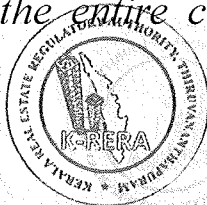
Exhibit A2 is the construction agreement dated 05/10/2018 executed between the Complainants and the Respondent No. 1 represented by Respondent No.2 for constructing a one- bedroom apartment having a super built-up area of 423 sq. ft on the Fifth Floor in the said project for a construction cost of Rs. 17,24,529/- in which the promised date of completion is shown as 30.09.2020 with 180 days grace period. **Exhibit A3** is the copy of the fact-finding report issued by the Cochin Municipal Corporation dated 02.04.2024. **Exhibit A4** series are the payment receipts. **Exhibit A5** is the payment schedule.

9. As mentioned above, the prayer with regard to the completion of the project in the above complaint has already been adjudicated and the order has been passed, the prayers to be considered herewith are that for a direction for sale deed execution, and to pay interest for delay in completion and handing over the apartment allotted to the Complainants. According to Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [herein after referred to as “the Act, 2016”], “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 obvious that Section 18(1) of the Act, 2016 is applicable 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 Complainants have opted to continue with the project and claimed interest for delay in handing over possession of the apartment to them.

10. As per Exbt. A2 Construction 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 30th day of September, 2020 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. A2 the construction agreement dated 05/10/2018 executed between the Complainants and the Respondent No. 1 represented by Respondent No.2 for constructing a one- bedroom apartment having a super built-up area of 423 sq. ft on the Fifth Floor in the said project for a construction cost of Rs. 17,24,529/- in which the promised date of completion is shown as 30.09.2020 with 180 days grace period. According to the Complainants, the Respondents have not handed over possession of the apartment to the Complainants. It is understood from the documents that the project was not completed on the date of completion as promised in the Exbt A2 agreement. The Registration web portal of the Authority also reveals that the project is still not completed and the occupancy certificate for the same has not been obtained so far. Before obtaining the occupancy certificate, the Respondents are not supposed to execute the sale deed in favour of any of the allottees.

11. Under Section 11(4) of the Act, 2016, the Respondents/Promoters are responsible to obtain the occupancy certificate, from the Competent Authority and after obtaining all the mandatory sanctions for the project, the Promoters are bound to hand over physical possession of the building/apartments to the allottees therein. Section 17 of the Act, 2016 stipulates 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 the 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 handover 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.”

12. With respect to the right of the allottees for getting interest for delay in getting handed over the apartments in such cases, certain remarkable observations were made 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 sought 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 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 consequences of a delay in not handing over possession.” From the Exhibit A4 series receipts it is understood



that the payments were made on time, and the Promoter has undoubtedly made use of the investments of the Complainant's hard-earned money for the past years and failed to complete the work and hand over possession as per the terms of the agreement.

13. In these circumstances, the only prayer to be addressed here is with regard to the interest for delay in completion and handing over. It is obvious that Section 18(1) of the Act, 2016 is applicable 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. As per Exbt.A2, the Respondents should have handed possession of the apartment on 30.09.2020, and the Complainants could take possession within the grace period. Since the Respondents could not hand over possession as per the terms of the agreement, the Complainants are eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. Proviso to Section 18(1) provides 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 will not be out of place to reproduce here, the 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 which are as follows: *"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.”

14. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondents/Promoters have failed to complete and handover possession of the apartment as promised to the Complainants herein and hence the Complainants are entitled to get interest for delay in handing over possession as provided under the proviso to Section 18(1) of the Act, 2016. Points 1 & 2 are answered accordingly in favour of the Complainants.

15. In the instant case, the Complainants have remitted Rs. **25,52,073/-** to the Respondent No.1, which is supported by Exbt A4 series documents. The said documents reveal that the Complainants have paid an amount of Rs. **12,48,000/-** before the promised date of completion, i.e., on 30.09.2020 . As the Respondent/ Promoter is a defaulter, he is not entitled to get the benefit of the grace period mentioned in the



Exhibit A2 agreement. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
25.07.2018	2,000/-
21.09.2018	6,23,000/-
28.09.2018	6,23,000/-
20.04.2022	3,00,000/-
16.05.2022	3,00,000/-
17.06.2022	3,00,000/-
16.07.2022	2,00,000/-
17.11.2022	2,04,073/-
Total	25,52,073/-

16. As the Complainants are found entitled to get interest for the delayed handing over of possession, the Respondents/Promoters are liable to pay interest to the Complainants as per the proviso to Section 18(1) of the Act, 2016. Hence the Complainants herein are entitled to get interest for the period from 01/10/2020, the promised date for handing over till the actual date of handing over possession, on Rs.12,48,000/- which is the amount paid by the Complainants before the promised date of completion and also, they are 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 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. The Respondents are liable to pay interest on the amount paid as mentioned above @ 17.15 % [15.15% (current BPLR rate) +2%].

17. On the basis of the facts and circumstances of the case as detailed above and by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, the Respondents/Promoters are hereby directed as follows: -


- 1) The Respondents No. 1&2 shall pay to the Complainant, simple interest @ 17.15% per annum, (a)for Rs. 21,28,000/-, the amount paid before 31/05/2019, the promised date of completion and handing over, for every month from 1/06/2019 till the actual date of handing over possession of apartment to the Complainant and (b) for the amounts paid after 31/05/2019, from the date of each payment as mentioned in the table inserted above in para 15 till the actual date of handing over possession of the apartment to the complainant.
- 2) 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 is 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

/True Copy/Forwarded By/Order/


Secretary (Legal)

APPENDIX

Exhibits produced by the Complainants

- Exhibit A1: Copy of agreement for sale
- Exhibit A2: Copy of agreement for construction
- Exhibit A3: Copy of the report from Cochin Corporation
- Exhibit A4 series: Copy of payments receipts
- Exhibit A5: copy of the payment schedule

Exhibits produced by the Respondent

Nil