



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 104/2023

Dated 3rd day of January, 2024

Present: Sri. M.P. Mathews, Member

Complainant

Sunil Nambiar,
9A, Orchid Court Apartments,
Ambelipadom Road, Panchavadi Colony,
Ponnuruni, Vytilla, Ernakulam.

(Adv A G Syam Kumar)

Respondents

- 1 Galaxy Homes Private Limited,
Galaxy Square, 6th floor, Rajaji Road
Junction, M G Road, Ernakulam – 682035.
- 2 Managing Director,
Galaxy Homes Private Limited,
Galaxy Homes, Sharaful Islam School
Lane, Deshabhimani Road, Edapally,
South Village, Kaloor P O – 682017.

(Adv. George Cherian Karippambal)

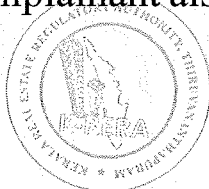


The above Complaint came up for virtual hearing today. Counsel for Complainant and Counsel for the Respondents attended the hearing.

ORDER

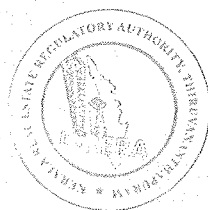
1. The Complainant is an Allottee of project named 'Galaxy Emerald' located at Elamkulam, Ernakulam District, developed by the Respondents. The said project is registered with the Authority under section 3 of the Real Estate (Regulation & Development) Act, 2016 (herein after referred as 'Act,2016). Registration No. K-RERA/PRJ/263/2020).

2. The facts of the Complaint are as follows:- The Complainant is the buyer of Flat No. C-10 and D-10 along with a specified car parking area on the first floor in multi storied building named 'Galaxy Emerald' consisting residential, common areas and amenities for residential apartments together with undivided shares in the property having a total extent of 10.97 Ares (27.107 cents) and had paid a booking advance of Rs. 25,000 on 21.11.2018 for a total agreed value of Rs.59,54,593/- including GST, building Tax, Onetime Tax, association deposit, registration, welfare fund and all other miscellaneous. The Complainant and Respondents executed an agreement for sale on 01.12.2018 in respect to the apartment and the undivided shares along with the common areas as well as the common amenities. The Complainant also executed an agreement for



construction on 01.12.2018, conferring the right to construct the apartment as per the specifications in the agreement for construction. The actual date of delivery and possession of the apartment was on or before 30.11.2020 as per the agreement provided. In accordance with the agreement, the Complainant availed a home loan for an amount of Rs. 47,95,000/- on 13.02.2019 from State Bank of India, Lissie Branch, Ernakulam. As on 31.03.2023, the Complainant has paid a total amount of Rs.50,95,404 to Galaxy Homes Pvt Ltd towards the purchase of the said property. The Complainant had also given 24 post dated cheques of State Bank of India, Lissie Hospital Branch and HDGC Bank, Kaloor Branch to the Respondents towards registration of flat No. C10 and D10 in Galaxy Emerald on written assurance from the Respondents that the cheques shall not be presented. Subsequently on 03.06.2019, a sale deed No. 1928/19 of Ernakulam SRO was executed by the Respondents in favour of the Complainant with respect to Flat No. C-10 and D-10 along with a car parking area on the first floor together with undivided shares in the property having a total extent of 10.97 Ares (27.107 cents), to which, still the possession was not handed over to the Complainant even after the expiry of the due date promised by the Respondents.

3. The Complainant further submitted that due to inordinate delay and due to non progress of the work as mentioned in the schedule, a meeting of the purchasers of flats in the building named Galaxy Emerald including the Complainant was organized by



the Respondents and other customers on 11.06.2022 at Hotel Abad Plaza, M G Road, Ernakulam to discuss the probable date of completion of the construction as well as the date of handing over of possession including designated car parking with the aim to arrive into a consensus in division of the future construction works into various stages. The meeting was attended by most of the customers/owners of Galaxy Emerald and on behalf of the Respondents, Mr Anil Gopinath, General Manager, Galaxy Homes Private Ltd and Mr Shibu Antony Assistant General Manager. This meeting was also attended by Mr Shiju Nair and Mr Abin Jose from M/s Primetech; the consultant towards monitoring the speedy completion of the project as mutually agreed by the customers/owners including the Complainant and the Respondents. It was decided and agreed in the meeting that the stage 1 construction shall be completed on or before 30.06.2022 and Primetech who being the inspecting agency shall submit the final inspection of Stage 1 on 01.07.2022 to the purchasers and to the Respondents. Subsequently other stages on work wise and date wise schedules were also prepared. In the meeting, it was also agreed that the extended and final revised date of completion of the project along with all amenities as specified was 30.11.2022 and also decided that rentals must be paid to owners with effect from 01.12.2022 at the rate of 18% of invested amount, if project is not completed and occupancy including final handing over of the project was not done on or before 30.11.2022 to the purchasers including the Complainant. This was agreed upon by the Respondents.



4. It was further submitted by the Complainant that the apartment was not delivered to him on 30.11.2022, as per the terms agreed in the meeting and in the meantime, upon a mutual understanding, the delivery date was extended till 31.03.2023, with an assurance that though the date has been extended, the rentals calculated at 18% of the paid amount shall be paid to the customers with effect from 01.12.2022. Similarly, according to the agreement for construction, in case if there is any default on part of the Respondent, then the Respondents are liable to pay all the amounts received from the Complainant along with penalty of 10% per annum from respective dates of payment. The Complainant is still repaying the monthly instalments, even though the Complainant could not avail the benefits of the property covered under the loan. Later, the breakdown of the construction was brought to the notice of the bank by the Complainant through an email dated 06.10.2022 and the Bank discontinued the disbursement of balance amount to the Respondent from 10.11.2022 after issuing intimation to the Respondent on delayed construction. Therefore, the Complainant is entitled to receive rentals @18% of the amount invested in addition to the interest for the amount given to the Respondents @10% per annum by the way of interest from the respective dates of payment.

5. The reliefs sought by the Complainant are as follows:- (1) Orders directing the Respondents to handover the possession of apartment No. C-10 and D-10 along with a designated

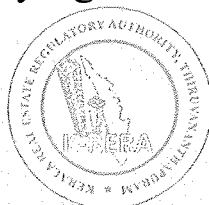


car parking on the first floor in the multi storied building named “Galaxy Emerald” together with common areas and common amenities as assured in the agreement to the Complainant at the earliest. (2) Orders directing the Respondents to pay the rentals entitled to the Complainant as agreed between the second Respondent and Complainant amounting to Rs. 76,431/- per month from 01.04.2023 up to the date of handing over the possession of apartment No. C-10 and D-10 along with a car parking on the first floor in the multi storied building named “Galaxy Emerald” together with common areas and common amenities as assured in the agreement to the Complainant. (3) Order directing Respondents to pay monthly interest from 30/11/2020 for Rs.60,28,058/- to the Complainant till the date of handing over of possession of the apartments along with car parking in the 1st floor and allied amenities together with corporation door number to the Complainant. (4) Award the cost of litigation to the Complainant.

6. The Respondents filed Written statement stating that the above Complainant is not maintainable either in law or on facts. The Complaint is hit by Section 18 of the Act, 2016. The reliefs sought for in the Complaint is not within the jurisdiction of this Hon’ble Authority. Complainant has filed this Complaint only on an experimental basis and hence it is liable to be dismissed with the cost of Respondents. The Second Respondent has no privity of contract with the Complainant. No consideration is paid by the

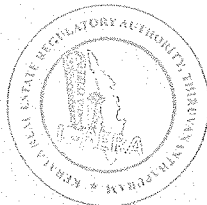


Complainant to the 2nd Respondent or received by the 2nd Respondent from the Complainant. Hence the 2nd Respondent is an unnecessary party to these proceedings and not liable in his personal capacity. It is submitted that the 1st Respondent purchased an extent of 11.79 Ares of land comprised in Sy Nos. 516/1-2, 516/16, 516/2-2 of Elamkulam Village, Kanayannur Taluk as per document Nos. 3784/2016 and 2041/2016 of Ernakulam SRO together with the building permit which was endorsed regarding change of ownership. The first Respondent proceeded with the construction of the apartment complex on the basis of the said building permit and completed the construction. Complainant is a chronic defaulter. The Complainant ought to have paid Rs. 60,28,058/- on or before 30.11.2020. whereas after paying the booking advance of Rs. 25,000/- on 21.11.2018, Complainant defaulted the payment. The substantial amounts were paid only in 2021-2022. Even today an amount of Rs. 9,32,654/- with accrued interest is due from the Complainant. It is respectfully submitted that the Complainant as per the terms of the agreement is responsible to make the scheduled payments in the manner and within the time as specified in page 5 clause 3 of the Annexure 2 construction agreement. In this case Complainant has totally failed to adhere to the payment schedule and is a chronic defaulter who cannot ask for possession of the apartment without making the scheduled payment together with the taxes and other statutory charges as stipulated in clause 19 of the construction agreement. It is specifically agreed between Complainant and the



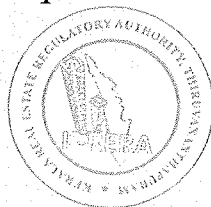
first Respondent that “the second party will not ask for handing over possession of the building before the payment of the entire amount including settlement of final bill to the first party....”.

7. The Respondents further submitted that there occurred a delay due to covid-19 pandemic, lockdown and non-payment of the scheduled payments by the Complainant and other similar allottees. Accordingly, the meeting of the first Respondent and the allottees were held from time and it was decided to extend the time of completion of the apartment project till 31.07.2023. Further Complainant has suppressed the fact that as agreed between the parties and as a goodwill gesture the first Respondent is paying Rs. 22,000/- per month to the Complainant as interest compensation. Hence this Complaint dated 16.05.2023 is premature and not maintainable. There is no merit in the Complaint. Complainant is suppressing material facts that he is an chronic defaulter and falsely accusing the first Respondent that the apartment project Galaxy Emerald not completed. The allegation of in ordinate and unexplained delay alleged in the Complaint are false. None of the prayers in the Complaint are allowable. Complainant has no cause of action against the Respondents in the facts and circumstances of this case. It is evident that the Complaint is bereft of any bonafides and an abuse of the process of this Hon'ble Authority. Hence the Complaint may be dismissed with the cost of the Respondents.



8. The Authority heard the learned counsels and perused the documents available on record. The documents produced from the part of the Complainant is marked as **Exbt.A1 to A7**. The documents produced from the part of the Respondents are marked as **Exbt.B1 & B2**.

9. **Ext.A1** is the copy of agreement for sale dated 01/12/2018 executed between the Complainant and the 1st Respondent represented by the 2nd Respondent. As per the said agreement the Respondents agreed to sell and the Complainant agreed to purchase 1281/77500 undivided share in the said property having a total extent of 10.97 Ares together with right to construct an apartment and a car parking area for a consideration of Rs.4,09,920/-. **Ext.A2** is the copy of agreement for construction dated 01/12/2018 executed between the Complainant and the 1st Respondent represented by the 2nd Respondent. As per the said agreement the Respondents agreed to construct flat No.C-10 on the 10th floor having super built up area of 1181 sq.ft. (including share in the common area) along with a car park on the 1st floor of the project for a total construction cost of Rs.55,84,673/-. It was also stated in the said agreement that the Respondents shall construct the apartment and finish the work on or before 30/11/2020 and possession will be handed over within 180 days from the date of paying entire consideration including statutory charges and the amounts as per the final bill. **Ext.A3 series** are the copies of statements issued by the Respondents for a period from 01/04/2018



to 25/03/2023. As per the said statement the **Complainant had paid an amount of Rs.50,95,404/- to the Respondents and the balance amount to be paid is Rs.9,22,597/-**. **Ext.A4** is the copy of statement dated 06/12/2021 issued by the State Bank of India. **Ext.A5** is the copy of list of undated cheques collected from the Complainant. **Ext.A6** is the copy of sale deed dated 1928/2019 dated 03/06/2019 executed by the 1st Respondent represented by the 2nd Respondent in favour of the Complainant, 1281/77500 UDS and incomplete apartment No.C-1. having super built up area of 1181 sq.ft. together with car parking together with right of way over the private road on the south leading to public road. **Ext.A7** is the copy of minutes of meeting held on 11/06/2022.

10. **Ext.B1** is the copy of statement of account of the Complainant issued by the Respondents. It is clear from the said statement that the Respondents have received an amount of Rs.50,95,404/- from the Complainant and the balance amount due is Rs.9,32,654/-. **Ext.B2** is the copy of interest compensation paid to the Complainant for a period from 01/04/2023 to 07/09/2023. It is also clear from Ext.B2 that the Complainant has received an amount of Rs.1,10,000/- from the Respondents by way of interest for the delay.

11. During the hearing on 08/09/2023 Counsel for the Respondents submitted that an amount of Rs.9,32,654/- is still due from the Complainant and counsel for the Complainant admitted



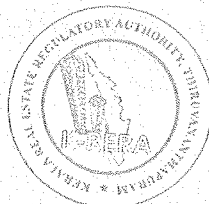
the same and submitted that he is ready and willing to pay the said amount. Hence on the same day the Authority vide interim order issued directions as follows:- “(1) The Complainant shall pay an amount of Rs.9,32,654/- to the Respondents within 7 days on receipt of this order. (2) The Respondents shall handover possession of the apartment, duly completed as per the agreement executed with the Complainant within 15 days on receipt of the payment from the Complainant”. In compliance of the said order, the Complainant had settled the balance amount payment as ordered by the Authority, but the Respondents have not handed over possession as per the interim order dated 08/09/2023.

12. The Authority vide notice dated 05/10/2023 directed the Secretary, Municipal corporation of Kochi, to produced all documents related to the project and report as to reasons for not issuing occupancy certificate for the project till date. Hence, Assistant Executive Engineer, Vyttila, Kochi Municipal Corporation attended the hearing on 18/10/2023 and submitted that the project land falls under wetland category and CRZ Zone 2. Hence permit was not renewed. The Respondent has challenged the matter before the Hon’ble High Court and is pending now.

13. On verification of the registration webpage of the project maintained by the Authority, it is seen that out of 74 building units, 45 building units are sold and status is still shown as “in progress”. The proposed date of completion as provided under

Section 4(2) (1) (D) of the Act, 2016 is uploaded by the Respondent as 19.11.2022, and the Occupancy Certificate and Form 6 are not seen uploaded as on date in the web page. The registration web portal before this Authority reveals that the project in question is not completed even now and majority of works remain with zero progress. It being the situation, I feel it appropriate to seek guidance of the mandates of the Act 2016 and the Rules 2018 made thereunder in this regard. The provisions under Sections 18 (1) of the Act 2016 give entitlement to the allottees to claim interest for every month of delay in the circumstances prescribed therein.

14. Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as “the Act, 2016”] states 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



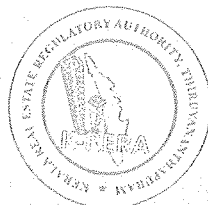
possession, at such rate as may be prescribed.” It will not be out of place to mention here, the observations made in this regard by the Hon’ble Supreme Court of India in its Judgement dated 11/11/2021 of M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others as follows: “ If the Promoter 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”.

15. The Complainant has paid an amount of Rs.60,28,058/- to the Respondents as on 09/09/2023. The details of payments made are given below in the payment schedule : -

Payment Schedule

Payments made before 30/11/2021

<u>Date</u>	<u>Amount</u>
21/11/2018	Rs.25,000.00
30/11/2018	Rs.3,75,000.00



07/12/2018	Rs.4,00,000.00
08/12/2018	Rs.4,00,000.00
28/10/2019	Rs.6,24,900.00
16/06/2020	Rs.6,24,900.00
27/01/2021	Rs.8,33,200.00
Total	Rs.32,83,000.00

Payments made after 30/11/2021

Date	Amount
12/04/2022	Rs.12,12,945.00
12/07/2022	Rs.5,99,459.00
19/09/2023	Rs.9,32,654.00
Total	Rs.27,45,058.00

16. As per Ext.A2 agreement the Respondents promised to complete the construction on or before 30/11/2020. As per Order No. K-RERA/T3/102/2020 dated 15/05/2020 and 19/07/2021 the Authority had taken cognizance of the adverse effects of Covid-19 Pandemic and the lock downs on the real estate projects in the state and resolved to treat this an event of force majeure as per the provisions of the Act, 2016. In this context, Clause 9 of Annexure A Format agreement prescribed under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018 is also important, which is as follows:



“9.1 Subject to Force Majeure clause, the Promoter shall be considered under a condition of Default, in the following events:

i) Promoter fails to provide ready to move in possession of the Apartment /Plot to the Allottee within the time period specified. For the purpose of this clause, ready to move in possession shall mean that the apartment shall be in a habitable condition which is complete in all respects;

ii) Discontinuance of the Promoters business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.

9.2. In case of Default by Promoter under conditions listed above, the Allottee is entitled to the following:

i) Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction milestones and only thereafter the Allottee be required to make the next payment without any penal interest.

ii) The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate specified in



the Rules within forty-five days of receiving the termination notice

Provided that where an Allottee does not intend to withdraw from the project or terminate the Agreement, he shall be paid, by the promoter, interest at the rate specified in the Rules, for every month of delay till the handing over of possession of the Apartment/Plot”.

17. Accordingly taking into consideration the force majeure conditions as mentioned above the time of completion is considered as 30/11/2021. In the instant case, it has been found that the Complainants had remitted an amount of Rs.32,83,000/- before the promised date of completion, i.e., 30/11/2021. Subsequently an amount of Rs. 27,45,058/- was paid by the Complainant, but the apartment has not been completed and no where near submission of completion certificate to the local body for obtaining occupancy certificate. The Respondents are liable to pay interest at the prescribed rate on Rs.32,83,000/- from the revised promised date of completion of 30/11/2021 for every month of delay from 01/12/2021 till the date of handing over possession as per Section 18(1) of the Act, 2016. The Respondents are also liable to pay interest on the payments made after 30/11/2021 from the date of each payment till the date of handing over of possession.

18. **As per Ext,B2 an amount of Rs.1,10,000/- is shown as paid to the Complainant as interest compensation by**



the Respondent. This amount shall be deducted from the amount payable as interest on delay under Section 18(1) of the Act, 2016.

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 15/09/2023. Hence it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 16.85 % [14.85 (current BPLR rate) +2%].

19. 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 are hereby directed as follows:

1. The Respondents shall pay to the Complainant, simple interest @ 16.85% per annum, on Rs.32,83,000/- the amount paid before 30/11/2021, the promised date of completion, for every month of delay from 01/12/2021 till 31/12/2023 within 60 days from the date of receipt of this order, failing which the Complainant is at liberty to recover the amount from the Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

2. The Respondents shall pay to the Complainant, simple interest @ 16.85% per annum, on Rs.32,83,000/- the

amount paid before 30/11/2021, the promised date of completion, for every month of delay from 01/01/2024 till the date of handing over of the possession of the apartment in accordance with the terms of Ext.A2 agreement.

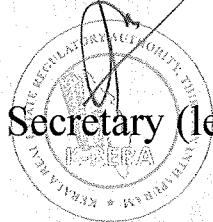
3. The Respondents shall also pay to the Complainant, simple interest @ 16.85% per annum, on Rs.27,45,058/- the amount paid after promised date of completion ie., 30/11/2021, for every month of delay from the date of each payment, till the date of handing over of the possession of the apartment in accordance with the Ext.A2 agreement.

4. If the Respondents fail to pay the aforesaid amount of interest as directed above, the Complainant is at liberty to recover the amount from the Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-

Sri. M.P. Mathews
Member

True Copy/Forwarded By/Order



Secretary (legal)

Exhibits**Exhibits marked from the side of Complainant**

- Ext.A1- Copy of agreement for sale dated 01/12/2018.
- Ext.A2 - Copy of agreement for construction dated 01/12/2018.
- Ext.A3 series- Copies of statements issued by the Respondents.
- Ext.A4 -Copy of statement dated 06/12/2021 issued by the State Bank of India.
- Ext.A5 - Copy of list of undated cheques collected from the Complainant.
- Ext.A6- Copy of sale deed dated 1928/2019 dated 03/06/2019 executed in favour of the Complainant.
- Ext.A7 - Copy of minutes of meeting held on 11/06/2022.

Exhibits marked from the side of Respondents

- Ext.B1-Copy of statement of account of the Complainant issued by the Respondents.
- Ext.B2-Copy of interest compensation paid to the Complainant for a period from 01/04/2023 to 07/09/2023.

