



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 23/2023

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

Dated 26th March 2024

Complainant

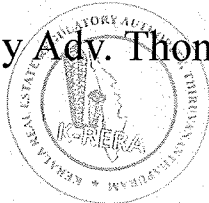
Rema Joshi,
C-1, 1204,
Unnathi Woods Phase 3 Kavesar,
Off Ghodunder Road, Thane Chitalsar Manpada,
Maharashtra, Pin - 400615

[By Adv. Jobin John]

Respondents

- 1 P A Jinas, The Proprietor,
Galaxy Developers, Galaxy Square,
Rajaji Road Junction, M G Road,
Karithala Desom, Ernakulam, Pin - 682035
- 2 Galaxy Homes Pvt Ltd,
Having its Registered Office at 38/2116-B,
Rajaji Road, Karikkamuri, Shenoy's,
Kochi, Pin – 682035
Represented by its Managing Director

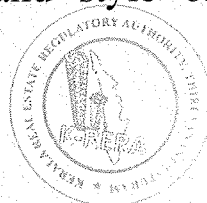
[R1&2 By Adv. Thomas John]



The above Complaint came up for virtual hearing. The Complainant in person and the counsel for the Respondents No. 1&2 attended the hearing.

ORDER

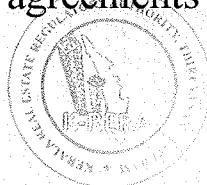
1. The facts of the case are as follows: - The Complainant is the absolute owner in exclusive possession and enjoyment of a 3 BHK flat (F11) having a super built up area of 928 sq. ft along with an undivided share of 1028/26800 over the landed property including the car park area obtained by virtue of Sale Deed No. 116/2020 of Thrikkakara SRO. The Complainant had purchased the subject matter flat from the 1st Respondents and is an allottee within the meaning of the Act, 2016. The 1st Respondents is the proprietor of a proprietary concern constituted in the name and style of Galaxy Developers, engaged in the business of construction and development of villas. The 1st Respondents was originally the owner of the large parcel of land admeasuring 55.01 Ares comprised in R.S. No 335/ 2,6 in Block No 7 of Kakkanad Village obtained by virtue of Sale Deed No 2218/2013 of Thrikkakara SRO. The 2nd Respondents is a private limited company constituted under the provisions of the Indian Companies Act, engaged in the business of construction and development of villas. The Respondents had formulated a housing scheme in the name and style of 'Galaxy Pine Court', for



constructing the proposed flat units in the aforementioned 55.01 Ares, along with common amenities, for the potential buyers. The 1st Respondents, in furtherance of the proposed housing scheme, had entered into an arrangement with the 2nd Respondents in the capacity as 'Promoter' cum 'Owner' and thereby, appointed/entrusted the 2nd Respondents Company as the Builder of the project, with the right to construct the flats along with common amenities on the subject property. Hence, the Respondents are the promoters within the meaning of Act. Respondents had jointly launched the 'Galaxy Pine Court', as an opulent Real Estate Project, spread across the abovesaid 55.01 Ares of land, comprising 15 storied building and 3 blocks of 90 Flat units and common amenities including 3 Automatic lifts, Swimming Pool, Health Club, Intercom connection with security cabin, Mini Auditorium with indoor game facility, Children's Play Area, Landscaped Garden, Granite/Vitrified tile flooring, 4 furnished lobby, main stair case, Modern firefighting equipment, common toilets for drivers and housemaids, Automated Generator backup for lift and common area, 24 hrs. security, Rain water harvesting, sewage treatment plant and car parking.

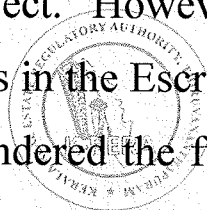
2. It was submitted that the Respondents had widely advertised the project inviting interested buyers to invest in the project and represented that they are trusted builders with several ongoing and completed projects. The true copy of the relevant

newspaper advertisement of the Galaxy Pine Court project of the Respondents is produced. Lured by the catchy advertisement and personal appeals by the Respondents and their agents, the Complainant booked 3 BHK flat having a super built-up area of 928 sq.ft at F11, Galaxy Pine Court Phase I of 08.12.2013. Pursuant to the booking, the Respondents had caused the Complainant to execute two separate contracts styled as 'Agreement for Sale' and Agreement for Construction' on the date of 20.11.2013. The true copy of the Agreement for sale and Agreement for construction dated 20.11.2013 is produced. As per the terms of the contract, Respondents shall construct the apartment as per the specification on or before 30.04.2016. It is further agreed between the parties that the completed flat along with all the amenities shall be handed over to the Complainant within a stipulated period of 180 days on payment of the entire consideration amount including the statutory charges, followed by the execution of the relevant sale deed. The specifications and the amenities of the project were appended and shown as Schedule of the relevant agreement for construction. The parties, vide the abovesaid agreements, had mutually fixed the total consideration amount for the project as Rs. 24,99,445/- consisting of Rs. 23,92,533/- payable towards the flat construction cost along with the parking space and the common amenities and Rs. 1,06,912/- towards the undivided right over the land. At the time of execution of the above said agreements for sale and construction,

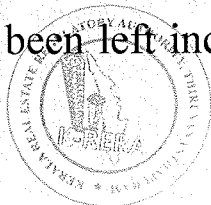


Complainant had paid a sum of Rs. 8 Lakhs as advance to the Respondents and further, agreed to pay the balance amounts in installments as shown in the payment schedule of the agreement. The complainant had always paid those installments to the Respondents promptly as per the payment schedule. The Respondents had collected the installments from the Complainant on regular intervals, by assuring that the project will be completed within a stipulated date and it shall be handed over to her in a time-bound manner, without any delay. The true copy of the relevant payment vouchers issued by the Respondents to the Complainant during the years 2013 and 2016 are produced.

3. Nevertheless, Respondents after collecting the entire consideration amount from the Complainant, have willfully failed to complete the project within the agreed period. Respondents have mischievously diverted the funds paid by the Complainant and the other allottees on the subject project to their personal accounts and hence, caused wrongful loss to the Complainant and the other allottees. Respondents had made the Complainant invest on the project on an assurance that 70% of the consideration amount to be collected from all the Allottees, shall be maintained as a Corpus fund in the Escrow Account and it shall be utilized for the completion of the project. However, Respondents failed to maintain the corpus funds in the Escrow Account as per the terms of the contract and squandered the funds of the project for their



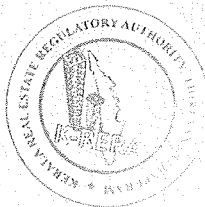
benefit. The complainant had paid her hard-earned money and entire life savings, for the purchase of the subject flat, after executing necessary agreements in this regard. Respondents always assured that, they shall complete and handover the project to her in a time bound manner, in tune with the specifications as provided in the Agreement. The relevant agreement for construction and sale even provides that 'Time is the essence of the contract and Respondents shall deliver and hand over the possession of the completed villa along with the amenities within a stipulated period of two years from the date of booking.' However, the Respondents had mischievously left the project abandoned after having received the entire consideration amount from the Complainant/allottee in the year 2016. When the Respondents failed to complete the project and to deliver its possession in accordance with the agreements of construction and they refused to provide the facilities and common amenities as agreed and the project remained an on-going project. The Real Estate (Regulation and Development) Act 2016 and Kerala Real Estate (Regulation and Development) Rules 2018 came into force, vide notification no. S.O.1544(E) dated 26.04.2016 and Notification No. S.O 1216(E) dated 01.05.2017. During the material period, the project has been left incomplete by the Respondents and no occupancy certificate has been issued for the villa project to date. The project including the subject flat allotted to the Complainant has been left incomplete by the Respondents



and thereafter, the Complainant and other allottees, at the request of Respondents, were constrained to spend additional funds in excess of the agreed consideration amounts, to complete the construction of villas, by hiring additional work force, at their costs and expenses. Respondents, in addition to the agreed consideration amount, had further caused the Complainant to pay an extra sum of Rs. 4,54,000/- in the year 2020. The true copy of the relevant payment vouchers issued by the Respondents in respect of the additional payments made by the Complainant is produced.

4. The Complainant had so expended additional funds, on assurance of the Respondents that all the pending works of the project, including the common amenities, shall be commenced in the beginning of the year 2018, as soon as the project is registered under the Kerala Real Estate Regulatory Authority. Nevertheless, the project remains at a stalemate and Respondents did not take any effective measures to register the project under RERA and to complete the project till date. Respondents have succeeded to dupe the Complainant and the other allottees under the pretext of Pandemic and lockdown issues and further delayed the project completion, by giving false promises and assurances. The partially completed flat was subsequently handed over by the Respondents to the Complainant in the year 2020 after executing a conveyance deed in respect of it as Document No 116/2020 of Thrikkakara SRO, agreeing to complete the remaining substantial construction

works including the entire facilities and common areas offered to be done in furtherance thereof. It is significant that in the abovesaid sale deed, the Respondents themselves have shown the subject flat therein as an incomplete apartment. The true copy of the Sale Deed No. 116/2020 of Thrikkakara SRO executed by the Respondents in favour of the Complainant with respect to the subject flat is produced. Although the subject apartment is agreed to have been completed and handed over by the Respondents to the Complainant/Allottee on 30.04.2016, only a partially completed flat was finally handed over to the Complainant on 15.01.2020 by executing the relevant sale deed. The Respondents, as a time bargaining technique, have convened several meetings of allottees including the complainant during the years between 2016 and 2020 and further assured that, the project shall be completed by the beginning of the year 2021. The relevant email correspondences exchanged between the Complainant and the Respondents during the years between 2019 and 2021 are produced. The Respondents have never completed the project including the project flat apartment as per the agreed specifications and presently, the project is abandoned by the Respondents with several unfinished/pending works. In the above circumstance, the Complainant was constrained to approach the Adjudicating Officer vide the Complaint filed as CCP 98/2020 on 14.03.2020 and later withdrawn the same due to formal defects with a liberty to file a fresh complaint.

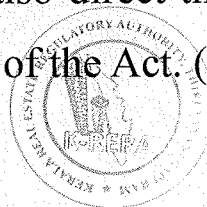


5. It was submitted that the Respondents are willful offenders in the eye of the law and they have no intention to complete the subject flat to the Complainant. The complainant has already performed her part of contractual obligations and paid hefty amounts to the Respondents, in far excess of the agreed consideration amount. There is willful negligence and laches on the part of Respondents to complete the apartment project nor have they taken any effective measures to complete the apartment project and to handover the completed project with amenities to the Complainant/ allottee within the stipulated time. The project has been an ongoing project, on the date when the RERA Act has come into force in the year 2017 and the Respondents have not obtained any Occupancy Certificate in respect of the total villa project, as of date. The 3 blocks of 90 Flat Units forming the part of 55.01 Ares of the project had been alienated by the Respondents 2 and 3 to the various buyers including the Complainant during the years between 2013 till 2020, by executing separate sale deeds and construction agreements thereof and the entire sale consideration have already been collected from all the buyers including the Complainant for the project. After having collected the entire consideration amount from all the allottees, the Respondents/promoters have abandoned the apartment project, without providing any facilities and common amenities, as provided in the agreement. Therefore, 1st



Respondents/promoter/owner as well as the 2nd Respondents/Developer are jointly and severally liable to the Complainant and the other allottees.

6. The reliefs sought by the Complainant is (i) to direct the Respondents to complete all the pending works in the subject flat – F11 allotted to the Complainant and also the Galaxy Pine Court Phase I project within a period of three months, as per the agreements, with all the facilities and common amenities thereto, under the supervision and control of the Authority and to submit a periodical status report about it on every month, (ii) to direct the Respondents to pay an interest @ 14.50% (SBI Benchmark Lending Rate plus 2%) to be computed on the total amount of Rs. 29,53,445/- paid by the Complainant for the delayed completion and handing over of possession of the flat apartment from the promised date of completion and delivery of the flat to the Complainant, till the actual date of completion and handing over the possession of flat and the project with all facilities and amenities, (iii) to direct the Respondents to register the Galaxy Pine Court Phase I under K-RERA as provided under the Act by furnishing sufficient bank guarantee for a sum of Rupees Five crores approximately, estimated to be the cost of pending villa project, already collected by the Respondents from Complainant and other allottees and also direct the Respondents to insure the project under Section 16 of the Act. (iv) to direct the Respondents

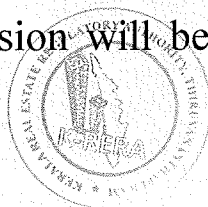


to obtain completion certificate and occupancy certificate in respect of villa project from the local body as provided under the Act, after completing the same in all respects as provided under the Act and Rules and by providing all facilities and amenities, as agreed in the relevant agreements executed by the Respondents. The Complainant has produced the copies of the brochure, agreement for sale, agreement for construction, payment receipts, sale deed, email communication, payment schedule.

7. The Respondents filed objection and submitted that the Complaint is not maintainable either on law or on facts. The Complainant and the 2nd Respondents entered into an agreement on 20-11-2013 whereby the Complainant agreed to purchase an apartment in the project by the name Galaxy Pine Court Block I at Kakkanad. As per the above agreement, the Complainant had agreed to pay a total amount of Rs. 23,92,533/- towards the cost of construction of a residential apartment having a built-up area of 928 sq. ft on the Second floor of the multi-storied building to be numbered as flat No. F-11. The construction cost of Rs. 23,92,533/- was agreed to be paid in 28 monthly installments of Rs. 60,300/- and a sum of Rs. 7,00,000/- was agreed to be paid on the date of the agreement and a further sum of Rs. 4,133/- as the last installment. The monthly installments payable as per the above agreement was not paid by the Complainant in time. This has placed the Respondents in immense trouble. The Complainant did



not make the payment in time as per the agreement dated 20-11-2013. Even in spite of this, these Respondents completed the construction. Construction of Galaxy Pine Court Block-I was completed on 22-05-2020. The Complainant was also issued with Final Bill for Rs. 5,20,730/- on 14-04-2018. The Complainant was given a discount of Rs. 66,730/- also on Final Bill. However, the Complainant paid the entire consideration only on 06-01-2020 and possession was handed over on that date itself. Upon settlement of dues, sale deed was executed on 15-01-2020. Since the Complainant wanted to give the apartment on rent, possession was handed over to the Complainant on 06-01-2020. The Complainant then gave the apartment on rent. It is submitted that since the possession of the apartment is already handed over and the sale deed is also executed, the rights if any which was available to the Complainant is waived by him and the Complainant is precluded from agitating the same. It is further submitted that the Final Bill in respect of the apartment F-11 booked by the Complainant was settled only on 06-01-2020. Clause No. 5 of the Agreement for Construction executed between the Complainant and the Respondents on 20-11-2013 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 30-04-2016 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

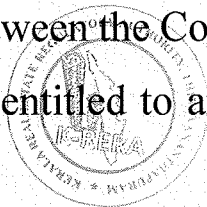


from the date of paying the entire consideration including statutory charges.” Therefore, as per clause 5 of the Agreement for Construction executed by the parties, the date for handing over of possession become due only on 06.07.2020.

8. Admittedly, the Complainant paid the entire consideration including statutory charges as agreed by the parties vide the agreement executed between them, only on 06-01-2020. Even though the due date of handing over was only 06-07-2020, the Respondents could hand over possession to the Complainant on 06-01-2022 immediately upon receiving the balance amounts from the Complainant since the Complainant wanted to get possession of the apartment so as to give it on rent. It is submitted that there are absolutely no willful laches or negligence on the part of the Builder in completing the Construction as agreed. The Complainant did not make the payment as agreed in the agreement. The amounts agreed by the Complainant were paid belatedly after repeated requests from the Respondents. Therefore, the Builder cannot find fault with for the delay in handing over possession of the apartment. It was submitted that since there occurred huge delay on the part of the Purchaser in paying the periodical installments of the cost of construction. The present complaint filed by the Complainant amounts to taking the benefit on his own wrongs which is impermissible under law. The Respondent/ Builder is only an implementing agency as per the agreement. As

per the Construction agreement, the only responsibility of the builder is to proceed with the construction on getting the periodical instalments of the cost of construction payable by the intending purchasers. Since the Complainant who is an intending purchaser failed to pay the amounts as agreed, the builder cannot be find fault with. The above Complaint is not maintainable for the further reason that the construction of the apartment was already completed on 22-05-2020. Due to covid pandemic there occurred delay on the part of Thrikkakara Municipality to issue the physical Occupancy Certificate. The RERA Authority extended the completion period by 1 year which applies to this project also. The allottees who had settled the Final Bill and paid the entire amounts were given possession and are residing in their respective apartments. It is submitted that construction of the apartment was completed on 22-05-2020. The Complainant wanted to get possession of the apartment before getting Occupancy Certificate. The Complainant also wanted a discount on the Final Bill which was allowed by the Respondents. The apartment was handed over to the Complainant immediately upon settling of amounts due to the Respondents.

9. It was further submitted that since the Complainant defaulted in paying the amounts as per the agreement for construction executed between the Complainant and Respondents, the Complainant are not entitled to any of the reliefs claimed by



them in the Complaint. It is also submitted that since the apartment was constructed and completed based on an agreement for construction, the above Act is not having any application in respect of the said apartment booked by the Complainant. As per the agreement executed between the Complainant and M/s Galaxy Homes Pvt. Ltd., the Complainant agreed to pay monthly installments. It is submitted that even though Complainant failed to perform his part of the agreement, the Respondents by raising money from other sources have completed the construction of the apartment. The Respondents shall also file a statement of delay in remitting amounts by the Complainant. The Respondents handed over possession of the apartment well before the 180 days stipulated for handing over possession. Moreover, it is respectfully submitted that Article 20(1) of the Constitution of India stipulates 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. Therefore, the provisions of the above Act are not having any application to the facts and circumstances of the above case and hence the Complaint filed by the applicants is not maintainable before this Hon'ble Authority. It is well settled that a person raising a claim of breach of contract should come with clean hands by performing his part of the agreement. Admittedly, the Complainant violated the terms of the

agreement. Therefore, for the aforesaid reason as well, the above Complaint is unsustainable under law. It is also submitted that there has been huge delay from the part of the Complainant in remitting the installments as well as the balance payments as agreed by him. The interest calculation submitted by the Complainant is not correct. The Complainant has no right to claim interest for the amounts paid by him. The Complainant is liable to pay the builder interest for the delay in remitting installments and the balance amounts. The Respondents prayed to dismiss the Complaint.

10. The project is registered as “Galaxy Pine Court Block-I” before this Authority as per 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 22/08/2022. On perusal of the web page concerned, it is seen that the Respondents have uploaded a partial occupancy certificate dated 15.03.2021 obtained for “Galaxy Pine Court Block-I” and Fire NOC dated 18.02.2021. They have also uploaded Form-6 showing completion of this project. While examining the registration records, it could be seen that the Respondents/Promoters had obtained approval /permit from the local authority for the whole project conceived by them as “Galaxy Pine Court” in 55.01 Ares of land, comprising of 3 residential Blocks/buildings of 15 floors each and also a separate Car parking



block with 2 floors. But the registration as per Section 3 of the Act 2016 has been taken only for Block-I for which the abovementioned 'Partial' Occupancy Certificate was issued by the local authority.

11. Heard both parties of the above complaint in detail. The documents produced from the part of the Complainant are marked as Exbts.A1 to A7. As directed by this Authority during the final stage of hearing, the Respondents have submitted an affidavit with respect to the completion of the project within a time period and it is marked as Exhibit B1. After hearing the counsels on either side and perusing the pleadings and documents placed on record, 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, with all the common amenities and facilities, in accordance with the terms of the agreement or duly completed by the date specified therein or not?
- 2) Whether the Complainant herein are 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?



12. **Points No. 2&3:** The documents produced by the Complainant are marked as Exhibits A1 to A7. **Exhibit A1** is the brochure of the project issued by the Respondents/Promoter. **Exhibit A2** is the agreement for sale dated 20.11.2013 executed between the Complainant and the Respondents No. 2/Promoter company represented by the Respondents No. 1 for sale of 1028/268000 undivided share. **Exhibit A3** is the construction agreement dated 20.11.2013 executed between the Complainant and the 2nd Respondents company represented by its Executive Director for constructing a three-bedroom apartment having a built-up area of 928 sq. ft on the Eleventh Floor in the said project for a construction cost of Rs. 23,92,533/- in which the promised date of completion is shown as 30.04.2016 with 180 days grace period. **Exhibit A4** series is the copies of the receipts of payment made by the Complainant to the Respondents. **Exhibit A5** is the sale deed dated 15/01/2020 executed by the 2nd Respondents represented by the 1st Respondents in favour of the Complainant. **Exhibit A6 series** are the email communications. **Exhibit A7** is the statement of payment made by the Complainant to the Respondents. The Respondents have submitted an affidavit dated 24/10/2023 with respect to completion of the whole project which is marked as **Exhibit B1**.

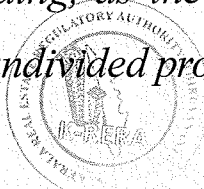


13. The Authority issued a common order dated 11/04/2022 in Complaints No. 218/20 & 173/21 filed by 2 allottees of the same project, directing the Respondents herein to complete and handover the respective apartments of the said Complainants and also to pay the interest for delay in handing over their apartments. When the above complaint came up for initial hearing, it is found that the Respondents/Promoter did not complete the Project so far, as promised as per the terms of agreements executed between the Respondents and the allottees including the Complainant herein. It was also submitted by the parties that though an Association of allottees were formed by the allottees themselves, the common amenities/common area or the documents pertaining to the project were not handed over by the Respondents/Promoters to the Association, as mandated by the law.

14. On perusal of the documents placed on record, it could be seen that the conveyance deed was executed in favour of the Complainant herein on 15.01.2020 itself whereas the Occupancy Certificate has been obtained only on 15.03.2021 for the said Galaxy Pine Court Block-I wherein the Complainant's flat is situated. The Complainant admits that she has taken over possession on 15.01.2020. Then it is disclosed that handing over of the apartment and execution of the conveyance deed took place before obtaining of the Occupancy Certificate for the project.



Before obtaining the Occupancy Certificate for the building, the Promoter is not supposed to hand over possession of apartments to anybody or to execute the sale deed transferring the title over the property. These kind of acts/violation of law are very commonly seen in all the cases pending against the Respondent/Promoter herein. As per the agreement executed with the Complainant herein, which is marked as Exbt.A3, the Respondents/builder has assured that “the construction will be completed on or before 30/04/2016 and possession will be handed over within 180 days from the date of paying the entire consideration”. But here, the possession was handed over on 15.01.2020 according to the Complainant and that too without completing the common amenities offered to her. It was also alleged by the learned counsel for the Complainant that the Respondents have not even taken any initiative to form an Association of allottees and hence the allottees themselves formed one. But the Respondents have not transferred the common area/amenities or the documents related to the project to the Association so far as stipulated under the law. As per Section 11(4)(e) of the Act 2016, it is the duty of the Promoter to enable formation of an Association of allottees within a period of 3 months of the majority of allottees having booked their apartments in the project. Moreover, Section 11(4) (f) stipulates that the Promoter “*shall execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common*



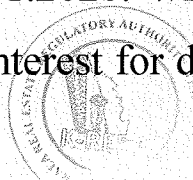
areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act.” Section 17 of the Act specifies that “conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section 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”.

15. It is noticed that as per the terms of Exbt. A3 agreement, the Respondents/Promoter had promised to give the Complainant several amenities such as Car Parking building, drinking water from connection of Kerala water Authority, swimming pool, Health club, Mini Auditorium with indoor game facility, Children’s Play area, Landscaped Garden, Firefighting equipment, automated generator backup for life, Rainwater harvesting, sewage treatment plant etc. in the project. But such



amenities are still distant dreams according to the Complainant. The Respondents/Promoter himself reveals in Exhibit B1 affidavit dated 24/10/2023, that there are more works to be completed in the project. Hence, it can be found that the Respondents herein have gravely failed to give possession of the apartment and complete the project along with common amenities, as promised in the Exbt. A3 agreement, as alleged by the Complainant. While passing judgement in Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., the Hon'ble Supreme Court had done certain important observations on the same aspect as follows: *"The Developers sell dreams to home buyers. Implicit in their representations is that the facilities which will be developed by the developer will provide convenience of living and a certain lifestyle based on the existence of those amenities. Having sold the flats, the developer may find it economically unviable to provide the amenities. The flat purchasers cannot be left in the lurch or, as in the present case, be told that the absence of facilities which were to be provided by the developer is compensated by other amenities which are available in the area. The developer must be held accountable for its representation. A flat purchaser who invests in a flat does so on an assessment of its potential. The amenities which the builder has committed to provide impinge on the quality of life for the families of purchasers and the potential for appreciation in the value of the flat. The representation held out by the developer cannot be dismissed as chaff"*.

16. . At the time of the final hearing, the Complainant kept on arguing that though the works were not completed in full respects as promised to her, she was compelled to take over possession of the apartment on 15.01.2020. While considering the claim of the Complainant for the interest for delay in handing over possession,



we have to revisit the provisions concerned of the Act 2016, in which Section 18(1) of the Act 2016 lays down 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 is apparent that Section 18(1) of the Act, 2016 applies only 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 her.

17. Here, as per the Exbt. A3 agreement, Clause No. 5 states that *“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 30th day of April, 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. A3 agreement is seen executed by the complainant and the Respondents/Promoter Company represented by its Executive Director on 20.11.2013 as per which the promised date of completion and handing over was on 30.04.2016 with a grace period of 180 days. As detailed in the forgoing paragraphs, the Respondents handed over the partially completed flat to the Complainant, after executing a conveyance deed only on 15.01.2020, agreeing to complete the remaining substantial construction works including entire facilities and common areas offered to her. It is significant that in the above said conveyance deed which is marked as Exhibit A5, the Respondents have shown the subject matter flat as an ‘incomplete apartment’. According to the Respondents, they handed over possession to the Complainant on 06-01-2020 immediately upon receiving the balance amounts



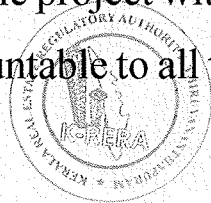
from the Complainant. As it is evident from the records that the Respondents could not hand over possession as per the terms of the agreement, the Complainant herein is eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. We would reproduce herein below, certain remarkable 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:

“ 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. 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 Complainant 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 A4 series, it reveals that the Complainant had made most of the payments before the promised date of completion. With regard to the contentions raised by the Counsel for the Respondents/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 and moreover 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. Exbt B1 affidavit also discloses that the Respondents could not complete and hand over the apartment on time as promised as per the agreement. In view of this, the Respondents have no right to shift the burden on the shoulders of the Complainant by alleging any delay/irregularity in her payments. Nevertheless, the Respondents, being promoters of such a project, cannot run away from their obligations with respect to completion of the whole project with all the amenities and facilities because they are accountable to all the prompt paying allottees also

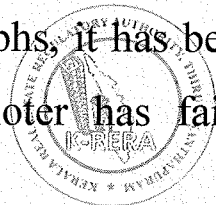


in the project. Therefore, the Respondents cannot escape contending that they are only an “implementing agency and their only responsibility is to proceed with the construction on getting the periodical instalments of the cost of construction payable by the intending purchasers”. Here, the promised date of completion and handing over was 30-04-2016, but possession of the apartment was handed over only on 15-01-2020 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 Respondents/Promoter. However,

19. It was observed 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.”

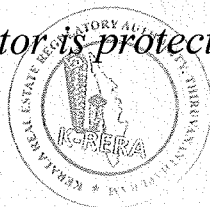
20. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondents/Promoter has failed to complete and hand over



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.

21. 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 has been established beyond doubt that the project has not been completed till date, as promised to the allottees including the Complainant herein. 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 certain 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”.

22. Even though, we had clarified many times through our previous orders, the counsel 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’. 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 Respondents has not pressed on the issue of maintainability as raised through his pleadings.

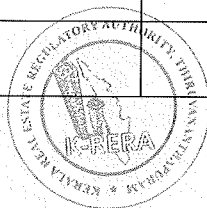
23. The Complainant herein has claimed "interest for the delayed completion and handing over of possession of the apartment from the promised date of completion and delivery of the flat to the Complainant, till the actual date of completion and handing over the possession of flat and the project with all facilities and amenities. But it is found that the Complainant had taken over the apartment on 15.01.2020 and given it to some other party for rent. Hence, the Complainant herein is found eligible to get interest from the promised date of handing over as per the agreement till the date of taking over possession by her. With respect to the completion of the common amenities offered as per the agreements executed with the Complainant and also with regard to other obligations as mandated by this law as Promoter, the Respondents herein cannot repudiate the terms of the contract entered into with the Complainant. Section 18(3) of the Act,2016 deals with the right of the allottee to get compensation "in case the Promoter fails to discharge any other obligations imposed on him under this Act,



Rules or Regulations made thereunder or in accordance with the terms and conditions of the agreement for sale”.

24. In the instant case, the Complainant had remitted Rs. **29,11,500/-** to the Respondents which is supported by Exbt 4 series documents. The said documents reveals that the Complainant has paid an amount of Rs.23,76,500/- before the promised date of completion, i.e. on 30.04.2016. As the Respondents/ Promoter is a defaulter, he is not entitled to get the benefit of the grace period mentioned in the Exhibit A3 agreement. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
08.11.2013	25,000/-
16.11.2013	2,70,000/-
18.11.2013	2,30,000/-
19.11.2013	2,75,000/-
19.12.2013	60,300/-
18.01.2014	60,300/-
01.03.2014	60,300/-
01.04.2014	25,300/-
25.04.2014	60,300/-
22.05.2014	60,300/-
01.07.2014	60,300/-
16.08.2014	60,300/-
06.10.2014	1,20,600/-



03.11.2014	60,300/-
30.12.2014	60,300/-
05.01.2015	60,300/-
21.02.2015	60,300/-
13.03.2015	60,300/-
16.05.2015	61,300/-
13.06.2015	59,300/-
15.07.2015	60,300/-
11.08.2015	60,300/-
11.09.2015	60,300/-
14.10.2015	60,300/-
12.11.2015	60,300/-
20.11.2015	60,300/-
12.12.2015	60,300/-
15.02.2016	60,300/-
21.03.2016	52,000/-
13.04.2016	52,000/-
14.06.2016	52,000/-
12.08.2016	29,000/-
06.01.2020	1,26,347/-
06.01.2020	4,000/-
06.01.2020	3,23,653/-
Total	29,11,500/-



25. 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 Complainant is entitled to get interest for the period from 01/05/2016, the promised date for handing over till 15/01/2020, the date of handing over possession, on Rs. 23,76,500/- 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 15/01/2020, 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 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%].

26. On the basis of the above detailed facts and circumstances of the case and Exhibit B1 Affidavit submitted by the Respondents/Promoter with respect to completion of the pending works, this Authority by invoking Section 37 of the Real

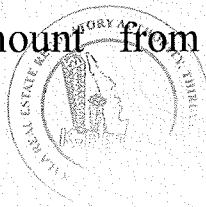


Estate (Regulation & Development) Act, 2016, directs the Respondents in the following manner:

1) The Respondents No. 1&2 /Promoters shall complete the pending works, if any, with respect to the Apartment No. F 11 in 'Galaxy Pine Court' and all the common amenities and facilities in the project as promised to the Complainant as per the Exbt. A3 agreement executed with her, **within 6 months** from the date of receipt of this order. In the event of failure to comply with this direction, this Authority shall be constrained to initiate penal action against the Respondents, as provided under Section 63 of the Real estate (Regulation & Development) Act, 2016.

2) The Respondents No. 1&2 shall pay to the Complainant, simple interest @ 16.85% per annum, (a)for Rs. 23,76,500/-, the amount paid before 30/04/2016 ,the promised date of completion and handing over, for every month from 1/05/2016 till 15/01/2020, the date of handing over possession of apartment to the Complainant and (b) for the amounts paid after 30/04/2016, from the date of each payment as mentioned in the table inserted above in para 24 till 15/01/2020, the date of handing over possession of the apartment to the complainant.

3) 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 are at liberty to recover the amount from the above Respondents and

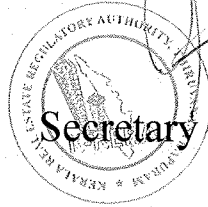


their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

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 Complainant**

- Exhibit A1 : Copy of the brochure
Exhibit A2 : Copy of Agreement for sale
Exhibit A3 : Copy of the Agreement for Construction
Exhibit A4 series : Copy of the payment receipts
Exhibit A5 : Copy of the sale deed
Exhibit A6 : email communications
Exhibit A7 : payment schedule

Exhibits on the side of the Respondents

- Exhibit B1 - Affidavit dated 24/10/2023.