



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No.290/2022**

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

**Dated 31<sup>st</sup> July 2023**

**Complainant**

Seleena Abraham & Lusina Saji  
Arikupurath House, Arakkunnam P.O,  
Mulanthuruthy, Ernakulam – 682 313.

(By Adv A.A Jaleel)

**Respondents**

1. Galaxy Homes Pvt Ltd.,  
Galaxy Square,  
Rajaji Road Junction,  
MG Road, Kochi, Ernakulam-682035.  
(Represented by its Managing Director)

2. P.A Jinas,  
Managing Director,  
Galaxy Homes Pvt Ltd.,  
Galaxy Square, Rajaji Road Junction,  
MG Road, Kochi, Ernakulam-682035.

(By Adv Thomas John. P)



The above Complaint came up for final hearing on 05/06/2023. Counsel for the complainants and Counsel for the Respondents attended the virtual hearing.

### **ORDER**

1. The Complainants are the Allottees of project named 'Galaxy Bridgewood' located at Kadavanthara, Ernakulam District, developed by the Respondents. The said project is registered with the Authority under Section 3 of the Real Estate (Regulation & Development) Act 2016, herein after referred as 'Act 2016'. (Registration No. K-RERA/PRJ/272/2020).

2. The facts of the Complaint are as follows: - The Complainants pre-booked an apartment proposed by Respondents, in the name and style 'Galaxy Bridge Wood - in 5<sup>th</sup> Floor 878 Sq. ft of type III with car parking on cellar floor of size 4x2.3 meters at Chilavannoor in Kochi with all fixtures thereon by remitting Rs. 25,000 on 17/11/2014. Thereafter, Complainants have remitted Rs. 9,25,000 on 25/11/2014. Accordingly, agreement for sale and agreement for construction dated 15/01/2015 have been executed between the Complainants and Respondents. The total price of the apartment as per the agreement dated 15/01/2015 was fixed at Rs. 26,87,723/-for the construction of the particular apartment and Rs. 3,53,058/- as the cost for undivided share in the land. The apartment complex was not completed till now. The said



apartment was booked believing the promise made by the Respondents, that the project would be completed and handed over to the Complainants by 20/06/2017. The complainants have remitted subsequent payments towards the consideration as Rs. 6,30,000/- on 7/10/2015 and Rs. 2 lakhs on 22/04/2016. But, in spite of the remittance of substantial amount, the construction was delayed and even at the time of proposed time for delivery (i.e., in 2017), the construction was at a preliminary stage. Even after the promised date, the construction activities were moving at a very slow rate. The apartment was proposed to be purchased for accommodating age-old mother of the complainants, who was under continuous medication for various ailments. In spite of the repeated enquiry and demands, the complainants did not get any proper explanation or promise from the side of respondents as regards the time for completion of the construction project. These being the situation, during June 2020, when the Complainants contacted the office of the Respondents, they were prompted by one Mr. Shafeeq to remit Rs. 2,20,000 and accordingly, complainants had paid the said amount on 02/07/2020. Even after the said payment, there was no progress in the construction. The respondents had convened a meeting of customers of the project during the time of COVID pandemic on 18/7/2020 and as there was restriction for travel, complainants could not attend the meeting. In the minutes of the meeting mailed to the complainants, the respondents proposed a revised schedule for completion of the



project and they promised that the apartment would be handed over by 30/03/2021.

3. The Complainants further submitted that the Respondents, vide mail dated 23/07/2020, directed the Complainants to remit the balance payment towards apartment in a monthly basis commencing from July 2020 to January 2021. The respondents have unilaterally decided a schedule as per their convenience without having any discussion or consent from the Complainants Accordingly, the Complainants were compelled to pay Rs. 10,40,781/- by the end of January 2021. The said stipulation is against the agreement and the spirit of the mutual understanding at the time of agreement. Therefore, Complainants expressed their objection to the same and sought time for arranging loan from financial institutions. Interestingly, at the time of making such a demand, there was no construction activity at all and only 50% of the construction were taken out by respondents. Anyhow, the complainants went to the construction site to oversee the stage of the project and found that the work was still lagging far behind and it could not be practical for completing the construction by 2021. These being the situation, 1<sup>st</sup> Complainant received an email dated 30/10/2020 from the 1<sup>st</sup> Respondent stating that the sale agreement executed for the purpose has been cancelled. The reason cited was that there was delay in paying the amount of Rs. 10,27,723/- which was due on 30/10/2020. They also mentioned in the mail that, if the Complainants wanted to continue with the



booking of the project, Complainants have to pay an additional amount of Rs. 9,70,190/-. The email dated 30/10/2020 is arbitrary and illegal. There was no intimation or discussion prior to the email dated 30/10/2020. Even though, Complainants have tried to contact the Respondents for having explanation and for clarifications, they did not respond. Later on, Complainants met the staff of the 1<sup>st</sup> Respondent who refused to give any explanation to the email. The Complainants felt that it was an attempt to pressurize them to leave the booking as per the terms and conditions fixed by the Respondents. The respondents have violated the terms and conditions of the agreement by non-completion of the project in time. A prior notice is mandated in case of any cancellation of booking; same was also violated by the Respondents by issuing an email dated 30/10/2020. From the minutes of the meeting dated 18/07/2020, it is clear that a major portion of the project was not started by them. The Complainants have already remitted around Rs.20 Lakhs with the Respondents; now the amount demanded by the respondents is much higher than the agreed rate. The complainants are not liable to remit any extra payment in violation of the agreement and on the other hand, they are entitled to get compensation for the delay and interest for the payment already made. Since the respondents have violated the stipulation made for completion of the project, they are not entitled to enhance the rate or to cancel the booking unilaterally.



4. The Complainants further submitted that during the time when the construction activities were halted, the respondents have accepted amounts from the complainants. The respondents have no satisfactory response for the delay in the construction process. Even during 2020, respondents were paid substantial amount by complainants with the expectation of completion of the construction at the earliest. The complainants are entitled to get their apartment as per the terms and conditions of the agreement dated 15/01/2015. When there is a delay and latches on the part of the Respondents, it is improper and arbitrary for them to enhance the rate of the apartment and to cancel the booking. It has been agreed and undertaken by the Respondents that the Respondents shall construct, transfer and handover the apartment together with the respective undivided share proposed to be assigned by the Respondents in favor of the complainants as per the aforesaid agreement in accordance with the stipulations and prescriptions therein. It has been specifically made clear in the aforesaid agreement(s) that the project has been approved by the Concerned Local Self Government Institution (Corporation of Kochi) subject to other statutory sanctions from various authorities. The Respondents themselves claimed that they are very much competent to complete the construction as per proposal. On the basis of the promise and offers made by the respondents, the complainants have entered into agreements dated 15/01/2015 and made substantial amount of Rs. 20 lakhs; much prior to the



project completion. Still, the construction activities of the projects are lagging behind. The Respondents have received all the amounts remitted by the complainants without any objection of any kind. The complainants have paid an overall amount of Rs. 20,00,000/- being a substantial part payment towards the total price payable by the complainant and the payment has been duly acknowledged receipt of by the respondents. Even though the agreed date of handing over as per agreement is 30/06/2017, it is still under construction. Therefore, Complainants are entitled to get interest and compensation adjusted to the balance sale consideration, if any, payable to the Respondents. The complainants continued to remit the amounts till the time they found that the construction of the apartment was lagging much behind and unsatisfactory. Since there was no one in the Respondent's office to explain the reasons for delay, complainants find it difficult to continue the payment. On an enquiry conducted by the complainants, it is revealed to them that the construction was lacking necessary sanction from the statutory authorities and that the respondents have been defrauding the complainants and are guilty of making unlawful gains and unlawful enrichment whereby causing corresponding unlawful loss to them.

5. In this connection the Complainants further submitted that, Despite repeated requests to the Respondents to transfer the ownership and handover the possession of the completed apartments, the Respondents have been taking the same



very lightly indeed and the complainants were carried away with the respondents pleasant conduct, but however, they cannot afford to suffer the same any further and now they are fully convinced that Respondents are taking time from time to time to complete the project without any justifiable cause and the aforesaid conduct of the respondents is against the interest of the complainants. Even now, the apartment is not ready for handing over to the complainants but the respondents are claiming some strange and excessive amounts without any reasoning. There was some hidden agenda for the respondents to include certain arbitrary clauses in the agreement and thereafter, they framed additional schedule with the intention to delay the project and thereby denying the legitimate rights of the complainants to get their flat. Now, the respondents are trying to cover up the delay in completing the project by claiming excessive amounts. The Reliefs sought by the Complainants is as follows :- 1) To transfer the ownership and possession of the completed apartment No. J5 in 5<sup>th</sup> Floor, 878 Sq. ft of type III with car parking on cellar floor of size 4x2.3 meters in Galaxy Bridge Wood at Chilavannoor in Kochi with all fixtures thereon, to the complainants without any further delay, on receipt of the balance sale consideration as per agreement dated 15.01.2015, less the amount payable to the complainants on account of the delayed completion of the project. 2) To direct the Respondent to pay the cost of this proceedings to the complainant. Copies of agreement for sale dated 15/01/2015, agreement for



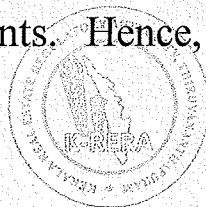


construction dated 15/01/2015, copy of minutes of meeting dated 23/07/2020, copy of work schedule and payment schedule, copy of email dated 30/10/2020, reply email dated 01/11/2020 are the documents produced from the part of Complainants.

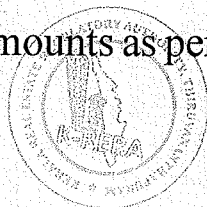
6. The Respondents have submitted statement of objection and denied entire allegations against them and submitted as follows: The above Complaint is not maintainable either on law or on facts and the Complainants and the 1<sup>st</sup> Respondent have entered into an agreement on 15-01-2015 whereby the Complainant agreed to purchase an apartment in the residential project by name "Galaxy Bridgewood Block I" near Panampilly Nagar. As per the above agreement, the Complainants agreed to pay a total amount of Rs.30,40,781/- towards the cost of construction of the residential apartment having built up area of 878 sq. ft. in the 5<sup>th</sup> floor of the multi-storied building to be numbered as flat No. J-5. The construction cost of Rs.26,87,723/- is agreed to be paid in 27 monthly instalments of Rs.71,500/- and a sum of Rs.6,00,000/- was agreed to be paid on the date of the agreement, another sum of Rs.1,43,000/- was agreed to be paid on 28/02/2012 and a further sum of Rs.14,223/- as the last instalment. The monthly instalments payable as per the above agreement was not paid by the Complainants in time which has placed the Respondents in immense troubles. The Complainants did not pay any of the instalments for around 8 months. The payment



specifically agreed to be paid on 28-02-2015 was paid only on 8-10-2015. It is submitted that the complainants had committed defaults in paying the monthly instalments payable in terms of the agreement from the very beginning onwards. There was inordinate delay in payment of instalments. After repeated requests from the Respondents, the Complainants made arrangements to pay few instalments only which has placed the Respondents in huge financial crisis and difficulty. In spite of the failures on the part of the complainant in paying the periodical instalments of the construction cost, the respondents completed the construction of the apartment project. The Completion drawing certified by the Engineer was submitted to the Corporation of Kochi on 24-08-2022 for issuing Occupancy Certificate. Since there was delay in verifying the application for Occupancy Certificate submitted by the Respondents by Corporation of Kochi, the Respondents are entitled for Deemed Occupancy Certificate as per proviso to Rule 20(3) of Kerala Municipality Building Rules, 2019. Even then, the Complainant has not cleared the huge amounts due from him. Later the Respondents approached the Honorable High Court of Kerala for issuing physical Occupancy certificate and the same was issued by the Corporation of Kochi on 18-04-2023 showing the date of completion as 24-08-2022. The Complainants committed huge defaults in payment of instalments. As they could not pay the instalment amounts, they wanted to avail bank loan for sourcing the instalment payments. Hence, as per the request of the



Complainants, the Respondents gave all possible assistance to the Complainants for availing loan. However due to ineligibility of the Complainants in convincing their bankers of the eligibility, the banks refused to sanction loan facility to the Complainants. The Respondents further submitted that as per Clause No.5 of the Agreement for Construction dated 15-01-2015 "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 30-06- 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." Since admittedly, the Complainant has failed to pay the balance consideration of more than 10 Lakhs, as agreed by the parties, vide the agreement executed between them, the Complainant has no right to claim any of the reliefs. There are absolutely no willful laches or negligence on the part of the Respondents in completing the Construction as agreed. Therefore, the Respondents cannot be found in fault with for the delay in handing over possession of the apartment. The above complaint is not maintainable for further reason that the construction of the apartment was already completed on 24- 08-2022. Even after repeated requests to clear the outstanding amounts, the Complainant failed to pay the amounts. Having deliberately refused to pay the amounts as per the agreements executed between



the Complainants and the Respondents, the present complaint filed by the complainants is not maintainable and is liable to be dismissed in limine. Since, the construction of the apartment booked by the complainant is completed in spite of the failures of the complainants to pay the periodical instalments of the construction cost payable as per the construction agreement, no cause of action for filing the above complaint has arisen. Therefore, the provisions of the above Act are not having any application to the facts and circumstances of the above case. The Complainant made payment of first instalments only after much delay of more than 8 months. Thereafter, the Complainant paid an amount in the year 2016 and did not pay any amounts for 4 years. Hence the booking was cancelled due to nonpayment of instalments. However, another payment scheme was offered to the Complainants to regularize the booking as per a new payment schedule. The Complainants failed to comply with the new payment schedule also. The fact that the Complainants failed to pay the amount even after revised payment scheme was offered, clearly shows that the intention of the Complainant was not to abide by the terms of the agreement. The Respondents further submitted that the Complainants had paid a total amount of Rs.20 lakhs only towards the sale of undivided share in land and cost of construction. When the Complainant delayed inordinately and defaulted in paying the balance instalments and thereafter failed to pay as per the new schedule also, the Complainant has unilaterally



breached the terms of agreement and as a result, the agreements stand cancelled. Thus, the Respondents had no other option but to invoke the terms of cancellation as agreed between the parties as per the agreement dated 15-01-2015. As a result, notice of cancellation of booking of the apartment J-5 was intimated to the Complainants vide letter dated 26- 08-2021. The agreement between the Complainants and the Respondents has already been cancelled due to default on the part of the Complainant. The Respondents are ready and willing to refund the amounts as per the agreement executed between the parties. Hence the Complainants are not entitled to any of the reliefs sought for in the Complaint. The Hon'ble Forum may be pleased to dismiss the complaint filed by the complainant with costs to the Respondents. Copy of Occupancy Certificate dated 18/04/2023 is the only document produced from the part of Respondents.

7. The documents produced from the part of the Complainants are marked as Exbts.A1 to A6. The documents produced from the part of the Respondent is marked as Exbt.B1. After hearing both parties in detail and examining all the documents produced, following points came up for consideration:

- 1) 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 duly completed by the date specified therein or not?

- 2) Whether the Complainants herein is entitled to get their grievances redressed or not?
- 3) What order as to costs?

8. **Point No. 1& 2:** Exbt.A1 is the copy of agreement for sale entered into between the Complainants and the 1<sup>st</sup> Respondent represented by its Managing Director. As per the said agreement the 1<sup>st</sup> Respondent agreed to sell and the Complainants agreed to purchase 978/109500 of undivided share in the property having a total extent of 51.06 cents for the purpose of constructing an apartment No. J-5 on the 5<sup>th</sup> floor along with a car parking for a total consideration of Rs.3,53,058/-. Exbt.A2 is the copy of agreement for construction entered into between the Complainants and the 1<sup>st</sup> Respondent represented by its Managing Director. As per the said agreement, the Respondents agreed to construct an apartment No. J-5 on the 5<sup>th</sup> floor having super built-up area of 878 sq.ft. including share in the common areas along with a car parking on the Cellar floor of 'Galaxy Bridgewood Block-I' for a total consideration of Rs.26,87,723/-. It was also stated in the agreement that the 1<sup>st</sup> Respondent shall construct the apartment and finish the work on or before 30/06/2017. Ext.A3 is the copy of minutes of meeting of owners of Galaxy Bridgewood



held on 18/07/2020. **Ext.A4** is the copy of new payment schedule and payment-based work schedule issued to the Complainants. **Ext.A5** is the copy of email dated 30/10/2020 issued to the Complainants stating that the agreement dated 15/01/2015 is cancelled. **Exbt.A6** is the copy of reply mail dated 01/11/2020 issued by the Complainants requesting the Respondents to send schedule of balance amount as per the agreement. **Ext.B1** is the copy of Occupancy certificate dated 18/04/2023.

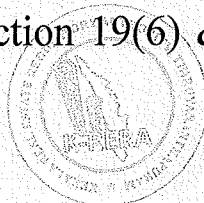
9. The learned counsel appeared for the Respondents raised contentions that the Respondents are bound to complete the construction only in the event of the Complainant paying the money in periodical instalments as per the agreement, but the Complainants did not pay the amount as agreed. He also argued that from the very beginning, the Complainants had committed defaults in paying the monthly instalments payable in terms of the agreement and being a defaulter in paying the amount agreed to be paid in terms of the agreement, the Complainants are not entitled to get any reliefs. The Respondents also contented that the agreement between the Complainants and the Respondents has already been cancelled due to default on the part of the Complainants and the Respondents are ready and willing to refund the amounts as per the agreement executed between the parties and hence the Complainants are not entitled to any of the reliefs sought for in the Complaint. But no documents were produced from the





part of the Respondents to substantiate their contentions as to cancellation of booking / agreement as provided under the law. During the hearing, the learned counsel for the Complainants had undertaken that the Complainants shall pay the amount due, once the Respondent make them convinced of the completion status of the project. But the Respondent neither conveyed the status of the project completion nor made any demands for payments of the amount due. The learned counsel for the Complainants strongly argued that the so-called cancellation was done without giving notices to the Complainants and hence such acts from the part of the Respondents are illegal and requested for a direction restraining the Respondents from alienating the apartments allotted to the Complainants. On the basis of the above, the Authority, vide interim order dated 12/01/2023, issued interim injunction restraining the Respondents / Promoter from alienating the Apartment No. J-5 allotted to the Complainants in the above project until further orders.

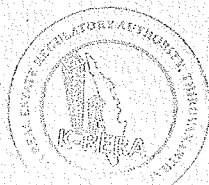
10. If at all the arguments of the learned counsel for the Respondents, that the Complainant were chronic defaulters in making payments, are taken into consideration, no documents have been placed on record before us by the Respondents to show that the Complainants had defaulted in payments in spite of completion of works as per the schedule and due notice was served to the Respondents invoking Section 19(6) & (7) of the Act 2016 and



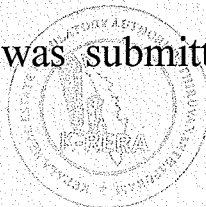


Clause 9.3 of the 'Annexure A' agreement prescribed as per Section 13 of the Act 2016 r/w Rule 10 of the Rules 2018. Section 19(7) of the Act 2016, "*the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*" Clause 9.3 provides the right of the Promoter to cancel the allotment and refund the amount by deducting the booking amount and the interest liabilities. As the project in question is a registered project comes under the purview of the Act 2016, the clauses and stipulations in the agreement format Annexure A to the Rules 2018 are applicable to both the parties. It is to be noted that Section 11 (5) of the Act 2016 stipulates that "*the Promoter may cancel the allotment only as per the terms of agreement for sale*". So, the Promoter has no right to cancel the allotment unilaterally without giving proper notice in that regard to the Complainants. The Respondents have failed to produce any evidence to corroborate their contentions that the default was solely on the part of the Complainants in spite of progress in work as promised. Hence it is found that the said cancellation said to have been done by the Respondents is purely against the law.

11. On verification of the webpage of the project in question in the website maintained by the Authority, it shows that out of 110 units 81 units are sold and status is still showing as "in progress". But the proposed date of completion as provided under Section 4(2) (l) (D) of the Act 2016 is uploaded by the Respondent



as 30.09.2022. The Consent to Operate from the Pollution Control Board is not uploaded and the Occupancy Certificate is also not uploaded in the web page so far. The Respondents have promised the Complainants that they will complete the construction of the apartment on or before 30/06/2017. The Respondents have failed to complete the project on 30/06/2017 as promised in the Exbt. A2 agreement or even now. It is also noticed in the web page that the number of covered car parking spaces is shown as 34 in the project and the list and details of common amenities are not yet uploaded by the Respondents/Promoter. Surprisingly, the details of litigations against the project are also not uploaded by the Respondent and it is seen that quarterly updates are not done properly by the Respondents and no steps have been taken to extend the registration after the expiry of date of completion given by them and many data/details are still not found uploaded in the web page. All these acts of the Respondents/Promoter amount to violation of Section 4 of the Act 2016 r/w Rule 17 of the Kerala Real Estate (Regulation & Development) Rules 2018 and it is seriously noted that this Respondent/Promoter has been continuously violating and evading the directions and notices given by this Authority to upload the details and rectify the defects in compliance of the Act and Rules. Exbt.B1 shows that the Occupancy Certificate has been obtained only on 18.04.2023. So, the arguments of the Respondents that "the Completion drawing certified by the Engineer was submitted to the Corporation of



Kochi on 24-08-2022 for issuing Occupancy Certificate and as there was delay in verifying the application for Occupancy Certificate submitted by the Respondents by Corporation of Kochi, the Respondents were entitled for Deemed Occupancy Certificate as per proviso to Rule 20(3) of Kerala Municipality Building Rules, 2019” are having no significance. The completion of a real estate project, as envisaged under the law, is completion of all the works in its entirety, as promised to the allottees, with all the sanctions and approvals from the authorities concerned. As per the provisions of the Act, 2016, after obtaining the Occupancy Certificate from the local authority, sale deeds shall be executed by the Promoter in favour of the allottees and hand over the whole project with all the documents concerned, to the Association of allottees formed and registered, as provided under Section 17 of the Act 2016. When the Occupancy Certificate has been obtained only on 18.04.2023, how could the Promoter hand over possession to the complainants and execute the sale deed before it? It being the situation, the argument of the learned counsel for the Respondents that “the above complaint is not maintainable for the reason that the construction of the apartment was already completed on 24- 08-2022” also lost relevance.

12. With respect to the prayer of the Complainants for direction to the Respondents to complete the project and hand over possession, the fault of the Respondents/Promoter to



complete the project as per the terms of the agreement has been explicitly established. According to Section 11(4) (a) of the Act 2016, *“The promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.”* As per Section 11(4)(b) of the Act 2016, *“the Promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;”*. Furthermore, Section 18(3) stipulates that *“If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”* The Respondent/Promoter herein submitted that as the agreement has been cancelled by him, only option available to the Complainant is to exit from the project and get refunded the amount from him. In this regard, it is worthwhile to reproduce certain significant remarks done by the Hon’ble Apex Court



through its judgement in DLF Home Developers Ltd. and another Vs Capital Greens Flat Buyers Association, as follows: “For a genuine flat buyer, who has booked an apartment in the project not as an investor or financier, but for the purpose of purchasing a family home, a mere offer of refund would not detract from the entitlement to claim compensation. A genuine flat buyer wants a roof over the head. The developer cannot assert that a buyer who continues to remain committed to the agreement for purchase of the flat must forsake recourse to a claim for compensation occasioned by the delay of the developer. Mere refund of consideration together with interest would not provide a just recompense to a genuine flat buyer, who desires possession and remains committed to the project. It was for each buyer to either accept the offer of the developer or to continue with the agreement for purchase of the flat.” So, the Complainants have the right to get their apartment completed and handed over by the Respondent/Promoter.

13. Hence, after detailed hearings and perusal of documents as mentioned above, it is to be concluded that the Respondents/Promoters have failed to complete or were unable to hand over possession of the apartment to the Complainant, in accordance with the terms of the agreement duly completed by the date specified therein and hence the Complainant is entitled to get interest for delay in completion and handing over possession as



provided under Section 18 of the Act, 2016. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that “if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, 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 an 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 mention that while discussing the objects and reasons of the Act 2016, 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 had made the remarkable observation in this aspect which is as follows: “The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the



*legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee. 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".* On the basis of the aforementioned facts and findings, it has been categorically established that the Respondents/Promoters have failed to complete and hand over possession of the apartment to the Complainants as promised and therefore the Complainants are entitled to claim interest for the delay in handing over possession of the apartment as provided under the Act, 2016. Hence point No.1 and 2 are answered accordingly in favour of the Complainants.

14. In the instant case, the Complainants had remitted Rs. 20,00,000/- to the Respondents and the Complainants pray for interest for the delayed possession. The last payment was made on 02/07/2020. The Complainants have paid an amount of





Rs.17,80,000/- before the promised date of completion ie., 30/06/2017. As the Complainants are found entitled to get interest for the delayed possession, the Respondents are liable to pay interest to the complainants as per the proviso to Section 18(1) of the Act, 2016 on Rs.17,80,000/- which is the amount paid by them before the promised date of completion for the period from 01/07/2017 till the date of handing over possession of the apartment, as prayed for by the Complainants. 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 PLR rate is 14.85% with effect from 15/03/2023. Hence it is found that the Respondents are liable to pay interest for every month of delay for Rs.17,80,000/- along with 16.85 % [14.85 (current BPLR rate) +2%] simple interest from 01.07.2017 till the date of handing over possession.

15. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issue following directions: -

1. The Respondents shall complete the entire works of the project "Galaxy Bridgewood" with all the mandatory sanctions/approvals and common amenities/facilities in accordance with the terms of the agreement for construction executed with Complainants, and execute sale deed





in favour of the Complainants and handover the possession of the apartment to the Complainants within one month from the date of receipt of this order, and the amount due from the Complainants as per the terms of the agreement executed by them with the Respondents shall be deducted from the amount of interest payable by the Respondents for the delay in completion and handing over possession.

2. The Respondents shall submit the compliance report in the form of an affidavit after compliance of the said order within the prescribed period. In case of failure of the Respondents to comply with the said direction, they shall be liable to pay penalty as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.

3. The Respondents shall pay the Complainants, interest on Rs.17,80,000/-, for every month of delay /- @ 16.85% simple interest per annum, for a period from 01/07/2017 till the date of completion and handing over possession of the apartment as per the terms of the agreement from which the Respondents can deduct the amount due from the Complainants towards consideration as per the agreement.

4. If the Respondent fails to pay the aforesaid amount as directed above within a period of 60 days from the date of receipt of this order, the Complainants 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.

Both parties shall bear their respective costs.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri. P H Kurian  
Chairman

True Copy/Forwarded By/Order



  
Secretary (legal)

## **Exhibits**

### **Documents marked from the side of Complainants**

Exbt.A1- Copy of agreement for sale dated 15/01/2015.

Exbt.A2- Copy of agreement for construction dated 15/01/2015.

Exbt.A3- Copy of minutes of meeting held on 18/07/2020.

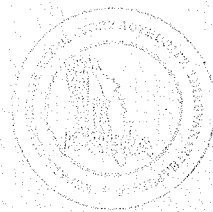
Exbt.A4 - Copy of new payment and payment based work schedule issued to the Complainants dated 23/07/2020.

Exbt.A5 - Copy of email dated 30/10/2020 issued by the Respondents.

Exbt.A6 - Copy of reply mail dated 01/11/2020 issued by the Complainants.

### **Documents marked from the side of Respondents**

Exr.B1-Copy of Occupancy Certificate dated 18/04/2023.



# THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. It begins with the first settlers who came to the Americas in search of a new life. They found a land of opportunity, but also a land of challenge. The early years were marked by conflict and struggle, as the settlers fought to establish their own communities and defend themselves against the forces of nature and the indigenous peoples. Over time, the United States grew from a small colony into a powerful nation, shaped by the ideals of freedom and democracy. The story of the United States is a testament to the resilience and spirit of its people, who have overcome countless obstacles to build a nation that stands as a beacon of hope and progress for the world.

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