KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 265/2022

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

Dated 27th May 2024

Complainant

P. Jayanarayanan
Puthuparambil, Sree Uthradam,
Vivekanandan Road, Ottapalam P O,
Palakkad- 679101

[By Adv. Rajasekharan Nair]

Respondents

1. M/s Galaxy Homes Pvt Ltd,
   Galaxy Square,
   Rajaji Road Junction, M G Road,
   Karithala Desom, Ernakulam, Pin - 682035

2. P A Jinas, The Proprietor,
   Galaxy Developers, Galaxy Square,
   Rajaji Road Junction, M G Road,
   Karithala Desom, Ernakulam, Pin – 682035
   [By Adv. Thomas John]

The above Complaint came up for virtual hearing. The counsel for the Complainant and the counsel for the Respondents attended the hearing.

ORDER

1. The facts of the case are as follows: - The Complainant is an allottee in the project, "Galaxy Pine Courts" developed by the Respondents. The Complainant had booked an apartment No. F-2 in the said project of Respondent No. 1. The Complainants entered into two agreements with the Respondents and complied with all the conditions including timely and prompt payment as per schedule. As of 12.04.2018, the Complainant paid a total amount of Rs. 19,72,000/-. As per the construction agreement dated 21.08.2013, the project was to be completed on 30.04.2016 and was to be handed over within 180 days. But the project was pulling on at a very slow pace, far behind the schedule, from the very beginning and at times halted. The Complainant made regular and repeated follow ups with the Respondent for timely completion, but all in vain. The works are still being dragged most negligently. The works of amenities i.e approach road, car parking, security cabin, mini auditorium, children's play area, Health club, swimming pool, compound wall, exterior painting of flat building, incinerator etc. are pending. As a result, the Completion of flat and handing over was inordinately delayed. The Complainant had made regular phone calls, follow ups,

enquiries and even personal visits to the office of the Respondents expressing his anguish over the miserable fate of incomplete flat. The Respondents never bothered to attend the grievances nor responded sensibly. Rather they acted in violation and contravention to section 11 and section 19(2), (3), (5), of the Act. They failed to comply with functions and duties as warranted in section 11 or honour the rights of the Complainant mandated in section 19 of the Act. Under these circumstances, the Complainant was constrained to keep a meager balance payment pending and was cleared later. The flat was the dream plan of the Complainant and wished to have a shelter for his family which was expected to be realized in the year 2016. Now, as a result of aforesaid breaches and contraventions committed by the Respondents, Complainant suffered huge loss, injury, damages and mental agony. The reliefs sought by the Complainant are 1) to issue appropriate orders to the Respondent to complete the flat in all respects as per agreement and hand over possession at the earliest. 2) interest for delayed completion and handing over of flat at the rate applicable from date of promised handing over as per agreement, till completion of flat and realization of interest as per Sec.18 of the Act. The Complainants have produced the agreement for construction, final bill, mail communication, claim statement, payment receipts.

2. The Respondents filed objection and submitted that the Complaint is not maintainable either on law or on facts. The Complainant and the 1st Respondent entered into an agreement on

21-08-2013 whereby the Complainant agreed to purchase an apartment in the project by the name Galaxy Pine Court Block I at Kakkanad. As per the above agreement, the Complainant had agreed to pay a total amount of Rs. 19,58,697/- towards the cost of construction of a residential apartment having a built-up area of 928 sq. ft on the Second floor of the multi-storied building to be numbered as flat No. F-2. The construction cost of Rs. 19,58,697/- is agreed to be paid in 31 monthly installments of Rs. 50,200/- and a sum of Rs. 4,00,000/- was agreed to be paid on the date of the agreement and further sum of Rs. 2,497/-as the last installment. The monthly installments payable as per the above agreement was not paid by the Complainant in time. This has placed the Respondents in immense trouble.

3. It was submitted that the Complainant did not make the payment in time. Even despite this, these Respondents completed the construction. The Complainant was issued with Final Bill for Rs. 3,80,534/- on 12-04-2018. Even despite execution of sale deed and even after obtaining Occupancy Certificate, the Complainant deliberately delayed in paying the balance amounts due and settling the Final Bill. The Complainant could not make the final payment and the possession could not be handed over only on acceptance of the final payment. It is submitted that since the possession of the apartment is already handed over and the sale deed is also executed, the rights if any which was available to the Complainant are waived by him and the

Complainant is precluded from agitating the same after waiving the rights if any. It is further submitted that the Final Bill in respect of apartment F-2 booked by the Complainant was settled only on 16-01-2020. Clause No. 5 of the Agreement for Construction executed between the Complainant and the Respondents on 21-08-2013 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 30-04-2016 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." Therefore, as per clause 5 of the Agreement for Construction executed by the parties, the date for handing over of possession became due only on 15.07.2020.

4. Admittedly, the Complainant paid the entire consideration including statutory charges as agreed by the parties vide the agreement executed between them, only on 16-01-2020. Even though the due date of handing over was only 15-07-2020, the Respondents could hand over possession to the Complainant on 01-02-2022 immediately upon receiving the balance amounts from the Complainant since the Complainant wanted to get possession of the apartment. It is submitted that there are absolutely no willful laches or negligence on the part of the Builder in completing the Construction as agreed. The Complainant did not

make the payment as agreed in the agreement. The amounts agreed by the Complainant were paid belatedly after repeated requests from the Respondents. Therefore, the Builder cannot find fault for the delay in handing over possession of the apartment. It was submitted that since there occurred huge delay on the part of the Purchaser in paying the periodical installments of the cost of construction. The present complaint filed by the Complainant amounts to taking the benefit on his own wrongs which is impermissible under law. The Respondent/ Builder is only an implementing agency as per the agreement. As per the Construction agreement, the only responsibility of the builder is to proceed with the construction on getting the periodical instalments of the cost of construction payable by the intending purchasers. Since the Complainant who is an intending purchaser failed to pay the amounts as agreed, the builder cannot be find fault with. The above Complaint is not maintainable for the further reason that the construction of the apartment was already completed on 22-05-2020 and the Occupancy Certificate was issued by the Thrikkakara Municipality on 29.05.2020. The allottees who had settled the Final Bill and paid the entire amounts were given possession and are residing in their respective apartments.The Complainant wanted to get possession of the apartment before getting Occupancy Certificate. The Occupancy Certificate is produced. The apartment was handed over to the Complainant immediately upon settling of amounts due to the Respondents.

5. It was further submitted that since the Complainant defaulted in paying the amounts as per the agreement for construction executed between the Complainant and Respondents, the Complainant are not entitled to any of the reliefs claimed by them in the Complaint. It is also submitted that since the apartment was constructed and completed based on an agreement for construction, the above Act is not having any application in respect of the said apartment booked by the Complainant. The Complainant has given the apartment on rent after taking possession of the apartment. After having taken possession of the apartment on settling the amounts due to the Respondent and after having given the apartment for rent the present Complaint filed by the Complainant is not maintainable. As per the agreement executed between the Complainant and Respondent., the Complainant agreed to pay monthly installments. There has been a huge delay in payment of monthly installments from the side of the Complainant. It is submitted that even though Complainant failed to perform his part of the agreement, the Respondents by raising money from other sources have completed the construction of the apartment. The Respondents shall also file a statement of delay in remitting amounts by the Complainant. The Respondents handed over possession of the apartment well before the 180 days stipulated for handing over possession. Moreover, it was submitted that Article 20(1) of the Constitution of India stipulates that no

person can be prosecuted and punished for an Act which was not made an offence at the time of its commission. The reliefs sought for in the above Complaint by the applicants are in the nature of a penalty which cannot be granted in view of the constitutional protection as above. Therefore, the above Act's provisions do not have any application to the facts and circumstances of the above case; hence, the Complaint filed by the applicants is not maintainable before this Authority. It is well settled that a person raising a claim of breach of contract should come with clean hands by performing his part of the agreement. Admittedly, the Complainant violated the terms of the agreement. Therefore, for the aforesaid reason as well, the above Complaint is unsustainable under law. It is also submitted that there has been huge delay from the part of the Complainant in remitting the installments as well as the balance payments as agreed by him. The interest calculation submitted by the Complainant is not correct. The Complainant has no right to claim interest for the amounts paid by him. The Complainant is liable to pay the builder interest for the delay in remitting installments and the balance amounts. The Respondents prayed to dismiss the Complaint. The Respondents have produced the copy of the occupancy certificate.

6. Heard both parties of the above complaint in detail. The documents produced from the part of the Complainant are marked as Exbts.A1 to A4. The documents from the part of the Respondent are marked as Exhibit B1. As directed by this

Authority during the final stage of hearing, the Respondents have submitted an affidavit with respect to the completion of the project within a time period and it is marked as Exhibit B2. 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 Complainant, 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 Complainant 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?

7. **Points No. 1&2:-**The project is registered as "Galaxy Pine Court Block-I" 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 22/08/2022. On perusal of the web page concerned, it is seen that the Respondents have uploaded a partial occupancy certificate dated 15.03.2021 obtained for "Galaxy Pine Court Block-I" and Fire NOC dated 18.02.2021. They have also uploaded Form-6 showing completion of this project. While

examining the registration records, it could be seen that the Respondents/Promoters had obtained approval /permit from the local authority for the whole project conceived by them as "Galaxy Pine Court" in 55.01 Ares of land, comprising of 3 residential Blocks/buildings of 15 floors each and also a separate Car parking block with 2 floors. But the registration as per Section 3 of the Act 2016 has been taken only for Block-I for which the abovementioned 'Partial' Occupancy Certificate was issued by the local authority.

8. The documents produced by the Complainant are marked as Exhibits A1 to A4. **Exhibit A1** is the construction agreement dated 21.08.2013 executed between the Complainant and the 1st Respondent company represented by Executive Director for constructing a three-bedroom apartment having a built-up area of 928 sq. ft on the second floor in the said project for a construction cost of Rs. 19,58,697/- in which the promised date of completion is shown as 30.04.2016 with 180 days grace period. **Exhibit A2** is the copy of the final bill. **Exhibit A3** is the mail communication. **Exhibit A4** series is the copies of the receipts of payment made by the Complainant to the Respondents. The documents produced by the Respondents are marked as Exhibits B1. **Exhibit B1** is the Occupancy Certificate. The Respondents have submitted an affidavit dated 24/10/2023 with respect to completion of the whole project which is marked as **Exhibit B2**.

9. The Authority issued a common order dated 11/04/2022 in Complaints No. 218/20 & 173/21 filed by 2 allottees of the same project, directing the Respondents herein to complete and handover the respective apartments of the said Complainants and also to pay the interest for delay in handing over their apartments. When the above complaint came up for initial hearing, it was found that the Respondents/Promoter did not complete the Project so far, as promised as per the terms of agreements executed between the Respondents and the allottees including the Complainant herein and as directed by the Authority in the order aforementioned. It was also submitted by the parties that though an Association of allottees were formed by the allottees themselves, 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.

10. In this Complaint, as per the agreement executed with the Complainant herein, which is marked as Exbt.A1, the Respondents/Promoters have assured that "the construction will be completed on or before 30/04/2016 and possession will be handed over within 180 days from the date of paying the entire consideration". But here, the possession has not been handed over even after receiving the Occupancy Certificate dated 15.03.2021. 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. But the Respondents have not 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.*" and Section 17 of the Act specifies as follows: "*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".

11. It is noticed that as per the terms of Exbt. A1 agreement, the Respondents/Promoter had promised to give the Complainant several amenities such as Car Parking building, drinking water from connection of Kerala water Authority, swimming pool, Health club, Mini Auditorium with indoor game facility, Children's Play area, Landscaped Garden, Firefighting equipment, automated generator backup for life, Rainwater harvesting, sewage treatment plant etc. in the project. But such amenities are still distant dreams according to the Complainant. The Respondents/Promoter himself reveals in Exhibit B1 affidavit dated 24/10/2023, that there are more works to be completed in the project. 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. 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". In these circumstances, the claims of the Respondents counsel that "the apartment was completed earlier, but possession was not handed over due to non-payment by the Complainant" etc. is not at all sustainable legally because what the Respondents/promoters are bound by the law as well as the contract is to complete the entire project along with all the amenities and facilities promised to each and every allottee including the Complainant and hence, after completing the whole project as mentioned above and after obtaining all the sanctions and approvals prescribed under the laws concerned, the Respondents/Promoter would 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 had already handed over the project as mentioned above, to the Association of Allottees.

12. While considering the claim of the Complainant 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 him.

13. As per the Exbt. A1 agreement, Clause No. 5 states that "*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 April, 2016 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 Respondent No. 1 company represented by Executive Director on 21.08.2013 as per which the promised date of completion and handing over was on 30.04.2016 with a grace period of 180 days. According to the learned counsel appeared for the Complainant, the Respondents have not handed over possession of the apartment so far to the Complainants. It is admitted by the Respondents that the Occupancy Certificate has been obtained for the project only on 15.03.2021. According to the Respondents, they handed over possession to the Complainant on 1-02-2022 immediately upon receiving the balance amounts from the Complainant, but no documents have been produced proving the same. The Respondents have also submitted an affidavit dated 24.10.2023 marked as Exhibit B2 and submitted that the project is not completed and needs some more time to complete and hand over the whole project. As it is evident from the records that the Respondents could not complete and 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*".

14. 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 delay in the progress of works will not constitute a breach on the part of the promoter. He also argued that a person raising the claim of breach of contract should have come with clean hands, by performing his part of the agreement, but the Complainant herein had violated the terms of the agreement

when he failed to pay monthly instalments. Anyhow, examining Exhibit A4 series reveals that the Complainant had made most of the payments before the promised completion date. With regard to the contentions raised by the Counsel for the Respondents/Promoter that there was failure from the part of the Complainant in paying instalments on time, no documents/communications produced from the side of the Respondents to substantiate this contention and moreover the Respondents could have sent notice of cancellation of booking to the Complainant at the time of the alleged delay in making payments, by invoking provisions under Section 19(5) and (6) of the Act, 2016 and under Clause 9.3 of 'Annexure 'A' Agreement for sale' under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018. Exbt B2 affidavit also discloses that the Respondents could not complete and hand over the apartment on time as promised as per the agreement. It has been assured through the affidavit that the works with regard to the amenities such as swimming pool, sewage treatment plant, children's play area etc will be completed and handed over within six months. 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 his 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. Therefore, the Respondents cannot escape contending that they are only an "implementing agency and their only responsibility is to proceed with the construction on getting the periodical instalments of the cost of construction payable by the intending purchasers". Here, the promised date of completion and handing over was 30-04-2016, but possession of the apartment has not been handed over even after receiving the Occupancy Certificate. The Respondents have submitted that the possession of the apartment is already handed over and the sale deed was also executed, but the Complainant had not admitted the same nor the Respondents have submitted any documents proving the said contention. It can be seen that the delay in final payments occurred due to the non-completion of work as promised by the Respondents/Promoter. Even if the Complainant/allottee had made delay in any of the payment of instalments, 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 term of the agreement.

15. 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."

16. 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 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.

17. Regarding the issue of maintainability raised by the Respondents/Promoters, it is pertinent to note that the projects that are not completed and have not received the Occupancy Certificate on the date of commencement of the Act come under the fold of the Real Estate (Regulation & Development) Act 2016 and in this case, it has been established unequivocally that the project has not been completed till date, as promised to the allottees including the Complainant herein. In the judgement passed in *M/s New Tech Promoters & Developers Pvt Ltd. Vs State of U P & Others*, the Hon'ble Supreme Court of India confirmed that the Act 2016 is "retroactive" in nature and made certain observations in this regard as follows: "*the clear and unambiguous language of the statute is retroactive in operation and by applying purposive*

interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case".

18. Even though, we had clarified many times through our previous orders passed in Complaints against the same Promoters, the counsel for the Respondents/Promoters keep on repeating the very same contention in all the reply statements that 'the relief sought for by the Complainant cannot be granted in view of the constitutional protection given as per Article 20 of the Indian Constitution'. We would clarify it again herein that according to Article 20(1) *"No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence*" which means that if an

act is not an offence at the date of commission, it cannot be an offence at the date subsequent to its commission. Even before the induction of the Act 2016, the Promoters were not having any right to violate the terms of the agreement executed with the homebuyers and cheat them after grabbing their hard-earned savings. Above all, it is to be noted that Article 20(1) provides constitutional protection to individuals charged against criminal offences prohibited by law but in case of civil liberties or civil proceedings, Art 20(1) shall not be applicable which was made clear by the Hon'ble Apex Court through a lot of judgements. Anyhow, during the final hearing, the Respondents has not pressed on the issue of maintainability as raised through his pleadings.

19. The Complainant herein has claimed interest for the delayed completion and handing over of possession of the apartment from the promised date of completion and delivery of the flat to the Complainant, till the actual date of completion and handing over possession of flat and the project with all facilities and amenities. As the Respondents had not yet handed over the flats, the Complainant herein is eligible to get interest from the promised date of handing over as per the agreement till the actual date of handing over possession to him. With respect to the completion of the common amenities offered as per the agreements executed with the Complainant and also with regard to other obligations as mandated by this law as Promoter, the Respondents herein cannot repudiate the terms of the contract entered into with

the Complainant. Section 18(3) of the Act,2016 deals with the right of the allottee to get compensation "in case the Promoter fails to discharge any other obligations imposed on him under this Act, Rules or Regulations made thereunder or in accordance with the terms and conditions of the agreement for sale.

20. In the instant case, the Complainant had remitted Rs. **24,17,000/-** to the Respondents which is supported by Exbt A4 series documents. The said documents reveal that the Complainant had paid an amount of Rs.20,72,000/- before the promised date of completion, i.e. on 30.04.2016. As the Respondents/ Promoters are defaulters, they are not entitled to get the benefit of grace period mentioned in the Exhibit A1 agreement. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
01.04.2013	25,000/-
30.04.2013	4,75,000/-
02.10.2013	50,200/-
06.11.2013	50,200/-
08.12.2013	50,200/-
06.01.2014	50,200/-
03.02.2014	50,200/-
01.04.2014	50,200/-
05.04.2014	50,200/-
29.04.2014	50,200/-

03.06.2014	50,200/-
28.07.2014	50,200/-
04.08.2014	50,200/-
04.09.2014	50,200/-
01.10.2014	50,200/-
06.11.2014	50,200/-
03.12.2014	50,200/-
03.01.2015	50,200/-
02.02.2015	50,200/-
03.03.2015	50,200/-
04.04.2015	50,200/-
13.05.2015	50,200/-
02.06.2015	50,200/-
02.07.2015	50,200/-
01.08.2015	50,200/-
03.09.2015	50,200/-
01.10.2015	50,200/-
02.11.2015	50,200/-
01.12.2015	50,200/-
01.01.2016	50,200/-
01.02.2016	50,200/-
01.03.2016	50,200/-
02.06.2016	16,500/-
01.08.2016	16,500/-

02.07.2016	16,500/-
30.09.2016	16,500/-
23.01.2020	3,45,000/-
Total	**24,17,000/-**

21. 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 01/05/2016, the promised date for handing over till the date of handing over possession, on Rs. **20,72,000/-** which is the amount paid by him before the promised date of completion and also, he is entitled to get interest from the date 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 15.00 % with effect from 15/12/2023. Hence, it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 17 % [15% (current BPLR rate) +2%].

22. On the basis of the above detailed facts and circumstances of the case and Exhibit B2 Affidavit submitted by the Respondents/Promoter with respect to completion of the pending works, 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, with respect to the Apartment No. F-2 in 'Galaxy Pine Court' and all the common amenities and facilities in the project promised to the Complainant as per the Exbt. A1 agreement executed with him**, within 6 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 pay to the Complainant, simple interest @ 17% per annum, (a)for Rs. **20,72,000**/-, the amount paid before 30/04/2016, the promised date of completion and handing over, for every month from 01/05/2016 till the actual date of handing over possession of apartment to the Complainant and (b) for the amounts paid after 30/04/2016, from the date of each payment as mentioned in the table inserted above in para 20 till the date of handing over possession of the apartment to the complainant.

3) 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/-
Preetha P Menon
Member

Sd/-
P H Kurian
Chairman

/True Copy/Forwarded By/Order/

Secretary (Legal)

APPENDIX

Documents from the side of the Complainant

Exhibit A1	: Copy of the Agreement for Construction
Exhibit A2	: Copy of the final bill
Exhibit A3	: Copy of the email communication
Exhibit A4 series	: Copy of the payment receipts

Documents from the side of the Respondents

Exhibit B1	- copy of the Occupancy Certificate.
Exhibit B2	-Affidavit dated 24/10/2023.