



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Present: Smt.Dr.B Sandhya, Member**

**Complaint No.35 of 2024**

**Dated 14<sup>th</sup> day of August 2024**

**Complainant**

Joemon Emmatty,  
Residing at Emmatty House,  
Mother Teresa Road,  
Edappally Kochi – 682024

(By Adv.Harish Vasudevan)

**Respondents**

- 1 Galaxy Homes Private Limited,  
Galaxy Square, 6<sup>th</sup> Floor,  
Rajaji Road Junction Road,  
Kochi, Ernakulam, Pin – 682035.  
(Represented by its Managing Director  
P.A Jinas.)
- 2 P A Jinas,  
Managing Director,  
Galaxy Homes Pvt. Ltd.,  
Galaxy Square, 6<sup>th</sup> Floor,  
Rajaji Road Junction Road,  
Kochi – 682035.

(Respondents 1 & 2 set exparte).



The above Complaint came up for final hearing on 03/07/2024. Only Counsel for the Complainant Adv. Harish Vasudevan attended the virtual hearing. Respondents are set exparte.

### **ORDER**

1. The Complainant is an allottee of the project named 'Galaxy Golden Dale' located at Panampilly Nagar, Ernakulam District developed by the Respondents. The said project is registered with the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred as 'Act, 2016') vide Registration No. K-RERA/PRJ/277/2020.

2. The facts of the Complaint are as follows: The Respondents had advertised their project viz. Galaxy Golden Dale in the year 2016. Believing the assurances made by the Respondent in the so-called advertisements, the Complainant had booked an apartment in the said project and entered into two agreements dated 25.06.2016 with the Respondents. One is for the sale of undivided share of 1015/166500 in the property named Galaxy Golden Dale, having a total extent of 25.10 Ares (62 cents) together with the right to construct an apartment and a car parking for a sale consideration of Rs.4,77,050/-. The second agreement is for the



construction of Flat No. C-8, having super built up area of 915 Sq. Ft having 3 bedrooms and having a car parking of size 4.4m X 2.4m on the first floor of the project for a total construction cost of Rs.37,33,379/- including service tax and vat along with common areas and common amenities like health club, swimming pool, mini auditorium, club house with indoor game facility etc. As per the agreement between the parties, the construction had to be completed on or before 30.06.2019 and thereafter the possession had to be handed over within 180 days from the date of paying the entire consideration. The total consideration for the construction of the apartment and for the purchase of undivided share in the property was fixed as Rs.42,10,429/-. The Complainant had transferred a total amount of Rs.26,57,400/- to the first Respondent's Bank account from 15.06.2016 to 04.02.2021 for the purpose of fulfilling the agreement. It is to be noted that as per the payment schedule mentioned in the agreement the Complainant ought to have been paid only Rs. 6,39,000 on or before 31.07.2016. But due to heavy pressure from the Respondents the Complainant was forced to pay Rs.10,25,000/- by 27.06.2016. Even though the payment schedule was fixed by putting specific dates, the Respondents informed the Complainant that the payment shall be made stage by stage only as per the development of the project as informed by the Respondent.



3. The Complainant further submitted that as per the construction agreement, the construction of the project had to be completed on or before 30.06.2019. However, the Respondents could not complete the works as they had agreed. Even though the Respondents claimed that they will complete the construction by January, 2020 due to Covid-19 pandemic, they orally requested to extend the time further. In 2019 January when the Complainant visited the worksite of the Respondents there was absolutely no construction going on and a person in charge of the site informed the Complainant that due to lack of fund the project construction has been stopped. An email was sent by the Complainant on January 6, 2019 to the Respondents specifically seeking their response on the delay. In reply to the email, the Respondent had sent two photographs of the construction site on 19.01.2019. Till June, 2019 there was no response from the Respondent regarding any updation about the construction. Several emails were sent by the Complainant in various dates in 2019 but here was no reply. Surprisingly, the first Respondent on 27.02.2020 giving false hope on the completion falsely stating that the project is nearing finishing stage and planning to host a family get-together of customers on 07.03.2020. Even though the Respondent demanded for money on 24.08.2020 through another email and the Complainant had duly started payment, there was no progress for the construction after March, 2021. On 22.03.2021, the 1<sup>st</sup> Respondent sent an email stating that they are expecting the



occupancy certificate by 31.03.2021. But surprisingly even in July 2021 there was no proper update from the 1<sup>st</sup> Respondent regarding the stage of construction. On 14.10.2021, final bill was sent by the 1<sup>st</sup> Respondent via email but even then there was no updation regarding the final completion of the construction as per the terms of the agreement. The Complainant had tried to contact the Respondent several times through email and through the contact person Mr. Shibu there was no proper reply from them. The Complainant had directly gone to the office of the Respondent and then the 1<sup>st</sup> Respondent assured that the management will discuss the issues and settle the dispute. The Complainant clearly intimated the Respondents that he is ready to settle the entire pending amount provided the Respondents agreed to finish the construction and all amenities as agreed as per the agreement and to provide at least one parking space and to make the apartment livable. There was no reply to such emails from the Respondents.

4. It was further submitted that on 28.06.2022, the Complainant sent an email to the 1<sup>st</sup> Respondent requesting the revised bill. There was no reply from the 1<sup>st</sup> Respondent. Thereafter since the contacting person from the 1<sup>st</sup> Respondent was not available over phone, on 03.06.2023, the Complainant had sent another email requesting the contact number of the person concerned, intimating the willingness to pay the amount. There was no reply for the same. On 09.06.2023, a reminder email was



also sent. There was no reply to any of these emails. Later, very recently it is learned by the Complainant that the Respondents did not want the Complainant to pay the balance amount, but to resell the property to some other person at a very higher rate and that is why the Respondents did not permit the Complainant to pay the balance amount. **The Respondents have not done the work as per the payment schedule and the apartment complex has still not been granted with permanent water connection and electricity connection. Complainant was always willing to perform his part of the agreement, but the Respondents have defaulted the terms of agreement dated 25.06.2016.** Even after obtaining the occupancy certificate on 29.03.2021, the property was not made ready for actual handing over of the possession. Instead, the Respondents vide email dated 09.06.2023, simply informed the Complainant that they are cancelling the booking of the project. Soon after the same, the Complainant approached the office of the Respondent and conducted a settlement talks. In this context it is pertinent to note that the Respondents till date have not issued any letter or notice in accordance with the terms of the agreement, to the Complainant to take possession of the apartment. It is also pertinent to note that there was no notice issued to increase the price or cancel or terminate the agreement in the address mentioned in the agreement as per Clause 22 of the construction agreement. It is pertinent to note that till today there was no money was refunded by the Respondents to the Complainant in any form,



is clear evidence for the non-cancellation of the agreement for construction or agreement for sale, following the terms of the contract.

5. The Respondents have failed to comply with the terms of the construction agreement and have failed to provide ready to move in possession of the apartment in habitable condition to the Complainant. Moreover, there is a delay of more than 4.5 years in completing the project. The Complainant has already intimated the Respondents through email that the entire balance amount is ready. Despite several requests, the Respondents have not made any positive communication and have not completed the construction in a liveable manner. Now the Respondents are showing a hostile attitude towards the Complainant and orally asked the Complainant to withdraw from the project by accepting the payment made by the Complainant. The same is not acceptable to the Complainant. Therefore, it is humbly submitted that the Respondents herein violated the provisions of RERA Act and therefore liable to compensate the Complainant by refunding Rs. 26,79,400/- along with its statutory rate of interest prescribed in the Act.

6. The reliefs sought by the Complainant are as follows:- (i) Direct the Respondents to return Rs.50,58,446/- to the Complainant along with its future interest as per the provisions of Real Estate (Regulation and Development) Act, 2016 from



17.01.2024 till the realization of the repayment of such amount. (ii) Direct the Respondents to pay a compensation of Rs.12,00,000/- towards loss sustained by the Complainants by the loss of monthly rent that could have been accrued to the Complainant had the construction of the apartment been completed on or before 30.06.2019 and handed over possession thereof within the time stipulated within the agreement. (iii) Direct the Respondents to pay a compensation of Rs.4,00,000/-towards the mental agony and the stress undergone by the Complainant because of the delay of the project. (iv) Award Rs. 50,000/- as cost of the proceedings to the Complainant from the Respondents.

7. The Authority heard the learned counsel for the Complainant and gave careful consideration to his submissions, and perused the material documents available on record. The documents produced from the part of the Complainant is marked as Exbt.A1 to A15.

8. **Exbt.A1** is the copy of agreement for construction dated 25/06/2016 entered into between the Complainant and 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent. As per the said agreement the 1<sup>st</sup> Respondent agreed to construct apartment No.C-8 having super built up area of 915 sq.ft. (including share in the common areas) on the 8<sup>th</sup> floor of the project along with a carparking on the 1<sup>st</sup> floor for a total consideration of Rs.37,33,379/- including service tax and VAT. As



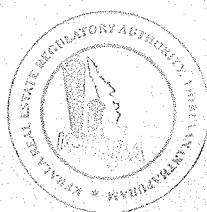


per the said agreement the 1<sup>st</sup> Respondent shall construct the apartment and finish the work on or before 30/06/2019 and possession will be handed over within 180 days from the date of paying entire sale consideration. **Exbt.A2** is the copy of agreement for sale dated 25/06/2016 entered into between the Complainant and 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent. As per the said agreement the 1<sup>st</sup> Respondent has agreed to sell and the Complainant has agreed to purchase 1015/166500 undivided share in the property together with right to construct apartment No.C-8 on the 8<sup>th</sup> floor of the project along with a carparking area for a total consideration of Rs.4,77,050/-. **Exbt.A3** series are the copies of payment receipts issued by the 1<sup>st</sup> Respondent & bank statements. **Exbt.A4** is the copy of the email dated 06.01.2019 issued by Complainant to the 1<sup>st</sup> Respondent enquiring on the status of the project. **Exbt.A5** is the copy of email dated 19.01.2019 issued by the 1<sup>st</sup> Respondent to the Complainant along with photographs showing the work status. **Exbt.A6** series are the copies of emails issued by the Complainant to the 1<sup>st</sup> Respondent to update and share current status of construction. **Exbt.A7** series are the copies of email communications between the Complainant and the Respondent. The 1<sup>st</sup> Respondent issued email dated 18/03/2020 to the Complainant by attaching payment based finished work schedule. In its reply the complainant requested correct payment schedule. The 1<sup>st</sup> Respondent vide email dated 25/04/2020 forwarded payment schedule. **Exbt.A8** is the copy of



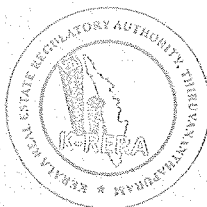
email dated 09/09/2020 issued by the 1<sup>st</sup> Respondent requesting the Complainant to release 1 and 2<sup>nd</sup> instalments at the earliest. **Exbt.A9** is the copy of email dated 22/03/2021 issued by the 1<sup>st</sup> Respondent to the Complainant stating that fire NOC was issued to the project and they are expecting the occupancy certificate by 31/03/2021. **Exbt.A10** & **Exbt.A11** are the copies of emails issued by the 1<sup>st</sup> Respondent requesting the Complainant to settle the final bill at the earliest. **Exbt.A12** Series are the copies of emails issued by the Complainant requesting the 1<sup>st</sup> Respondent to issue the final bill. **Exbt.A13** is the copy of email dated 09.06.2023 issued by the 1<sup>st</sup> Respondent to the Complainant stating that occupancy certificate was issued to the project on 29/03/2021 and even after issuance of Final bill on 15/04/2021 the Complainant has not remitted the balance amount. Since the Complainant failed to remit the balance amount they are constrained to terminate the booking made by the Complainant as per Clause 22 of the agreement and the balance amounts to be refunded shall be paid in accordance with the terms of the agreement. **Exbt.A14** is the copy of FIR No.0012 of 2024 of Kadavanthra Police Station.

9. As mentioned above, the project in question is a registered project under Section 3 of the Real Estate (Regulation & Development) Act 2016 before this Authority and the proposed date of completion given by the Respondent/promoter was 11.02.2023. On verification of the registration webpage of the



project maintained by the Authority, it is seen that out of 72 building units, 63 building units are sold and status is still shown as “in progress”. It is seen that the Respondent/Promoter uploaded in the web portal, a partial Occupancy Certificate dated 29/03/2021 obtained for the project from the local authority. It is noticed that the Form 6 showing completion of the project is not uploaded as on date in the registration web page which reveals that the project in question is not completed even now.

10. The learned counsel for the Complainant contended that the Respondents had promised the Complainant to complete the project on or before 30/06/2019 which is supported by Ext.A1 agreement produced by him. The Complainant had transferred a total amount of Rs.26,57,400/- to the 1<sup>st</sup> Respondent's Bank account from 15.06.2016 to 04.02.2021 for the purpose of fulfilling the agreement. On 22.03.2021, the 1<sup>st</sup> Respondent sent Exbt.A9 email stating that they are expecting the occupancy certificate by 31.03.2021. But surprisingly even in July 2021 there was no proper update from the 1<sup>st</sup> Respondent regarding the stage of construction. On 14.10.2021, final bill was sent by the 1<sup>st</sup> Respondent via email but even then there was no updation regarding the final completion of the construction as per the terms of the agreement. The Complainant issued series of emails to the Respondent, requesting the revised bill. There was no reply to any of the emails. Later, very recently it was learned



by the Complainant that the Respondents did not want the Complainant to pay the balance amount, but to resell the property to some other person at a very higher rate and that is why the Respondents did not permit the Complainant to pay the balance amount. The Respondents have not done the work as per the payment schedule and the apartment complex has still not been granted with permanent water connection and electricity connection. Complainant was always willing to perform his part of the agreement, but the Respondents have defaulted the terms of agreement dated 25.06.2016. Even after obtaining the occupancy certificate on 29.03.2021, the property was not made ready for actual handing over of the possession. Instead, the Respondents vide issued **Exbt.A13** email dated 09.06.2023, and simply informed the Complainant that they are cancelling the booking of the project. The Respondents till date have not issued any letter or notice in accordance with the terms of the agreement, to the Complainant to take possession of the apartment and there was no notice issued to increase the price or cancel or terminate the agreement in the address mentioned in the agreement as per Clause 22 of the construction agreement.

11. Clause 9.3 of the 'Annexure A' agreement for sale of Kerala Real Estate (Regulation & Development) Rules 2018 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 Complainant. Hence it is found that the said cancellation said to have been done by the Respondents is purely against the law.

12. As per the agreement dated 25/06/2016 the Respondents shall complete the construction of the apartment on or before 30/06/2019, and it is clear from the above documents produced by the Complainant, that the Respondents failed to complete and handover possession of the apartment as per the terms of the agreement and partial occupancy certificate for the project was issued only on 29/03/2021. As per the website maintained by the Authority, the said project is not completed till date. The provisions under Sections 18(1) and 19(4) of the Act 2016 give entitlement to the allottees to withdraw from the project and obtain refund of the amount paid by them in the circumstances prescribed therein. Both these provisions are reproduced herein below:



Section 18(1): “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 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”.

Section 19(4): “The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder”. With respect to the above provisions of law, the Hon’ble Supreme Court of India made some remarkable observations in its judgement M/S



Newtech Promoters & Developers Pvt. Ltd. Vs State of U. P. & Ors., which are suitable to be replicated herein below:

*“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/home buyer, 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”.*

13. As stated in pre paragraphs, the registration web page shows that the project still remains incomplete. Since the Respondents failed to complete the project and hand over the apartment, as promised to the Complainant as per the terms of the agreements, executed with him, the Complainant herein is entitled to get refund of the amount due along with interest as prescribed under the law.

14. According to the Complainant he has paid an amount of Rs.26,57,400/- to the Respondents. As per Exbt.A3



Series the Complainant has paid total amount of Rs.26,59,400/- to the Respondents. The details of payment made by the Complainants are as follows: -

<b>Date</b>	<b>Amount</b>
<b>15/06/2016</b>	<b>Rs.25,000/-</b>
27/06/2016	Rs.10,00,000/-
18/05/2017	Rs.90,800/-
01/07/2017	Rs.90,800/-
13/09/2017	Rs.90,800/-
19/12/2017	Rs.90,800/-
22/02/2018	Rs.90,800/-
12/06/2018	Rs.90,800/-
06/10/2018	Rs.90,800/-
22/02/2019	Rs.90,800/-
28/06/2019	Rs.90,800/-
06/10/2019	Rs.90,800/-
10/06/2020	Rs.90,800/-
28/08/2020	Rs.90,800/-
05/10/2020	Rs.90,800/-
23/11/2020	Rs.90,800/-
28/01/2021	Rs.90,800/-
04/02/2021	Rs.2,72,400/-
<b>Total</b>	<b>Rs.26,59,400/-</b>



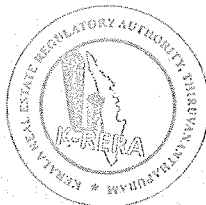


15. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI PLR rate is 15% with effect from 15/03/2024. Here, the Complainant is entitled to get 17% simple interest on Rs.26,59,400/- from the Respondents/Promoters.

16. On the basis of the above facts and findings, and invoking Section 37 of the Act, this Authority hereby directs as follows: -

1) The Respondents shall return the amount of **Rs.26,59,400/-** to the Complainant with simple interest **@ 17% per annum** from the date of each payment till the date of realization of the said amount.

2) If the Respondents / Promoters fail to pay the aforesaid sum with interest as directed above, **within a period of 60 days** from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act and Rules.



The Complainant may approach the Adjudicating officer of the Authority for getting eligible compensation as per law.

No order as to costs

Sd/-  
Smt.Dr.B Sandhya.  
Member

True Copy/Forwarded By/Order



Secretary (legal)

LJ1

## **EXHIBITS**

**Exbt. A1:** Copy of agreement for construction dated 25/06/2016.

**Exbt.A2:** Copy of Agreement for sale dated 25/06/2016.

**Exbt.A3 series:** Copies of receipts issued by the 1<sup>st</sup> Respondent & bank statements.

**Exbt.A4:** Copy of the email dated 06.01.2019 issued by Complainant to the 1<sup>st</sup> Respondent.

**Exbt.A5:** Copy of email dated 19.01.2019 issued by the 1<sup>st</sup> Respondent to the Complainant.

**Exbt.A6 series:** Copies of emails issued by the Complainant to the Respondent.

**Exbt.A7 series:** Copies of email communications between the Complainant and the Respondent.

**Exbt.A8:** Copy of email dated 09/09/2020 issued by the 1<sup>st</sup> Respondent to the Complainant.

**Exbt.A9:** Copy of email dated 22/03/2021 issued by the 1<sup>st</sup> Respondent to the Complainant.

**Exbt.A10:** Copy of email dated 02/07/2021 issued by the 1<sup>st</sup> Respondent to the Complainant.

**Exbt.A11:** Copy of email dated 14/10/2021 issued by the 1<sup>st</sup> Respondent to the Complainant.

**Exbt.A12 Series:** Copies of emails issued by the Complainant to the 1<sup>st</sup> Respondent.

**Exbt.A13:** Copy of email dated 09.06.2023 issued by the 1<sup>st</sup> Respondent to the Complainant.



**Exbt.A14: Copy of FIR No. 0012 of 2024 of Kadavanthra Police Station.**