



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Present: Sri. M.P. Mathews, Member.

Complaint No. 221/2021
Dated, 7th September, 2023

Complainant

G. Jayalakshmi Vinod,
X/1445, K.B Jacob Road,
Fort Kochi
Kochi, Pin- 682 001.
[Adv. B. Rajasekharan Nair]

Respondents

- 1 Sri. P.A Jinas
Managing Director,
M/s Galaxy Homes Pvt Ltd
Rajaji Road Junction, M.G Road,
Kochi- 680018.
- 2 M/s Galaxy Homes Pvt Ltd
Rajaji Road Junction, M.G Road,
Kochi- 680018
[Adv. Thomas John. P]

The complaint is with regard to the real estate project 'Galaxy Midwinter', which is registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016



[herein after referred to as 'the Act, 2016'] with Registration No. K- RERA /PRJ/003/2021 on 08-01-2021. The above Complaint came up for virtual hearing on 12-07-2023. The Counsels for the Complainant and the Respondents attended the hearing. Heard both the parties and passed the following:

ORDER

1. The case of the Complainant is as follows: The Complainant, a senior citizen and pensioner had booked a flat of the Respondent builder, M/s Galaxy Homes Pvt Ltd at their project, 'Galaxy Oxton'. Later, the Complainant wished to upgrade from 1BHK to 2BHK, the builder offered another project 'Galaxy Midwinter' at Elamkulam, Kadavanthra, Ernakulam which was accepted by the Complainant and respective agreements for sale and construction dated 11.08.2016 were executed. Consequently, payment schedule and completion date were revised. As per revised agreement the flat was to be completed on or before 31.03.2017. The complainant complied all conditions including timely and prompt payment of amounts. Out of total amount of Rs. 24,72,372/- for the flat a meagre balance amount of Rs. 1,55,852/- was left payable by the Complainant which was kept pending due to breach and contraventions committed by the respondents. An additional amount of Rs. 35,879/- was shown in the final bill which was not part of cost of the property but incidentals viz.

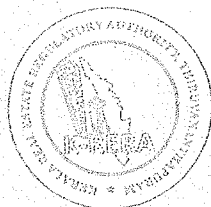


Owner's Association Deposit, Welfare fund, etc. The flat as completed in all respects, was to be handed over to the Complainant on or before 31.03.2017 which was not complied by the Respondents and due to the slow work, the Complainant made regular calls to the Respondent's office, but they refuse to furnish any specific reply or satisfactory reasons for the delay. The Complainant is a senior citizen and pensioner, living on her pension income, her life time savings was utilised for the flat and connected expenses. When the completion of the flat was delayed the entire pension amount was being drained out for payment of flat. Since the possession of flat was delayed inordinately, the complainant had suffered huge loss in respect of interest and potential rental income. The complainant booked the flat out of her ardent and passionate desire for a comfortable retired life in the later stages of life which was shattered by these circumstances. The reliefs sought by the Complainant were (i) Issue appropriate orders to the Respondent to complete the flat in all respects as per agreement and fit for occupancy, (ii) Interest for delayed completion and handing over of flat at the rate of 18% per annum from date of promised handing over as per agreement, i.e. 31.03.2017 till completion of flat in all respects, (iii) A compensation of Rs. 10,00,000/- for the mental agony and miseries caused to the complainant, (iv) Rs. 10,000/- towards cost of this proceedings, (v) pass any other order the Hon'ble Forum



deems fit and proper in the facts and circumstances of the complaint.

2. The Authority vide interim order dated 02-03-2022 had directed the Respondents to execute sale deed in favour of the Complainant after receiving any amount due from the Complainant. The Complainant filed an IA No. 71/2022 to take appropriate steps against the Respondents as they miserably failed to comply with the directions in the interim order dated 02-03-2022. Authority vide order dated 25-04-2022 directed the Respondents to execute the sale deed in favour of the Complainant within 29-04-2022, after receiving the amount due from the Complainant. The Complainant was also directed to pay the balance amount as per the mail received by the Complainant from the Respondent before 28-04-2022. When the case came up for hearing on 28-06-2022, the Respondents filed an affidavit stating that sale deed had been executed on 29-04-2022. The Respondent admitted the fact that the keys of the apartment were not handed over to the Complainant as the balance amount was not settled. The Authority vide order dated 28-06-2022 directed the Complainant to settle the balance amount and the Respondents to hand over the keys within two weeks from the date of receipt of the order. The Authority vide another interim order 25-10-2022, directed the Complainant to submit detailed interest claim statement after serving copy to the Respondents. Accordingly, the delay interest calculation and claim summery



was filed on 18-03-2023 by the Complainant. The case was finally heard on 12-07-2023.

3. After hearing the counsels on either side and perusing the pleadings and documents submitted by both the parties with respect to the claim for interest for delay, the Authority came to the following conclusions.
4. The documents produced by the Complainant are marked as **Exhibits A1-A4** and the documents produced by the Respondents are marked as **Exhibit B1-B2**. The Agreement for construction dated 11-08-2016 entered in to between the Complainant and the Respondents is marked as **Exhibit A1**. As per Exhibit A1, the total construction cost agreed was Rs. 24,72,372/- It was specified in the Exhibit A1 agreement that the amount shown in payment schedule is including of service tax of Rs. 1,31,276/- at the prevailing rate of 6% and VAT of Rs. 1,53,156/- at the prevailing rate of 7% and the Complainant shall pay the instalment amounts at such higher rates if and when the rate of service tax or VAT are increased by the Government at any point of time. As per clause 5 of the Exhibit A1 agreement, Respondents had undertaken to finish the work before 31-03-2017 and possession handed over within 180 days from the date of paying the entire consideration including statutory charges. The copy of final bill dated 01-10-2018 issued by the Respondent to the Complainant with respect to Apartment No D5 allotted to the Complainant is marked as **Exhibit A2**. As per Exhibit A2 bill



the Complainant paid an amount of Rs. 24,68,500/- and the balance outstanding as on 01-10-2018 was Rs. 1,91,731/- including GST, workers welfare fund, association deposit, building tax and Advocate fees for agreement execution. The bank account statement of the Complainant from 01-01-2014 to 31-12-2017 showing the details of amount transferred to the Respondents, including the summery is marked as **Exhibit A3 series**. As per the summery, total amount paid as on 5-04-2017 is Rs 25,17,000/- The copies of payment receipts issued by the Respondents on various dates from 15-07-2014 to 29-03-2017 is marked as **Exhibit A4 series**. As per the payment receipts the total payments received is Rs. 20,76,500/- The copy of occupancy certificate dated 22.06.2020 issued by the Kochi Municipal Corporation is marked as **Exhibit B1**. As per Exhibit B1 occupancy certificate, the date of completion of the project was on 02-04-2020. The copy of the mail dated 26-04-2022 is marked as **Exhibit B2**. As per Exhibit B2 mail the final bill amount due from the Complainant is Rs.1,92,291 and the Registration expenses is Rs 1,92,650/- to be borne by the Complainant.

5. It is admitted by the Complainant that an amount of Rs. 1,55,852/- is left payable by the Complainant, kept pending due to breach and contraventions committed by the Respondents in violation of the terms of agreements. The Complainant has also stated that the additional amount of Rs 35,879/- shown in the final bill (Exhibit A2) is owners association deposit and welfare fund etc. Exhibit



B1 occupancy certificate was received by the Respondents on 22-06-2022. As per clause 19(6) of the Act, 2016, every allottee is responsible for making necessary payments as specified in the said agreement for sale, including the share of registration charges municipal taxes water and electricity charge maintenance charges and other charges if any. As per clause 19(10) of the Act, 2016, every allottee shall take physical possession of the apartment, plot or building as the case may be within a period of two months of the occupancy certificate issued for the said apartment. As per clause 19(11) of the Act, 2016, every allottee shall participate towards registration of the conveyance deed of the apartment, as provided under Section 17(1) of the Act, 2016. Under Section 17(1) conveyance deed in favour of the allottee is to be carried out by the promoter within 3 months from date of issue of occupancy certificate. Under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018, [herein after referred to as 'the Rules, 2018'] in the prescribed format for agreement for sale, in Clause 9.2, in case of default by promoter allottee is entitled to stop making further payments to promoter as demanded by the promoter. Only after completing the construction mile stones the allottee is required to make the next payment without any penal interest.

6. According to Section 18(1) of 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

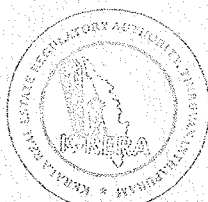


sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot 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.” 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 had opted to continue with the project and claimed interest for delay in handing over possession of the apartment to her. There was delay in completing the project, but the Complainant did not take possession of the apartment even after obtaining the Occupancy Certificate by settling the balance payment due and getting the apartment transferred into her name.



The period of delay in taking possession due to default on the part of the Complainant in settling the balance payment immediately after receipt of the Occupancy Certificate and taking possession within 3 months cannot be considered for delay interest. In this case the promised date of completion as per the agreement was 30-09-2017. The Occupancy Certificate was received on 22-06-2020, and it was the duty of the allottee to take possession of the apartment, after executing the conveyance deed by settling the balance payment. Since it is admitted by the complainant that an amount of Rs. 1,55,852/- was due, the date of handing over of possession shall be considered as 22-09-2020 (three months after the receipt of Occupancy Certificate on 22-06-2020). 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 lockdowns on the real estate projects in the State and resolved to treat this event of force majeure as per the provisions of the Act, 2016. The one-year period from 25-03-2020 was considered to be treated under the force majeure clause and the Respondents are not liable to pay delay interest for the said period of one year. Taking into consideration of the above order of the Authority the delay interest payable u/s 18(1) of the Act, 2016 shall be for the period from 30-09-2017 to 25-03-2020 instead of 22-09-2020.

7. The Rule 18 (1) of the Rules, 2018 prescribes the annual rate of interest payable by the promoter to the allottee as SBI PLR plus



2%, to be computed as simple interest. The relevant portions of rule 18 of the Rules, 2018 are extracted below: “(1) *The annual rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be at the State Bank of India’s Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest. (2) In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment on such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement for construction or sale.*” The said Rule prescribes the annual rate of interest payable by the promoter to the allottee as SBI PLR plus 2%, to be computed as simple interest. The Complainant has claimed relief of interest for delayed completion and handing over of flat at the rate of 18% per annum from the date of promised handing over as per agreement, ie 31-03-2017 till completion of flat in all respects. In the delay interest calculation & claims summery, the Complainant has claimed interest at the rate of $14.5\%+2\%=16.15\%$. The State Bank of India Prime Lending Rate as on 25-03-2020 is 12.90%. Hence the interest is considered at SBIPLR rate of 12.90% plus 2% as per rule 18(1) of the Rules, 2018. The Complainant is eligible for delay interest from the agreed date of handing over of possession of the project to the date on which the apartment was ready for handing over (25-09-2020). However, as per Order No. K-



RERA/T3/102/2020 dated 15-05-2020 and 19-07-2021 of the Authority the date is considered as 25-03-2020.

8. The Authority, after going through the facts and circumstances of the case and perusing the documents produced by the Complainant and the Respondents, invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, hereby directs as follows:

1) The Respondents shall pay to the Complainant, simple interest @14.90% for every month of delay from 01-10-2017 to 25-03-2020, on the amount of Rs. 24,68,500/- paid by the Complainant to the Respondent.

2) If the Respondent fails to pay the aforesaid sum 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 Respondent and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-
M.P. Mathews
Member

True Copy/Forwarded By/Order/



Secretary (Legal)

Exhibits marked from the side of Complainant

Exhibit A1 -Copy of agreement for construction dated 11-08-2016.

Exhibit A2- Copy of final bill dated 01-10-2018 issued by the Respondents to the Complainant with respect to Apartment No D5 allotted to the Complainant.

Exhibit A3 series– Copy of bank account statement of the Complainant from 01-01-2014 to 31-12-2017 showing the details of amount transferred to the Respondents

Exhibit A4 -Copy of payment receipts issued by the Respondents on various dates from 15-07-2014 to 29-03-2017.

Exhibits marked from the side of the Respondent

Exhibit B1- Copy of occupancy certificate dated 22.06.2020 issued by the Kochi Municipal Corporation.

Exhibit B2 – Copy of e mail dated 26-04-2022 of the Respondent to the Complainant informing the final bill amount due.