



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 123/2024&124/2024

Present: Dr. Asha Thomas, Chairperson

Dated 19th September, 2025

Complainant in C No. 123/2024

M/s Galaxy Carlton Flat Owners Association
Represented by President
Flat No. D3, Thyilvadakkethil, Mahadevikadu P.O,
Karthikappally, Alappuzha- 690516

Complainant in C No. 124/2024

M/s Galaxy Oxton Flat Owners Association
Represented by President
K T John, 27/1383/39, Galaxy Oxton,
Flat No. G5, A V John Alunkal Road,
Near Vinobha Nagar, Kadavanthra,
Ernakulam, Kerala- 682020

[By Adv. S.S Aravind]

Respondents

1. M/s Galaxy Homes Pvt Ltd



Represented by Managing Director,
P A Jinas, Galaxy Square,
Rajaji Road Junction, M G Road,
Cochin- 35

The above Complaints came up for virtual hearing. The counsel for the Complainants attended the hearing. The notices for attending were sent to the Respondents for the earlier three hearings also, including ex-parte notices, but the Respondents failed to attend the hearings. Hence, the Respondents are set ex parte.

ORDER

1. The above Complaints are related to the projects 'Galaxy Carlton' & 'Galaxy Oxton'. Both the projects are registered under section 3 of the Real Estate (Regulation and Development) Act & Rules. The proposed date of Completion as per the registration certificate is 03/03/2021 for Carlton and 20/03/2023 for Oxton. On perusal of the Authority's web portal, it is seen that the Respondents have uploaded the occupancy certificate dated 07.08.2020 for 'Galaxy Carlton' and occupancy certificate dated 31.12.2019 for 'Galaxy Oxton'. But they have not yet uploaded Form-6 showing completion of these projects. As per the Authority's web portal status, the projects are not complete so far.



2. The complainants have filed the said Complaints as the association representing the allottees of the apartment towers Galaxy Carlton & Galaxy Oxton. The associations named as Galaxy Carlton Flat Owners Association & Galaxy Oxton Flat Owners Association are seen formed and registered by the allottees themselves. As per the Act of 2016, it is the responsibility of the Respondents to form an association of allottees which is not seen done in these two cases. As the promoter has not fulfilled his obligation under the Act of 2016, and as the self-formed associations are seen to have been formed and registered under the provisions of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the Authority accepts both the associations as the Associations representing the allottees/occupants of the apartment towers 'Galaxy Carlton' and 'Galaxy Oxton'.

3. As the complaints are related to similar apartment towers developed by the same Promoter, and the cause of action and the reliefs sought in both complaints are one and the same, the said Complaints are taken up together for joint hearing for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020. The reliefs sought by the Complainants are as follows.



- (a) Direct the respondents to produce all the documents relating to the project and an investigation may be directed in the matter under section 35 of RERA Act.
- (b) Direct the respondent to provide proper Sewage treatment plant and also to maintain the same as per SOP of the Kerala Pollution Control Board rectifying all the existing defects and shortcomings by entering into an agreement with the association as mandated in SOP.
- (c) Direct the respondents to remove all the temporary constructions in the Western side of the building allotting car parking to occupants of other project and which causes the reduction of minimum open space as stipulated in the Rule 117 of the Kerala Municipality Rules.
- (d) Direct the respondents not to offer or allow to make any construction for any third party outside the project to use or possess or allow the project space of 24.55 cents for whatsoever purpose including the parking.
- (e) Direct the respondents to provide recreational area for the allottees of the complainant association as stipulated in the sanctioned plan and permits within 24.550 cents of land.
- (f) Direct the respondents to provide proper and functionalable firefighting system duly renewing the Fire NOC.
- (g) Duly providing separate meters and EB panels for the occupants of project Galaxy Carlton so that the occupants do not bear burden of the cost of usage of electricity by occupants of



other projects with respect to the electricity charges of the lifts, lights around the three projects, Generator, etc.

(h) Direct the respondents to hand over the project at the earliest as mandated under section 17 of the Real Estate Regulation and Development Act, 2016 i.e. along with all statutory permits, plans, drawing of Electricity, Fire System, property documents etc.

(i) Direct the respondent to return the Association fund, AMC agreement funds and maintenance amount collected from the allottees of the Oxton & Carlton apartment towers.

4. The common facts of the Complaints are as follows: - The Apartment Towers are in Ernakulam District. The building permit was issued by the Cochin Municipal Corporation on 15/01/2015 and 23/10/2014. Subsequently the Respondents have renewed the building permits in the year 2018. The Occupancy certificate has been obtained in the year 2019 for Oxton & 2020 for Carlton apartment towers. The Fire NOC has been obtained by the apartment towers on 16/06/2020 which has expired years back and has never been renewed. It was submitted that "as per the Kerala Building Rules R.117, a clear motorable open space of minimum 5 meters width should be provided for the building at the front side as well as at any one of its sides contiguous to the road abutting it, so as to facilitate firefighting, which shall be kept free of parking and other erections or



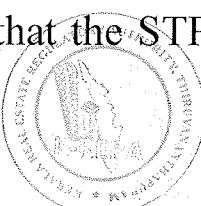
projections thereon other than projections of roof or weather shade or cornices of not more than 75 meters.”

5. The Complainants submitted that from the plan produced it can be seen that the entrance of the building is from western side, wherein it is stated that there is 5 meters road with gate. The said gate leads to the northern side of the building towards which the apartment tower faces. On the western side of the building, it is shown in the plan that there is a 5.50 meters width road and recreation area and assembly point. This is the only side of the building contiguous of the road abutting it. It was alleged that the Respondent had made an extra construction in the said area modifying and designating the same as the parking area for the apartment owners of apartment tower ‘Midwinter’, which is also in the same compound. Construction of the additional car parking in the property of the apartment tower Galaxy Carlton is clearly opposed to the statutory mandate and also against the right of the allottees of the apartment tower Galaxy Carlton who are having undivided right over the land. The said constructions made for the parking of vehicles is above the water tank of the apartment tower Galaxy Carlton apartment. This causes substantial damage to the water tank. It was also submitted that the present rain water harvesting tank in the apartment towers are not properly maintained and managed.

6. The Complainant further submitted that the sanctioned plan of the Galaxy Carlton apartment clearly states



that there is a Sewage Treatment Plant (STP). The STP in a building of this size and type, is a mandatory requirement as per the provisions of the Kerala Municipal Building Rules and each building should have separate and clear sewage disposal system on its own. To the contrary, the respondents have constructed only one sewage treatment plant for three different projects with three different building permits and three different plans which are registered with K-RERA as three separate projects named as Galaxy Oxton, Galaxy Carlton & Galaxy Mid- Winter. As per the complainants, “The consent to operate is for 130 residential units, whereas the number of residential apartments is 166 in all three projects and the present STP is insufficient. There has not been proper maintenance of the same and there is continuous over flow of the filth and drainage water causing substantial hazards to the occupants of the all three projects. There is no compound wall or separation between the three projects which are exclusively in three different extents of land. The Kerala State Pollution Control Board has issued notice dated 29/05/2024 in the name of the ‘M/s Residential Apartments for Galaxy Homes- Oxton, Carlton, Midwinter’ to operate the plant properly and had asked for an explanation for not properly maintaining the STP. It is highly necessary that a proper STP is installed in the project Galaxy Carlton and Galaxy Oxton and that the consent to operate it be obtained. The guidelines of the Kerala State Pollution Control Board (PCB) states that the STP present installed in a different



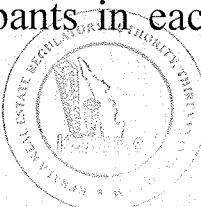
project is not as mandated. There are certain responsibilities for the Respondents/builders under the SOP of the PCB and certain requirements like builders' obligation to enter into contract for operation and maintenance with consultants for operation and maintenance of the STP for a minimum period of 5 years. The builder should ensure that the training is provided to the STO operator by the consultant regarding the operation of the STP, schedule of maintenance etc. This should be displayed in the control room of the STP. Most importantly the Respondent.builder is obliged to enter into a mutual agreement with the residential associations regarding the operation and maintenance of the STP and solid waste management facilities. The copy of the agreement should be produced before the PCB. Until the apartments are handed over to the association, the builder is having responsibility as per the guidelines of the PCB."

7. It was also submitted by the Complainants that the Respondents have obtained the occupancy in the years 2019 & 2020. In spite of the fact that the apartment tower is completed on paper way back, the same has not been handed over to the Association as mandated under the Act, 2016. The entire Electricity panel boards for all three projects are situated in the ground floor of the Galaxy Carlton. The plan states that there is recreational area for the apartment tower. This is a statutory mandate under Rule 50 of the Kerala Municipality Rules, 1999, which states that 'any residential apartment having more than 12



dwelling units in a single plot or single building, shall be provided with a recreational space of suitable size'. There is no recreational space outside as depicted in the sanctioned plan. The present recreational space for the apartment towers is recently set up in the terrace of the apartments. The construction agreement which is entered into with allottees mentions certain aspects which is primarily against the sanctioned plan and statutory requirement. Even though the sanctioned plan and building rules prescribe a mandatory recreational area, the construction agreement states that the same is common for three different buildings/projects with different permits, plans, and totally independent existence. Also, there cannot be common firefighting equipment for all three buildings, in spite of which it is stated in the construction agreement that it is common for the three buildings/projects.

8. It was further submitted that as per the construction agreement, the amenities like lift, mini auditorium, club house with indoor games facilities and rain water harvesting are exclusively for owners of the Galaxy Carlton. Whereas the generator provided in the Galaxy Oxton for back up lifts and common areas are for allottees of Galaxy Carlton and Galaxy Oxton. This implies that the allottees of the all the projects have to bear the cost and expense of the Generator equally. This leads to great disparity among the allottees as to the share of the cost. The strength of occupants in each tower is different from the



other. Galaxy Carlton apartment having 54 occupants, Galaxy Oxton with 72 occupants and the Midwinter with 40 occupants. Hence, if one of the apartment towers uses more power or the generator, the burden is on all the three towers equally, which is absolutely unacceptable. Same is in the case with electricity usage also. The apartment towers are having Electricity connections in the name of the Respondent/Builder which is still running for construction purpose with Consumer No. 1155421030521. The amount is now made to be paid by the entire occupants of the project for the common use of the electricity for the above requirements. Further there is only one generator for the entire three projects. The same is maintained by the occupants of the Galaxy Carlton apartment and the occupants of Galaxy Oxton are also co-operating with the same. The occupants of the Galaxy Mid-winter are not even caring about the same. This literally makes the three project as a single project practically.

9. As regarding the car parking which is a statutory mandate under the local legislation and national building code, it was submitted that there is an attempt to club all the three projects. One project cannot hold or allowed to be held in possession of, the car parking space of entirely a different project. This is against the building rules and national building code. Moreover, when sale deed is executed what is conveyed is undivided right on land along with the apartment building along with car parking. The sale deed also refers to certain amenities



common to all three projects which is primarily against the scheme of the Act, 2016 and Kerala Municipality Act and Rules thereunder. Hence it is mandatory that each project building is self-sufficient and self-contained and does not hold any of the amenities of another project/building within itself. When there are three different building permits, sanctioned plans, completion certificates, occupancy certificates, and K-RERA registrations, it is to be considered as three different and distinct projects and cannot be integrated in any manner so as to cause inconvenience to the allottees. Even though occupancy certificates have been received, the completion of the building as specified and offered is yet to be completed. The proper Rain water harvesting, Recreational space outside the tower, proper installation and operation of STP, proper working Fire and safety equipment and renewal of the permit, proper handing over of the project to the complainant association along with documents, sanctioned plans, permits etc are yet to be completed. Further the respondent has collected amount as Flat Owner's Association Deposit Fund, AMC agreement fund, maintenance fund etc from the allottees which is liable to be refunded by the Respondent to the Complainants with immediate effect.

10. The Respondents neither attended any hearing nor filed any counter statement in both the Complaints. Notices were sent to the Respondents/Promoters for attending the case and ex-parte notices dated 09.10.2024 & 25.10.2024 were also



sent to the Respondents/promoters. Despite the said notices being duly served, they failed to appear before the Authority. Hence, the Respondents are set ex parte.

11. Heard the complaints in detail. The documents produced from the part of the Complainants are marked as Exhibits A1 to A13. **Exhibit A1 series** are the certificates of registration of the associations of both towers marked as Exhibit A1(a) & Exhibit A1(b). **Exhibit A2** series are the building permits marked as Exhibit A2(a)& Exhibit A2(b). **Exhibit A3** is the sanctioned plan and site plan produced by the Complainants in C No. 123/2024. **Exhibit A4** is the brochure of Galaxy Oxton. **Exhibit A5** series are the occupancy certificates marked as Exhibit A5(a) & Exhibit A5(b). **Exhibit A6** series are the Fire NOC marked as Exhibit A6(a) & Exhibit A6(b). **Exhibit A7** is the letter issued by the PCB in the name of M/s Residential Apartments for Galaxy Homes Oxton-Carlton-Midwinter. **Exhibit A8** is the SOP of the PCB. **Exhibit A9** is the consent to establish issued from the Kerala Pollution control board. **Exhibit A10 series** are the construction agreements marked as Exhibit A10(a) and Exhibit A10(b). **Exhibit A11** series marked as Exhibit A11(a) & Exhibit A11(b) are the sale deeds executed by the Respondent in the name of one of the Allottees in each project. **Exhibit A12** is the possession certificate of Galaxy Oxton issued in the name of the Respondents. **Exhibit A13** is the



order dated 15.11.2021 issued by the Authority in C No. 288/2020 with regard to the project Galaxy Oxton.

12. When the complaint came up for initial hearing, the complainants alleged that the Respondents/Promoter did not complete the Project so far, as per the terms of agreements executed between the Respondents and the allottees. It was also submitted that the Respondents have not taken any steps for the formation of association and the allottees themselves were compelled to form an Association of allottees. It was alleged that the common amenities/common area or the documents pertaining to the project were not handed over by the Respondents/Promoters to the Association, as mandated under the law.

13. As per Sec 11(4) (e) of the Act, 2016, *the promotor shall enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project.* More over as per Sec 17(2) of the Act, 2016, *“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, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate. Here, it is noticed that the Respondents have neither enabled the formation of an association nor transferred the common area/amenities or the documents related to the project to the allottee-created Association so far as stipulated under the law. Even though, the Occupancy Certificates are obtained, the project cannot be considered as completed as they have not yet uploaded the Form- 6 proving that the project is completed. As per the terms of Exhibit. A10 series agreements and the submission made and documents produced, the Respondents/Promoter had promised to give the Complainants several amenities which are not seen done properly.

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". The Respondents/promoters are bound by the law as well as the contract to complete the entire project along with all the amenities and facilities promised to each and every allottee and hence, after completing the whole project and after obtaining all the sanctions and approvals prescribed under the laws concerned, the Respondents/Promoter should have handed over the common area and documents pertaining to the project to the Association of allottees formed and registered as per the law. Here, the Respondents have not produced any documents to show that they have set up an association and that they had already handed over the project to the Association of Allottees.

14. The Complainants also alleged that the car parking allotment is not in proper manner, as it is affecting the open/common space provided to the individual projects whereas it is clearly mentioned in the construction agreement that the



common space provided will be exclusively for the single block. As per the agreements and sale deeds produced, the apartment is transferred along the right to use proportionate share in the common area, common facilities, private roads etc along with the car parking on the ground floor of each apartment tower. It is the bounden duty of the Respondent to make sure that the construction and provisions are provided exclusively to all the allottees individually as per their construction agreement.

15. As per the Exhibit A10 series agreements executed with the Allottees, the Respondents/Promoters have assured that they will be providing proper Sewage Treatment Plan (STP) as per the law. But here, the Exhibit A7 letter issued by the Pollution Control Board in the name of M/s Residential Apartments for Galaxy Homes Oxton-Carlton-Midwinter clearly shows that the STP provided by the Respondents is not proper and needs to follow the SOP of Kerala State Pollution Control Board. As the project is not complete, it is the duty of the Respondent/Promoter to do the internal development works as provided under the law and as promised in the agreements. As per section 2(zb) of the Act,2016, "*internal development works*" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social



infrastructure such as education, health and other public amenities or any other work in a project for its benefit, as per sanctioned plans. The safe living of the residents of the apartments can be ensured only by providing such basic facilities. As the project is not yet complete, all actions with regard to the malfunctioning of the common provisions in the project are to be taken care of by the Respondent/Builder as per law.

16. The security deposits collected from the allottees, which have been kept by the Respondents themselves, are meant to be used for the rectification of such amenities which are still in the custody of the Respondents. The Respondents have not produced any documents to prove that they have handed over the common amenities to the Association or have fulfilled their obligations as promised.

17. Even after receiving the notices and filing vakalath, the Respondents have failed to attend the hearings and submit their versions in the case of both the Complaints. As mentioned above, notices were sent to the Respondents/Promoters several times for attending the case and ex-parte notices dated 09/10/2024 & 25/10/2024 were also sent to the Respondents/promoters, but they failed to appear. Hence, the Respondent/Promoter is set ex parte and it has been found that the Complainants herein are entitled to get the prayers allowed as such as per the Act, 2016.



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

- i. The Respondents shall complete all the pending works as per the agreements and handover the common amenities and common areas to the concerned Association along with all the necessary mandated documents including all statutory permits, plans, and drawings of electrical systems, Fire System, and conveyance deed related to the common areas.
- ii. The Respondents shall provide a proper Sewage Treatment Plant as promised in the agreements and as required by the permits obtained.
- iii. The Respondents shall provide proper car parking slots as promised in the conveyance deeds and agreements of the individual allottees.
- iv. The Respondents shall provide the recreational areas as promised to the allottees in both the apartment towers.
- v. The Respondents shall provide separate electrical and other systems as required by their permits for the three apartment towers- Galaxy Oxton, Galaxy Carlton, Galaxy Midwinter, thus ensuring the proper usage, functioning and maintenance of the common equipment like lifts, lights, generators, etc.



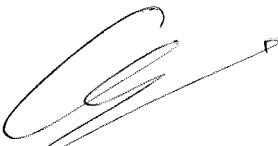
vi. The Respondents/Promoter shall return the amount of corpus fund to the Association, and the maintenance funds collected to the respective allottees.

With regard to other violations concerning the Building Rules, Pollution Control Board, etc., the Complainants can approach the appropriate forum constituted under the provisions of law.

Sd/-

Dr. Asha Thomas
Chairperson

/True Copy/Forwarded By/Order/



Secretary (Legal)



APPENDIX

Documents from the side of the Complainant

- Exhibit A1 series : Certificate of association registration.
- Exhibit A2 series : Copy of the Building permit.
- Exhibit A3 : Copy of the sanctioned plan & site plan
- Exhibit A4 : Copy of the brochure of Galaxy Oxton.
- Exhibit A5 series : Copy of the occupancy certificates
- Exhibit A6 series : Copy of the Fire NOC
- Exhibit A7 : Copy of the Letter issued by PCB
- Exhibit A8 : Copy of the SOP
- Exhibit A9 : Copy of the consent to establish issued from the Kerala Pollution control board
- Exhibit A10 series : Copy of the construction agreement
- Exhibit A11 series : Copy of the sale deed
- Exhibit A12 : Copy of the possession certificate.
- Exhibit A13 : Copy of the order dated 15.11.2021 issued by the Authority in C No. 288/2020 with regard to the project Galaxy Oxton.

Documents from the side of the Respondents

Nil