



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaints No. 238/2021

Dated- 1st July, 2023

Present: Sri. M.P Mathews, Member

Complainants

Presymon. P.S,
A J Apartments,
Jyothi Nagar, Konthuruthy
Thevara, Kochi- 682013.

[By Adv. C.V Manuvilson]

Respondents

1. Galaxy Homes Pvt Ltd.,
Galaxy Square,
Rajaji Road Junction,
MG Road, Cochin,
Ernakulam-682035.
2. Palliparambil Abdulrahman Jinas,
Galaxy House,
Sharaful Islam School Lane,
Desabhimani Road,
Edapally South Village,
Kaloor, Ernakulam- 682017.



3. Suniya Jinas,
Galaxy House,
Sharaful Islam School Lane,
Desabhimani Road,
Edapally South Village,
Kaloor, Ernakulam- 682017.

4. Mohammed Nuaim Jinas,
Galaxy House,
Sharaful Islam School Lane,
Desabhimani Road,
Edapally South Village,
Kaloor, Ernakulam- 682017.

5. Nurain Jinas,
Galaxy House,
Sharaful Islam School Lane,
Desabhimani Road,
Edapally South Village,
Kaloor, Ernakulam- 682017.

[By Adv. Manoj Ramaswamy]

The above Complaint came up for final hearing on 29/05/2023. Counsel for the Complainant and the Counsel for the Respondents attended the hearing.

ORDER

1. The Complainant is an Allottee of the project named 'Galaxy Bridgewood' located at Kadavanthara, Ernakulam District, developed by the Respondents 1 & 2. The said project is registered with the Authority under Section 3 of the Real



Estate (Regulation & Development) Act 2016, herein after referred as 'Act 2016'. (Registration No.K-RERA/PRJ/272/2020).

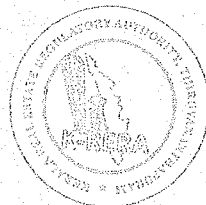
2. The Case of the Complainant is as follows:- The Complainant had seen an advertisement of Project "Galaxy Emerald" (1 BHK for 14.2 lakhs) promoted by the Respondent/ Builder. On contacting the Respondent Company, the Complainant was informed that the said Project is a prestigious one of the 1st Respondent and the Company shall complete the entire works of the Apartment within 3 years and handover the key without fail. Accordingly, on 06-06-2016, an amount of Rs.25,000/- was received as token advance by the Respondent and after discussion with Managing Director of the 1st Respondent Company the final price was fixed at Rs 18,56,182. The Complainant had paid an advance of Rs. 5,00,000/- on 09/06/2016 for floor H4-475. The Complainant further submitted that the loan for further amount at Rs 13,31,000 was agreed to be sanctioned from the Union Bank of India through the staff of Respondent. The sale deed was registered on 30/06/2021 and an amount of Rs.96,190 as registration charge on 27/06/2017 was given to the Respondent. Later loan was sanctioned and registered sale deed for Rs 18,56,182/- which included all other miscellaneous expenses of the apartment.

3. The Complainant further submitted that he had already paid 60% of the contract amount to the Respondent



within one year and two months by believing the promise that the apartment will be completed within 3 years. But the Respondents were lagging the same by saying the reasons one or another. Due to the same, the Complainant asked for refund and the Respondent immediately offered another flat of 2-BHK with 714 sq.ft, Galaxy Bridgewood in Kadavanthra. It was informed by them that the total amount on completion of the said flat for handover would be Rs. 28,14,530/-. Accordingly, the Respondent and Complainant have signed a new agreement on 05-10-2018. The agreement stipulates that the construction will be completed on 31-03-2020 and the keys will be handed over. In the meantime, the old agreement has been missed from Union Bank and the Respondent asked the Complainant to put up an agreement for a new higher price of Rs 6,51,991, that is from Rs 28,14,530 to Rs 34,66,521. The Complainant was constrained to put signature on the new agreement for Rs 34,66,521.

4. It was further submitted by the Complainant that Respondent has committed forgery by removing page numbers 5,6,7 from the old edition and new price has been changed from Rs 28,14,530 to Rs. 34,66,521. Thereafter, on 31-12-2020, the loan amount of Rs.25,53,000/- was sanctioned on the basis of the loan from SBI. On the same day, on 31-12-2020, Rs.20,00,200/- was transferred from SBI Loan account to the Respondent's account. Thereafter on 30-06-2021, an exchange



deed of Rs 34,66,521 was signed between Complainant and Respondent and Complainant handed over the total amount of Rs 33,15,290 and 6 undated cheques of Rs.6,91,550/- to the Respondent. It is also submitted, the Respondents had not kept its promise to complete the work on 31-03-2020 and, on 18th May 2021, the Respondents emailed the Complainant demanding to make final payment of Rs 6,91,500/- which included many hidden charges like water/ electricity, workers welfare fund, building tax etc. to a total amount of Rs 1,90,207/-. It is furthermore submitted that the Respondents have not handed over to the Complainant the keys of completed flat and the Complainant is paying monthly interest for the said loans sanctioned on 17-07-2017 from Union Bank which was closed on 04-09-2020 and loan sanctioned from State Bank on 31-12-2020.

5. The Complainant further submitted that based on the present stage of construction of 'Galaxy Bridgewood' Apartment it is definite that the handing over of the flat to the Complainant will not be happen in the recent periods. The photographs showing the construction status is also produced. The said project is an ongoing one at the time of notification of RERA Rules and its construction is not yet been completed. The Respondents entered into an agreement for sale on 05/10/2018 and thereafter executed a Deed of Exchange on 28/06/2021 vide Exchange Deed No.1518/2021 with the Complainant. The Respondent had collected a total sum of Rs.33,15,290/- from the



Complainant till the date by way of cheating and criminal breach of trust. The Complainant had pledged gold ornaments for an amount of Rs.1,53,883/- for closing the loan taken from the Union Bank, in nexus with the 'Galaxy Emerald Project' of the Respondents. The aforesaid gold loan account is still pending unpaid. Though the Complainant spend Rs.34,69,173/- (Rs.33,15,290/- + Rs.1,53,883/-) for a flat with the Respondents, it is still under construction. The Respondents are liable to pay monthly interest for Rs.34,69,173/- from 31/03/2020 onwards for their failure in handing over the flat as agreed to the Complainant.

6. The reliefs sought by the Complainant is to
1) declare that the Respondents has committed unfair trade practice, deficiency in service, cheating and culpable breach of trust to the Complainant herein by all means by not delivering the finished apartment till date after accepting the amount. 2) To direct the Respondents to deliver the finished apartment as promised without any further delay. 3) To direct the Respondents to pay 10% interest per month for Rs.34,69,173/- (Rs.33,15,290/- + Rs.1,53,883/-) from 31/03/2020 till the date of handing over of the finished flat, as agreed to the Complainant.

7. The Respondents have filed Objection and submitted that the Complainant herein is a person who had booked one bedroom apartment in the Galaxy Emerald Project in



Elamkulam on 08-06-2016 after paying Rs 25,000/- as against the payment schedule for a total amount of Rs 3,74,000/-. The Complainant having heard about another project of this Respondent namely "Galaxy Bridge Wood Apartment Complex" in chilavannur approached Respondent and expressed his desire to purchase a two bedroom flat in that complex instead of one bedroom flat in Galaxy Emerald Project. The Complainant was satisfied about the terms and conditions including cost and payment schedule and agreed to modify the existing agreement. Thereafter at the instance of Complainant, the booking was modified and agreement was executed on 05-10-2018 in respect of a 2 bedroom apartment in Galaxy Bridge wood Apartment complex. The amount payable by the Complainant herein was Rs. 34,66,521/- comprising of Rs. 31,72,667/- towards construction cost of apartment and Rs.2,93,854/- towards sale consideration for the undivided share in the land. The Complainant has till date paid only Rs.31,51,990/- to the Respondent. It is further submitted by Respondent that due to the delay on the part of Complainant in making payments, the construction activity was disrupted and the construction cost had to be revised with passage of time due to the hike in cost of building materials and labour charge. Despite the Complainant has not been paying the total amount due from his side, this Respondent has on 30-06-2021 registered in favour of him the sale deed in respect of the undivided share in the land. The Complainant has also issued a cheque for Rs. 6,91,550/- to this



Respondent towards statutory charges in respect of the apartment. Furthermore, it is clear that Complainant had not paid any amount for the period from 29-08-2017 to 30-12-2020 and there is a delay of 40 months on Complainants part.

8. The Respondents further submitted that the construction of the project was stalled due to cases filed by certain neighbor's as well as the Residents association of the locality alleging false claims regarding the width of the access road. The issue was also raised before the Honble High Court of Kerala by filing writ petition in the year 2015. During this period the Respondents were not able to proceed with the construction. The construction was finally disposed of vide judgment dated 06-12-2017 only. The construction could be restarted only upon the direction of the Honble High Court as per the said judgment. It is also submitted that by the time the judgment was delivered, the building permit was due for renewal and Respondent applied for renewal too. It is also submitted Corporation of Kochi delayed in issuing renewal memo to the building permit. Hence, the Respondents were forced to again approach the Honble High Court for a direction to the Corporation of Kochi. The said issue was finally decided as per the judgment in writ appeal no. 1764 of 2018. The corporation of Kochi finally issued the renewal memo on 21-11-2018 which was valid till 13-01-2021.



9. The Respondents have filed additional objection and submitted that the Complainant had entered into construction agreement with the Respondent agreeing that the Respondent will not be liable for the period of delay or default or failure of performance to the extent that the same results from any acts or orders passed by Government and other authorities, courts, tribunals etc., which are circumstances beyond the reasonable control of the Respondent. It is also submitted that the Complainant was also well aware of the cases due to which the work could not be progressed. Hence it is submitted by the Respondent that there are absolutely no willful laches or negligence on the part of the Respondent/ Builder in completing the construction and handing over the apartment to the Complainant. The Complainant is not entitled for any interest to be paid by these Respondents as the delay in handing over of the finished apartment was not willful.

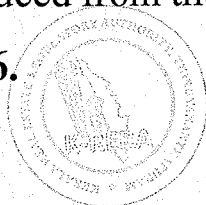
10. The Respondents have filed an affidavit stating that they have started the construction of the project as per the revised building permit issued by the Kochi Municipal Corporation on 01/07/2015. The said permit was renewed on 21/11/2018 and on 16/04/2021. The permit is valid till 13/01/2025. The Respondent has submitted application for the electrical sanction before the KSEB as early on 26/03/2022. The executive Engineer vide communication dated 31/03/2022. The Asst.



Executive Engineer vide communication dated 11/04/2022 has sought for necessary route approval from the Cochin Corporation. The Respondent has obtained Fire NOC on 22/08/2022. Thereafter, the Respondent had obtained the completion certificate and had submitted necessary application before the Corporation on 23/08/2022 for obtaining occupancy certificate and the same is pending before the Secretary for approval. Aggrieved by the non issuance of Occupancy Certificate, the 2nd Respondent has filed WP(C) No.39440/2022 before the Hon'ble High court of Kerala. It was further submitted that more than 30 apartments has been handed over to the assignees. There is a balance amount of Rs.6,91,550/- to be paid by the Complainant. if the Complainant pays the balance amount as agreed by the agreement, the Respondents shall handover the key of the apartment.

11. The Complainant had filed an affidavit stating that he had booked an apartment in the above project developed by the Respondents in May 2016, but still the Respondent has not completed and handed over the promised apartment to him.

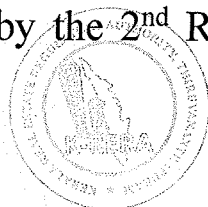
12. The Authority heard the learned counsels and perused the documents available on record. The documents produced from the part of the Complainant is marked as **Exbt.A1 to A14**. The documents produced from the part of the Respondents are marked as **Exbt.B1 to B6**.



13. Ext.A1 to Ext.A4 are the brochure, agreement for construction, agreement for sale and confirmation letter issued by the Respondents with respect to the booking of Flat No.H-4 in the 4th floor having super built up area of 475 sq.ft. in the project named 'Galaxy Emerald' developed by the Respondents. The Complainants have booked flat in the 'Galaxy Emerald' project, but due to non commencement of the construction work in the said project the Respondents offered a flat in their another project named 'Galaxy Bridgewood' located at Kadavanthra.

14. Ext.A5 is the copy of brochure of the project 'Galaxy Bridgewood' issued by the Respondents. Ext.A6 is the copy of agreement for construction dated 05/10/2018 entered into between the Complainant and the 1st Respondent represented by the 2nd Respondent. As per the said agreement the 1st Respondent agreed to construct an apartment No.C-9 on the 9th floor having super built up area of 714 sq.ft. including share in the common areas along with a car parking on the Cellar floor of 'Galaxy Bridgewood Block-I' for a total consideration of Rs.25,20,676/-. It was also stated in the agreement that the 1st Respondent shall construct the apartment and finish the work on or before 31/03/2020.

15. Ext.A7 is the copy of agreement for sale dated 05/10/2018 entered into between the Complainant and the 1st Respondent represented by the 2nd Respondent. As per the said



agreement the 1st Respondent agreed to sell and the Complainant had agreed to purchase 814/109500 of undivided share in the property having a total extent of 51.06 cents for the purpose of constructing an apartment No.C-9 on the 9th floor having super built up area of 714 sq.ft. along with a car parking for a total consideration of Rs.2,93,854/-. **Ext.A8** series are the copies of payment receipts issued by the Respondents and bank statement showing the payments made to the Respondents. **Ext.A9** is the copy of loan arrangement letter issued by the State Bank of India for an amount of Rs.25,53,000/-**Ext.A10** is the copy of Tripartite agreement dated 11/12/2020 executed between the Complainant, 1st Respondent and the State Bank of India for the purpose of availing a loan of Rs.25,00,000/- for the Complainant. **Ext.A11** is the copy of final bill dated 17/05/2021, issued by the Respondents claiming 691550 as balance due against construction cost, water and electricity connection charges, Extra works, Workers Welfare fund Building Tax Flat owners association deposit, advocate fee etc. Total value of services is Rs 31,72,667/- and amount already received is Rs 28,76,024/-. **Ext.A13** series is the copies of photographs showing the status of construction of the project. **Ext.A14** is the copy of exchange deed No.1518/2021 dated 28/06/2021 executed between the Complainant and the 1st Respondent represented by the 2nd Respondent.

16. **Ext.B1** is the copy of judgment in WP (C) No. 38929/2015, **Ext.B2** is the copy of judgment in W.P (C) No.



1764 / 2018. **Ext.B3** is the copy of extended building permit dated 16/04/2021, **Ext.B4** is the copy of communication dated 31/03/2022 issued by the Executive Engineer, **Ext.B5** is the copy of communication dated 11/04/2022 issued by the Asst. Executive Engineer, **B6** is the copy of Certificate issued by the Department of Fire & Rescue Services.

17. The Authority vide notice dated 02/08/2022 directed the Secretary, Municipal Corporation of Kochi, to report the status of the building permit issued to the Respondents for the construction of the project 'Galaxy Bridgewood' within 2 weeks from the date of receipt of the notice. In compliance of the same the Secretary has filed a report dated 03/11/2022 stating that Occupancy Certificate was not issued to the said project as Parking required as per RTP's layout approval was not provided, and NOC from Pollution Control Board, valid Airport NOC, Naval NOC are not produced. Recreation space and solar lighting system was not specifically marked in the plans and the width of the access road is only 4.80m instead of 5.00m. It was also reported that, the Corporation had already informed the parties concerned to rectify the above deficiencies, for the issuance of the Occupancy certificate. The said report is marked as **Ext.X1**.

18. It is clear from Ext.X1 and information on the website maintained by the Authority, that the Occupancy certificate was not issued to the said project. The Respondents in



their counter statement, submitted that they have obtained Fire NOC only on 22/08/2022. The Respondents also admitted that the construction of the project was stalled due to cases filed by certain neighbor's as well as the Residents association of the locality alleging false claims regarding the width of the access road. The issue was also raised before the Hon'ble High Court of Kerala by filing writ petition in the year 2015. During this period the Respondents were not able to proceed with the construction. Hence the Complainant is eligible to get interest for every month of delay for the amount paid by the Complainant from the promised date of completion as per the agreement till the date of actual handing over of possession as per Section 18 of the Act, 2016.

19. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, 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 an 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". Here, in this case the Allottee is entitled to claim interest for delay in handing over possession of the apartment as the promoter failed to handover possession of the apartment within the time stipulated in the agreement.

20. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below *"The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee. 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". On the basis of the aforementioned fact and findings, it is found that the Respondent/Promoter has failed to complete and hand over possession of the apartment to the Complainant/allottee as promised and therefore the Complainant/allottee is entitled to claim interest for the delay in handing over possession of the apartment as provided under the Act, 2016.

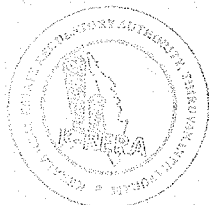
21. As per Ext.A8 series, the payment receipts and the bank statement produced, the Complainant had paid an amount of Rs.33,15,290/- to the Respondents. The details of the payment made to the respondents is as follows:-

<u>Date</u>		<u>Amount</u>
06/06/2016		Rs.25,000.00
09/06/2016		Rs.5,00,000.00
27/06/2017	Registration etc	Rs.96,190.00
25/08/2017	Loan disbursement	Rs.5,30,600.00
31/12/2020		Rs.20,00,200.00
07/04/2021		Rs.1,63,300.00
Total		Rs.33,15,290.00



22. It is seen from the above statement the Complainant had paid total amount of Rs.33,15,290/- to the Respondents. The Complainant is eligible to get interest for every month of delay on Rs.11,51,790/- which is the amount paid by the Complainant to the Respondents before the promised date of completion of 31/03/2020. Rule 18(2) of the Kerala Real Estate (Regulation & Development) Rules 2018 stipulates that *"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 of such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement of construction or sale"*. Since the Respondents failed to complete the project and handover possession of the apartment as per the agreement the Complainant is eligible to get interest for the delay from the Respondents as per section 18 of the Act.

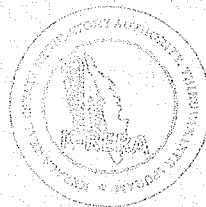
23. Hence, the Complainant herein is entitled to get interest for the delay on Rs.11,51,790/- which is the amount paid by the Complainant to the Respondents before the promised date of completion of 31/03/2020 and the Respondents are liable to pay interest to the complainant according to Section 18 of the Act, 2016 for the period from 31/03/2020 till the date of handing over possession of the apartment. As per Order No.K-RERA/T3/102/2020 dated 15/05/2020 and 19/07/2021 the



Authority had taken cognizance of the adverse effects of Covid-19 Pandemic and the lock downs on the real estate projects in the state and resolved to treat this an event of force majeure as per the provisions of the Act, 2016. 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 1 year, and hence the delay interest is payable from 25/03/2021.

24. 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. The claim of the Complainant is for 10% per month interest, but is entitled to get only 16.85% simple interest per annum on the amount paid, from 25/03/2021 till the date of handing over of possession. As per the master data available on the website of the Ministry of Corporate Affairs, the 5th Respondent is not a director or a party to the agreements.

25. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issue the following directions: -



1. The Respondents 1 to 4 shall complete the entire works of the project "Galaxy Bridgewood" with all the mandatory sanctions/approvals and common amenities/facilities in accordance with the terms of the agreement for construction executed with Complainant, and handover the possession of the apartment to the Complainant **within three months** from the date of receipt of this order, failing which the Respondents shall be liable to pay penalty as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.

2. The Respondents shall pay the Complainant interest for every month of delay from 25/03/2021 till the date of completion and handing over possession of the apartment as per the agreement under section 18 of the Act, 2016 on **Rs.11,51,790/-** which is the amount paid by the Complainant to the Respondents before the promised date of completion of 31/03/2020/- @ **16.85%** simple interest per annum.

3. If the Respondents fail to pay the interest for every month of delay up to 30/04/2023 on Rs.11,51,790/- as directed above within a period of 60 days from the date of receipt of this order, the Complainant is at liberty to recover the amount from the above Respondents 1 to 4 and their assets by executing this order in accordance with the Real Estate (Regulation & Development) Act and Rules.




4. If the Respondents fail to pay the balance amount up to the date of completion and handing over of the apartment as per the agreement, the Complainant is at liberty to recover the amount from the Respondents 1 to 4 and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-
Sri M.P Mathews
Member

True Copy/Forwarded By/Order




Secretary (legal)

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

Ext.A1- Copy of Brochure of 'Galaxy Emerald'.

Ext.A2- Copy of Construction agreement of Galaxy Emerald dated 08/06/2016.

Ext.A3- Copy of agreement for sale of 'Galaxy Emerald' dated 08/06/2016 .

Ext.A4- Copy of confirmation letter dated 16/06/2016 of 'Galaxy Emerald'.

Ext.A5- Copy of Brochure of 'Galaxy Bridgewood'.

Ext.A6- Copy of construction agreement of 'Galaxy Bridgewood' dated 05/10/2018.

Ext.A7-Copy of agreement for sale of 'Galaxy Bridgewood' dated 05/10/2018.

Ext.A8 Series - Copy of payment receipts & bank statement.

Ext.A9- Copy of loan arrangement letter issued by SBI for an amount of Rs.25,53,000/-.

Ext.A10- Copy of Tripartite agreement dated 11/12/2020.

Ext.A11- Copy of final bill dated 17/05/2021.

Ext.A12- Copy of Email communications from Galaxy Homes Pvt. Ltd.

Ext.A13 series - Copy of Photographs.

Ext.A14- Copy of Exchange deed No.1518/2021.

Exhibits on the side of the Respondents

Ext.B1- Copy of judgment in WP (C) No. 38929/2015.

Ext.B2-Copy of judgment in W.A No.1764/ 2018.

Ext.B3-Copy of extended building permit dated 16/04/2021.

Ext.B4-Copy of communication dated 31/03/2022 issued by the Executive Engineer, Electrical Sub.Div. KSEB.

Ext.B5-Copy of Copy of communication dated 11/04/2022 issued by the Asst. Executive Engineer Electrical Sec., KSEB.

Ext.B6-Copy of Certificate dated 22/08/2022 issued by Department of Fire & Rescue Services.

Ext.X1- Copy of reply dated 03/11/2022 submitted by the Secretary, Kochi Municipal Corporation.