



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 52/2024

Dated 26th March 2025

Present: Smt. Preetha P Menon, Member

Complainant

Hema Thomas
Kakkassery House,
Chiyaram P O, Thrissur- 680026

Respondents

1. M/s Galaxy Homes Pvt Ltd.
Rajaji Road Jn, M G Road,
Kochi- 638035
2. P A Jinas
Managing Director,
M/s Galaxy Homes Pvt Ltd.
Rajaji Road Jn, M G Road,
Kochi- 638035

The above Complaint came up for virtual hearing on 15/01/2025.

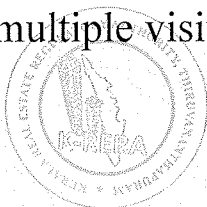
The Complainant attended the hearing. The counsel for the



Respondents was present in the first two postings. Thereafter Respondents were absent in all the hearings. The exparte notice was issued on 5/11/2024. Hence the Respondents were set exparte.

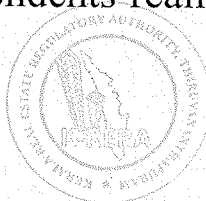
ORDER

1. The facts of the case are as follows: - The Complainant's father Late Mr. I M Thomas had booked a proposed flat, C3, of the Respondent builder, M/s Galaxy Homes at their project, "Galaxy Emerald", Elamkulam, Kochi, and executed two agreements dated 28.05.2016, with Respondents for purchases of undivided shares of land for a consideration of Rs. 2,95,680/- and for construction of the three-bedroom flat, No C3, with car parking, at a cost of Rs. 31,23,883/-, excluding statutory charges and registration charges. The payments were made to the Respondents very promptly as per schedule. However, the Respondents delayed the work and there was very inadequate progress during 2016 to 2020. Thereafter, the Complainant's father, Mr. I M Thomas expired on 07.05.2021 and the flat property was bequeathed to the Complainant as she was the legal heir. Further to that, as per the Respondent's demand, the Complainant furnished all relevant documents as regards to legal heirship and inheritance of her father's flat property which were accepted by the Respondents. But there was inordinate delay in communicating the approval of the same despite repeated efforts of the Complainant by multiple visits to the Respondent's office,



phone calls and emails. Till then, the Complainant was not able to make any reminder payments. Later through email dated 08.07.2022, the Respondents intimated the due amount of Rs. 19,72,268/- and their bank account details to the Complainant. As per the construction agreement, the flat was to be completed on or before 30.06.2021. Meanwhile, the Respondents convened a meeting of allottees and tried to pacify their protest against the Respondents' recalcitrant and unresponsive attitude. Respondents repeated false promises in the meeting that flats would be completed by 15.12.2022. In view of the exigent situation and taking the developments in a positive spirit the Complainant discussed with Respondents and decided to make the remaining payments in installments depending on the progress of work. Accordingly, the Complainant made lumpsum payment of Rs. 4 lakhs on 14.07.2022 and 1 lakh each for five months from July to November 2022 which were accepted and confirmed by the Respondents by payment vouchers in the name of Ms. Hema Thomas, the Complainant.

2. It was submitted that the Respondents intimated Complainant, by e-mail dated 01.11.2022, that they proposed to cancel the apartment booking. That was a unilateral step by the Respondents without any discussion or any notice to the Complainant in violation and breach of contract. The Complainant objected the above by e-mail reply on 09.11.2022. Subsequently, Respondents realized their mistake and agreed to



reverse their arbitrary action, which was assured in the multiple telephonic conversations and one-to-one meetings. Later, as demanded by Respondents and believing their assurance to handover the flat by December 2022. Complainant paid balance amount of Rs. 12 lakh making the total payment to Rs. 35.97 lakhs which is 100% of the cost of the Apartment. However, as if in an afterthought, Respondents chose to retain Rs. 2 lakh as part payment, and refunded Rs. 10 lakh to the Complainant, without furnishing any reason for the same. The payment voucher was issued for Rs. 2 lakh. Thereafter there was no response or any communication from the Respondent despite repeated enquiries. It is presumed that the refund of Rs. 10 lakh was part of Respondents attempts to rationalize the payment against the cost of works done vis a vis the construction progress. The latest promised completion date was on 31.03.2023 which was also not honoured by the Respondents, rather the completion is far behind. In spite of these, in a further unethical move, the Respondents wanted to revise and increase the cost of the flat and informed this to the Complainant by email dated 06.04.2023. The Complainant objected to any revision in violation of the agreement, in a direct meeting at the Respondents office on 08.04.2023 and later served a detailed email reply on 11.11.2023. There was no reply for the aforesaid mail nor any response thereafter from the Respondents. The Respondents keep changing the committed date of completion and still, they are not certain about a probable date.



The relief sought by the Complainant is to (1) direct the Respondent to desist from any move to revise the cost of the apartment in violation of agreement, and furnish statement of accounts to the Complainant specifying balance of payment, if any, at the earliest. (2) to direct Respondent to complete the flat in all respects and hand it over to the Complainant at the earliest as per the agreement. (3) the Respondent to register the deed in favour of the Complainant at the earliest. (4) Issue orders on interest for delayed completion and handing over of flat at the rate applicable as per Sec.18 of the Act.

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

4. The project in question is a registered project before this Authority under Section 3 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as the "Act 2016"] in which the proposed date of completion was shown as 19.11.2022. On perusal of the web page concerned, it is seen that the Respondents have not so far uploaded the occupancy certificate obtained for the project and Form -6 showing completion of the project. Hence, it is clear that the project is still



not completed and the occupancy certificate has not been obtained for the project till date. At the same time, the Respondent have not initiated any steps for extending the registration as prescribed under the law which is a clear violation of Sec 6 of the Act, 2016 read with Rule 8 of the Rules, 2018. The Authority issued a notice dated 08.07.2024 to the Respondent/Promoter on the lapse of the registration and non -observance of the post-registration/ completion requirements in respect of the project as prescribed under the law. In the suo-moto proceedings No. K-RERA/T1/OL/590/2021 initiated by this Authority with regard to the abovesaid violation of the promoter was called upon for a direct hearing seeking explanation for the same. In the hearing held on 23.07.2024, the Promoter submitted that the outbreak of pandemic and the resultant restrictions delayed the completion of the project. The registration of the project expired on 19.11.2022, but the Respondent/Promoter has not filed the Occupancy Certificate and the Quarterly report for the second Quarter. It was submitted by the Respondent/Promoter that the building permit expired 19.05.2022. Even though 90% of the work has been completed, the corporation of Kochi has not renewed the permit and hence, the Promoter approached the Hon'ble High Court. After hearing the Promoter, the Hon'ble Chairman of this Authority passed an order dated 30/07/2024 directing the Respondent/Promoter "to complete the project in all respects within six months from the date of renewal of the building permit

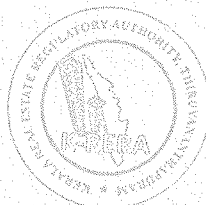


and stipulating that the Respondent/Promoter shall not enter into any sale agreements for the unsold units and shall not receive any money from the allottees of the allotted apartment units from the date of the said order till the receipt of Occupancy certificate of the project from the Corporation of Kochi”.

5. Here, the reliefs sought by the Complainant are for completion, handing over possession, sale deed execution and interest for delay. As far as the prayers for completion, the above said order dated 30/07/2024 for completion and handing over shall be applicable to all the allottees of the Project in question including the Complainant herein.

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

- (i) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainant, in accordance with the terms of the agreement or duly completed by the date specified therein or not?
- (ii) Whether the Complainant herein is entitled to get interest for delay in completion and handing over



possession of the apartment as provided under Section 18(1) of the Act, 2016 or not?

7. **Points No. 1&2:** The documents produced by the Complainant are marked as **Exhibits A1 to A10**. **Exhibit A1** is the sale agreement dated 28.05.2016 executed between the Complainant and the Respondent for sale of 924/77500 undivided share having an extent of 10.97 Ares for a sale consideration of Rs. 2,95,680/-. **Exhibit A2** is the construction agreement dated 28/05/2016 executed between the Complainant's father and the Respondent No. 1 represented by Respondent No.2 for constructing a three-bedroom apartment having a super built-up area of 824 sq. ft on the Third Floor in the said project for a construction cost of Rs. 31,23,883/- in which the promised date of completion is shown as 31.05.2019 with 180 days grace period. **Exhibit A3** is the letter dated 17/03/2020 issued by Respondent No. 1 in the name of the Complainant's father informing revised payment schedule are the payment receipts. **Exhibit A4 series** are the mail communications demanding for payments from the Complainant. **Exhibit A5 series** are the payment receipts. **Exhibit A6** is the legal heirship certificate. **Exhibit A7** is the family membership certificate. **Exhibit A8** is the death certificate of the Complainant's father.

8. As mentioned above, the prayer with regard to the completion of the project in the above complaint has already been adjudicated and the order has been passed, the prayers to be



considered herewith are that for a direction for sale deed execution, and to pay interest for delay in completion and handing over the apartment allotted to the Complainant. According to Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [herein after referred to as “the Act, 2016”], “If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act – Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. Moreover, Section 18(1) of the Act, 2016 clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till



handing over of possession. Here, the Complainant has opted to continue with the project and claimed interest for delay in handing over possession of the apartment to them.

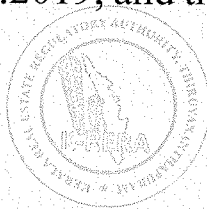
9. As per Exbt. A2 Construction agreement, Clause No. 5 is as follows: *"The First party shall construct the apartment as per the specifications attached hereto and try the utmost possible to finish the work on or before the 31st day of May, 2019 provided the entire amount due to the First Party from the Second Party including statutory charges has been paid by the Second Party. Possession will be handed over within 180 days from the date of paying the entire consideration including statutory charges."* Exhibit. A2 agreement is seen executed by the Complainant's father and the Respondents on 28/05/2016 as per which the promised date of completion and handing over was 31-05-2019 with a grace period of 180 days. According to the Complainant, the Respondents have not handed over possession of the apartment to the Complainant. It is understood from the documents Exhibit A3 and Exhibit A4 that the project was not completed on the date of completion as promised in the Exbt A2 agreement. The Registration web portal of the Authority also reveals that the project is still not completed and the occupancy certificate for the same has not been obtained so far. Before obtaining the occupancy certificate, the Respondents are not supposed to execute the sale deed in favour of any of the allottees.

10. Under Section 11(4) of the Act, 2016, the Respondents/Promoters are responsible to obtain the occupancy



certificate, from the Competent Authority and after obtaining all the mandatory sanctions for the project, the Promoters are bound to hand over physical possession of the building/apartments to the allottees therein. Section 17 of the Act, 2016 stipulates that *“conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from the date of issue of occupancy certificate. After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.”*

11. Here, the only prayer to be addressed is with regard to the interest for delay in completion and handing over. It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. As per Exbt.A2, the Respondents should have handed over possession of the apartment on 31.05.2019, and the Complainant could take over



possession within the grace period. Since the Respondents could not hand over possession as per the terms of the agreement, the Complainant is eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. Proviso to Section 18(1) provides that *“where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”* It will not be out of place to reproduce here, the observations made in this regard by the Hon’ble Supreme Court of India in its Judgement dated 11.11.2021 of M/s Newtech Promoters and Developers Pvt Ltd Vs State of UP & Others which are as follows: *“If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

12. With respect to the right of the allottees for getting interest for delay in getting handed over the apartments in such cases, certain remarkable observations were made by the Hon’ble Supreme Court in its judgement **Wg. Cdr. Arifur Rahman Khan & Others vs**



Dlf Southern Homes Pvt. Ltd., as follows: “.....Judicial notice sought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the the contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit the consequences of a delay in not handing over possession.” From the Exhibit A6 series receipts it is understood that the payments were made on time, and the Promoter has undoubtedly made use of the investments of the Complainant’s hard-earned money for the past years and failed to complete the work and hand over possession as per the terms of the agreement.

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

14. In the instant case, the Complainant had remitted Rs. **25,97,800/-** to the Respondent No.1 which is supported by Exbt A6 series documents. The said documents reveal that the Complainant



had paid an amount of Rs.12,97,800/- before the promised date of completion, i.e. on 31.05.2019. As the Respondent/ Promoter is a defaulter, he is not entitled to get the benefit of the grace period mentioned in the Exhibit A2 agreement. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
31.03.2016	10,00,000/-
30.06.2016	25,000/-
18.07.2016	1,36,400/-
23.08.2016	68,200/-
04.10.2016	68,200/-
12.06.2020	2,00,000/-
24.08.2020	1,00,000/-
14.07.2022	4,00,000/-
03.08.2022	1,00,000/-
01.09.2022	1,00,000/-
07.10.2022	1,00,000/-
31.10.2022	1,00,000/-
30.12.2022	2,00,000/-
Total	25,97,800/-

15. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents/Promoters are liable to pay interest to the Complainant as per the proviso to Section



18(1) of the Act, 2016. Hence the Complainant herein is entitled to get interest for the period from 01/06/2019, the promised date for handing over till the actual date of handing over possession, on Rs.12,97,800/- which is the amount paid by her before the promised date of completion and also, she is entitled to get interest from the dates of payment of each amount, as shown in the table inserted above, paid after the promised date of handing over till the actual date of handing over possession of the apartment. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI BPLR rate is 15.15% with effect from 15/06/2024. The Respondents are liable to pay interest on the amount paid as mentioned above @ 17.15 % [15.15% (current BPLR rate) +2%]. Here, as the Complainant has sought relief of interest for delay @16.85% on the amount paid to the Respondent, the Authority has decided to grant same after the detailed perusal of pleadings and documents submitted by the Complainant.

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

- 1) The Respondents No. 1&2 shall pay to the Complainant, simple interest @ 16.85% per annum, (a)for Rs. 12,97,800/-, the amount paid before 31/05/2019, the promised date of completion and handing over, for every month from 1/06/2019 till the actual date



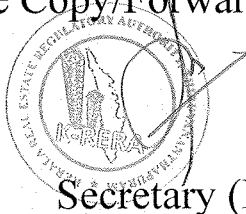
of handing over possession of apartment to the Complainant and (b) for the amounts paid after 31/05/2019, from the date of each payment as mentioned in the table inserted above in para 14 till the actual date of handing over possession of the apartment to the complainant.

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

Sd/-

Smt. Preetha P Menon
Member

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX**Exhibits produced by the Complainant**

Exhibit A1: Copy of agreement for sale

Exhibit A2: Copy of agreement for construction

Exhibit A3: Copy of the letter dated 17.03.2020

Exhibit A4: Copy of the email communications

Exhibit A5 Series: Copy of payments receipts

Exhibit A6: Copy of the legal heirship certificate

Exhibit A7: Copy of the family membership certificate

Exhibit A8: Copy of the death certificate

Exhibits produced by the Respondent

Nil

