



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 172/2021

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

Dated 5th September 2023

Complainant

Pramod Sivanandan
Thanal, T C 76/2101(1),
Oolankuzhi, Anayara, Trivandrum,
Kerala- 695029

[By Adv. Rajashekar]

Respondents

P A Jinas
Managing Director
M/s Galaxy Homes Pvt. Ltd.
M G Road, Kochi- 6820358

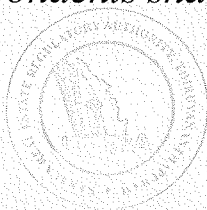
[By Adv. Thomas John]



The Counsel for the Complainant, Adv. Rajasekharan and the counsel for the Respondent, Adv. Thomas John attended the hearing.

ORDER

1. The Complainant is an allottee in the project Galaxy "Cloud Space" developed by the Respondents. The Authority issued an order dated 24/06/2021 in Complaints No. 206/2020, 222/2020, 254/2020 & 46/2021 filed by the allottees of the same project in which it was directed as follows: (1) *The Respondents shall complete the works related to essential services, mutation of flats in the name of Complainants, etc. within One month and complete and hand over, the whole project 'Galaxy Cloud Space' to the Complainants, in all respects as committed/promised to them, along with all the amenities and facilities as agreed as per the agreements entered into with them and with all the mandatory sanctions / approvals required to be received from the Authorities concerned, on or before 30.12.2021 without fail.* (2) *The Association of allottees formed and registered, to monitor the progress of works and make sure that the work is being carried out as per the Work Schedule given in the Exbt. B1 affidavit marked in the above said complaints and it was informed that in case of any default on the part of the Respondent, the Association can approach the Authority seeking further intervention.* (3) *The Respondents shall complete the executions of*



*all sale deeds, if any, related to apartments / common areas of the project within the said time frame. (4) The Respondents shall handover all the documents pertaining to the project such as a) title deeds of land, b) permits/sanctions/approvals/NOCs, etc, c) all drawings of electricity, plumbing, etc. to the Association within **one month** from the date of receipt of the order, and (5) the Respondents shall submit before the Authority, the compliance report in the form of an affidavit on or before **03-01-2022** after serving copies to the Complainants. It was also specified that in the event of any non-compliance of the order by the Respondents, the Authority shall initiate severe penal actions as provided under Section 63 of the Act. The Complaints were posted for further hearing on adjudication of interest claims filed by the Complainants separately.*

2. Thereafter above complaint No. 172/21 came along with other new Complaints No. 129/2021, 132/2021, 133/2021, 243/21, 203/21, 50/22, 73/22, 96/22 & 153/22 filed by some other allottees in the same project and the Authority, vide orders dated 26/07/2021 & 23/07/2022, had made the aforementioned previous order dated 24/06/2021 applicable, to these Complaints and decided to hear the claims on interest for delay on a later date. Accordingly, the interest claims on the above said Complaints were heard together on 05/09/2023 and decided to pass orders separately in each of these Complaints.



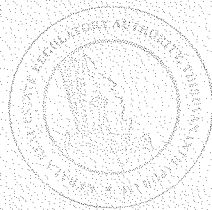
3. The facts of the Complaint are as follows: - The Complainant came across an advertisement in a UAE local newspaper, having a promotion campaign for NRI's with an instalment plan. The Respondent promoted a premium Apartment named as CLOUDSPACE which was to be constructed in one compound owned by the Respondent, located at Ernakulam. The Respondent had formulated the scheme to construct the multi-storeyed building with residential apartments along with common amenities. The Complainant booked a three-bedroom apartment on the 7th floor of the building admeasuring 1159 sq ft. and paid a token advance of Rs. 25,000/- on 17.02.2013. Two agreements were signed on 08.04.2013. The Agreement of sale for an undivided share of the property having 89.871 cents and providing the rights to Galaxy Developers for constructing a three-bedroom apartment on 7th floor with a super built up area of 1159 sq. ft with car parking. The Agreement for construction of the apartment with all specifications and completion date mentioned was on 31.03.2016. As per agreement for construction, payment schedule was fixed and the Complainant have made a total payment as below:

Sale of Property	Rs. 1,41,008.00	Rs. 1,41,008.00 paid in full
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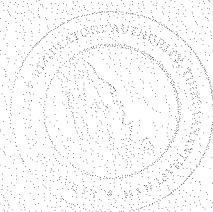
Agreement of Apartment Construction with Car Parking	Rs. 26,64710.00	Rs.26,29,500.00 paid. Balance 35,210 pending
Registration expense	1,20,490.00	1,20,490.00 paid in Full
Statutory Expenses	To be settled at the time of handover	

4. There was no work progress until March 2016 as committed by the Respondent. The Complainant travelled more than 3 times between 2014 and 2016 exclusively to follow up the apartment construction progress from Dubai to Ernakulam incurring travel expenses of over Rs. 25000 per visit. The Respondent then in Jan 2017 blamed the delay due to the government policies as he was severely impacted by the demonetization rule given in November 2016. Subsequently, the Respondent had claimed various government and monsoon reasons affecting the delay. After repeated follow-ups and email communications and dire consequences of legal appeal and Respondent agreed to compensate, and a letter of compensation was given in 07.07.2017 with a monthly compensation fee of Rs. 10,000 till the date of handover. On 2nd Feb 2018, Respondent raised a final bill with all taxes and additional works expenses. The



Respondent does not mention the compensation amount on the bill and verbally agreed that the amount shall be adjusted when registration is completed and at the time of full payment. However, the Respondent has failed to complete the work within the stipulated time and even today the cellar parking and common amenities are not yet completed. On 8th April 2021 a meeting with the representative of Galaxy Developers, Mr. Thadeus (Executive Director) who had signed the agreement, was done and the representative refused to honor the commitment of compensation hence the balance payment was not done by me. The revised final bill was sent to the Complainant excluding the additional charges for additional works.

5. The relief sought by the Complainant to direct the Respondent to hand over the allotted apartment and to direct the Respondent to get water and electricity connection from the authorities in compliance to the Rules and regulations of the authorities. Thereafter, the Complainant amended the Complaint adding a prayer to direct the Respondent to pay a sum of Rs. 19,01,592/- towards interest for delaying the completion and handing over as per the agreement. The Complainant had produced along with the Complaint, copies of the agreement for sale, agreement for construction, email communication, letter dated 07.07.2017 issued

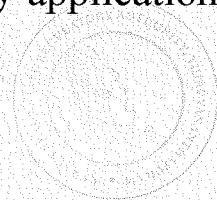


by the Respondent to the Complainant and final bill. Additionally, the Complainant has also produced calculation statement for interest claim, receipts of payment made and bank statement.

6. The Respondent filed objection to the Complaint and submitted as follows: The Complaint is not maintainable under law as admittedly the applicants are claiming reliefs based on as agreement executed on 08.04.2013. The project was formulated by the Respondents in 36.39 Ares of land situated at Ernakulam 140 apartments. The agreement for sale and agreement for construction were executed on 08.04.2013 stipulating the conditions including the payment schedule. Clause 4 of the Agreement for Construction executed between the Complainant and the Respondent on 08.04.2013 is as follows- "The First party shall construct the apartment as per the specifications attached thereto and try the utmost possible to finish the work on or before 31.03.2016 provided the entire amount due to the First Party from the Second Party including statutory charges has been paid by the Second Party. Possession will be handed over within 180 days from the date of paying the entire consideration including statutory charges." The date of handing over of possession has not become due as admittedly, the Complainants have not paid the entire consideration including statutory charges as agreed by the parties and the amount as per the final bill of Rs. 5,16,126/- which is not



paid till date. The Respondents produced copies of two occupancy certificates dated 27/05/2020 and 27/01/2021. As per the agreement, the completion of construction was subject to the payment of entire amounts due. There was a huge delay in payment of monthly instalments from the side of the Complainant. Therefore, having failed to pay the periodical instalment in time to meet the construction expenses, the contention raised by the Complainant by claiming interest from the Respondent is untenable. There was absolutely no wilful laches or negligence on the part of the Respondent/Builder in completing the construction and handing over the apartment to the Complainant. The project was completed in spite of the fact that the Complainant has not paid the entire amounts agreed to be paid as per the construction agreement, no cause of action for filing the above Complaint has arisen. Article 20(1) of the constitution of India stipulated that no person can be prosecuted and punished for an Act which was not made an offence at the time of its commission. The reliefs sought for in the above Complaint by the applicants are in the nature of a penalty which cannot be granted in view of the constitutional protection as above. The penal provision as above could be invoked only for agreements executed after the commencement of the RERA Act. It was also submitted that the Act came into force in the State of Kerala vide Notification No. G.O (P) No. 65/2019/LSGD dated 05/12/2019. Therefore, the provisions of the Act are not having any application to the facts and circumstances



of the case. The Respondents submitted that there was a huge delay from the part of the Complainant in remitting the instalments as well as the balance payments as agreed. The interest calculation submitted by the Complainant is not correct. The Complainant has not yet paid the final payment as per the revised final bill issued by the Respondent. The Complainant has no right to claim interest for the amounts paid by Complainant and he is liable to pay the builder interest for delay in remitting instalments and the balance amount and hence the Complaint is to be dismissed.

7. 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 is shown as 04/06/2022. On perusal of the web page concerned, it is seen that the Respondents have uploaded the occupancy certificate and the final fire NOC obtained for the project in question but the Respondents have neither uploaded Form-6 showing completion of the project nor taken any steps for extension of registration as provided under the provisions of the Act 2016 despite notice from the Authority which is sheer violation of the law.

8. After hearing the counsels on either side and perusing the pleadings and documents submitted by both the parties with respect to the claim of the Complainant for interest for delay, the following points are being considered and decided herewith:



- 1) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainant, in accordance with the terms of the agreement or duly completed by the date specified therein or not?
- 2) 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?

9. **Points No. 1&2:** The documents produced by the Complainant are marked as **Exhibits A1 to A8**. **Exhibit A1** is the sale agreement dated 08.04.2013 executed between the Complainant and the Respondent for sale of 1259/175500 undivided share having an extent of 89.871 cents. **Exhibit A2** is the construction agreement dated 08.04.2013 executed between the Complainant and the Respondent for constructing a three-bedroom apartment having a super built-up area of 1159 sq. ft on the seventh Floor in the said project for a construction cost of Rs. 26,64,710/- in which the promised date of completion is shown as 30.03.2016 with 180 days grace period. **Exhibit A3** series are email communications showing the demand of compensation. **Exhibit A4** is the Letter dated 07.07.2017 issued by the Respondent to the



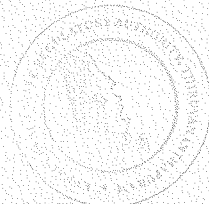
Complainant. **Exhibit A5** is the copy of the final bill. **Exhibit A6** is the calculation statement. **Exhibit A7 series** is the email communications showing the yearly work status at different stages. **Exhibit A8** is the copies of receipts of payment. The documents produced by the Respondent were marked as **Exhibits B1 to B2**. **Exhibit B1(a)** is the copy of the Occupancy Certificate dated 27/05/2020 and the **Exbt. B1(b)** is the copy of Occupancy Certificate dated 27/01/2021 The final bill has been produced by the Respondents which are marked as **Exhibit B2**.

10. As mentioned above, other prayers in the above complaint have already been adjudicated and order has been passed the only prayer to be considered herewith that for a direction 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 [hereinafter 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 him.

11. As per Exbt. A2 Construction agreement, Clause No. 4 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 March, 2016 provided the entire amount due to the First Party from the Second Party including statutory charges has been paid by the Second Party. Possession will be handed over within 180 days from the date of paying the entire consideration including*

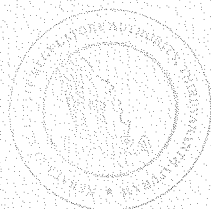


statutory charges.” Exhibit. A2 agreement is seen executed by the Complainant and the Respondents on 08.04.2013 as per which the promised date of completion and handing over was on 31-03-2016 with a grace period of 180 days. According to the learned counsel appeared for the Complainant, the Respondents handed over the key to the Complainant and possession of the apartment was taken over only on 06.08.2022. It is admitted by the Respondents that the Occupancy Certificate has been obtained for the project only on 27-01-2021. It feels strange that the learned counsel for the Respondents/Promoter produced copies of 2 Occupancy certificates for the same project dated 27-05-2020 and 27-01-2021 and on examination of the said certificates issued by the local authority, it could be seen that the one issued later on 27-01-2021 is the final Occupancy Certificate for the building. In fact, the earlier one dated 27-05-2020 was a partial occupancy certificate for certain area issued on demand of the Promoter, the Secretary of the said local authority/Thrikkakkara Municipality signed on it ought to have shown specifically that it was only a “partial occupancy certificate.” Surprisingly, both these certificates bear the same heading “Occupancy Certificate” and both of them certify as follows “..... *inspected by me and the work executed is in accordance with the permit and the building is now fit for occupation/use.*” However, this Authority made it clarified time and again that as per the Scheme of the law, what the provisions concerned of the Act 2016 and Rules 2018 made thereunder



envisioned is not a partial or conditional Occupancy Certificate, but it is the final Occupancy Certificate, issued by the Competent Authority, certifying the completion of the project in all respects. As pointed out by several orders of this Authority, even the so-called “final Occupancy Certificates” issued by the local authorities now, in accordance with the prevailing Building Rules in the State, do not constitute the completion of the whole project as promised to the allottees as per the terms of the agreements executed with them by the Promoter and these can only be considered only as proof of completion of the building/s concerned in accordance with the approved plan and permit. The Respondents/Promoters, being well aware of these facts, are supposed to be more careful before submitting such misleading contentions and documents.

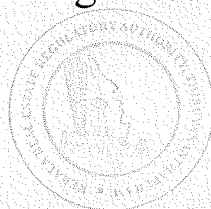
12. Regarding the issue of maintainability raised by the Respondents/Promoters, it is pertinent to note that the projects that are not completed and have not received the Occupancy Certificate on the date of commencement of the Act come under the fold of the Real Estate (Regulation & Development) Act 2016 and in this case, it is evident that the project has not completed till date, as promised to the Complainant. In the judgement passed in *M/s New Tech Promoters & Developers Pvt Ltd. Vs State of U P & Others*, the Hon’ble Supreme Court of India confirmed that the



Act 2016 is “retroactive” in nature and made observations in this regard as follows:

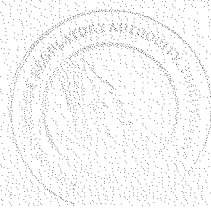
“.....the clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real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

13. Even though, we had clarified many times through our previous orders passed in the complaints connected to projects of the Respondents herein, the learned counsel appearing for the Respondents has been continuously raising the very same contention in all the reply statements that ‘the relief sought for by the Complainant cannot be granted in view of the constitutional

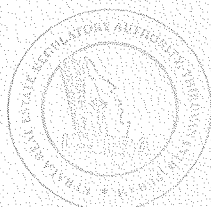


protection given as per Article 20 of the Indian Constitution'. Anyhow, we would clarify it again that according to Article 20(1) *“No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”* which means that if an act is not an offence at the date of commission, it cannot be an offence at the date subsequent to its commission. Even before the induction of the Act 2016, the Promoters were not having any right to violate the terms of the agreement executed with the homebuyers and cheat them after grabbing their hard-earned savings. Above all, it is to be noted that Article 20(1) provides constitutional protection to individuals charged against criminal offences prohibited by law but in case of civil liberties or civil proceedings, Art 20(1) shall not be applicable which was made clear by the Hon'ble Apex Court through a lot of judgements. Anyhow, during the final hearing, the Respondent has not pressed on the issue of maintainability as raised through his pleadings.

14. Here, the learned counsel for the Respondents mainly raised arguments that the completion date was subject to the performance from the part of the complainant but the Complainants failed to perform by making delay in the payments as per the agreement and hence delay in the progress of works will

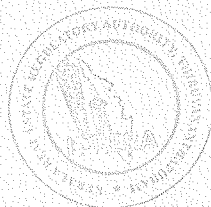


not constitute a breach on the part of the promoter. He also argued that a person raising the claim of breach of contract should have come with clean hands, by performing his part of the agreement, but the complainant herein had violated the terms of the agreement when he failed to pay monthly instalments. Anyhow, on examination of Exhibit A8 series, it reveals that the Complainant had made most of the payments before the handing over date. With regard to the contentions raised by the Counsel for the Respondent/Promoter that there was failure from the part of the Complainant in paying instalments on time, no documents/communications produced from the side of the Respondents to substantiate this contention because the Respondents could have sent notice of cancellation of booking to the Complainant at the time of the alleged delay in making payments, by invoking provisions under Section 19(5) and (6) of the Act, 2016 and under Clause 9.3 of 'Annexure 'A' Agreement for sale' under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018. Exhibit B1/ occupancy certificate dated 27-01-2021 reveals that the construction according to the approved plan was completed only on 27-05-2020. In view of this, the Respondents have no right to blame the Complainant for any delay/irregularity in payments. Here, the promised date of completion and handing over was 31-03-2016. But possession of the apartment was handed over only on 06.08.2022 according to the Complainant. It can be seen that the delay in final payments



occurred due to the non-completion of work as promised by the Respondent/Promoter. As stated above, Exhibit B1 occupancy certificate shows that the Respondents could not complete the project as promised and apart from that, the registration web page of the project in question reveals that the Project is not completed even now as the Respondent/Promoter has not yet uploaded Form-6 Certificate showing completion of the project. The mail communications dated 23.12.2016 from the Respondent attaching the photographs of the project and the copy of photograph at that time marked as Exbt. A7 series & the letter marked as Exhibit A4 produced by the Complainant also corroborates the case of the Complainant that the Respondent has grievously failed to complete the project and hand over to him on the date of promise as per the terms of the agreement.

15. Under Section 11(4) of the Act, 2016, the Respondent/Promoter is responsible to obtain the occupancy certificate, from the Competent Authorities and under Section 17 of the Act, 2016 after which, he is duty bound to hand over physical possession to the allottees. 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 date of issue of occupancy certificate. After obtaining the occupancy certificate and handing over physical possession to*



the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand- over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate".

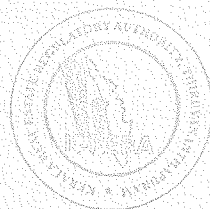
16. With respect to the right of the allottees for getting interest for delay in getting handed over the apartments in such cases, certain remarkable observations were made by the Hon'ble Supreme Court in its judgement **Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd.**, as follows:

".....Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit the consequence of a delay in not handing over possession." Even if the Complainant/allottee had made delay in



any of the payment of instalments, the Promoter has undoubtedly made use of the investments of the Complainant's hard-earned money for the past years and failed to complete the work and hand over possession as per the terms of the agreement.

17. 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 31.03.2016, 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 sec 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”.

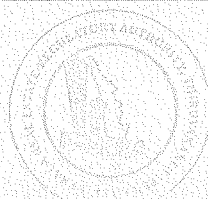
18. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondent/Promoter has failed to complete and hand over possession of the apartment as promised to the Complainant herein and hence the Complainant is entitled to get interest for delay in handing over possession as provided under Section 18(1) of the Act 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainant.

19. In the instant case, the Complainant had remitted a total amount of **Rs. 35,23,934/-** to the Respondents and the Complainant prayed for interest for the delayed months. According to the complaint, the Complainant has paid an amount



of Rs. **28,11,998/-** before the promised date of completion, i.e., 31.03.2016. 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.
17.02.2013	25,000/-
06.04.2013	4,60,000/-
06.04.2013	1,40,000/-
15.05.2013	11,008/-
11.10.2013	1008/-
19.10.2013	1,20,490/-
11.12.2013	7,16,992/-
17.12.2013	53500/-
28.01.2014	53500/-
22.03.2014	53,500/-
31.03.2014	53,500/-
10.05.2014	53,500/-
03.06.2014	53,500/-
01.07.2014	53,500/-
01.08.2014	53,500/-
02.09.2014	53,500/-
27.09.2014	53,500/-
14.11.2014	53,500/-



20.11.2014	53,500/-
03.01.2015	53,500/-
29.01.2015	53,500/-
11.03.2015	53,500/-
28.03.2015	53,500/-
07.05.2015	53,500/-
16.05.2015	53,500/-
26.06.2015	53,500/-
05.08.2015	53,500/-
18.08.2015	53,500/-
16.09.2015	53,500/-
27.10.2015	53,500/-
05.12.2015	53,500/-
14.03.2016	53,500/-
19.04.2016	79,000/-
07.07.2022	1,16,810/-
07.07.2022	5,16,126/-
Total	35,23,934/-

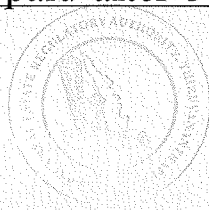
20. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents are liable to pay interest to the complainant as per the proviso to Section 18(1) of the Act, 2016. Hence the Complainants are entitled



to get interest for the period from 1/04/2016, the promised date for handing over till 06/08/2022, the date of handing over possession, on Rs. 28,11,998/- which is the amount paid by him before the promised date of completion and also, he 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 06/08/2022. 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 on the amounts paid as mentioned above @ 16.85 % [14.85 (current BPLR rate) +2%].

21. 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 Respondent/Promoter is hereby directed as follows:

1) The Respondent/Promoter shall pay to the Complainant, simple interest @ 16.85% per annum, (a)for Rs. 28,11,998/-, the amount paid before 31/03/2016 (the promised date of completion), for every month from 1/04/2016 till 06/08/2022 and (b) for the amounts paid after 31/03/2016 (the promised date of



completion), for every month from the date of each payment as mentioned in the table inserted above till 06/08/2022.

2) If the Respondent fails 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 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 2016 and Rules 2018.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Copy of the Agreement for sale
- Exhibit A2 : Copy of Agreement for Construction
- Exhibit A3 series : Email communications showing the demand of compensation
- Exhibit A4 : Letter dated 07.07.2017 issued by the Respondent to the Complainant.
- Exhibit A5 : Copy of the Final Bill
- Exhibit A6 : calculation statement.
- Exhibit A7 series : email communications showing the work status at different stages yearly.
- Exhibit A8 : copies of receipts of payment

Exhibits on the side of the Respondents

- Exhibit B1 : True Copy of Occupancy Certificates issued by Thrikkakara Municipality
- Exhibit B2 : Final Bills