



## KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint Nos.276/2021**

Present: Smt. Preetha P. Menon, Member.

Dated 1<sup>st</sup> day of October 2024

### **Complainant**

Soundammal,  
Santhi Bhavan,  
T.B Road,  
Changanassery,  
Kottayam-686 101.

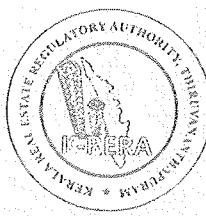
(By Adv. Rajasekharan)

### **Respondents**

1. M/s Galaxy Homes Pvt. Ltd,  
Galaxy Square, 6<sup>th</sup> Floor,  
Rajaji Road junction, M.G Road,  
Ernakulam- 680 035.  
(Represented by Managing Director)

2. P.A Jinas  
Managing Director,  
M/s Galaxy Homes Pvt. Ltd,  
Galaxy House, Deshabhimani Road,  
Ernakulam-682017.

(By Adv.Thomas John)

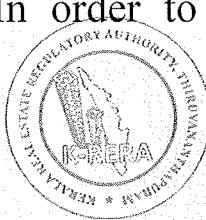


The above Complaint came up for final hearing on 31/07/2024. The Counsel for the Complainant Adv. Rajasekharan and Counsel for the Respondents Adv. Thomas John attended the virtual hearing.

### **ORDER**

1. The Complainant is an allottee of the project named 'Galaxy Cloudspace' located at Kakkanad, Ernakulam District developed by the Respondents. The said project is registered with the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred as 'Act, 2016') with Registration No. K-RERA/PRJ/122/2021.

2. The factual matrix of the Complaint are as follows:- Being attracted with the offers given by the marketing executives on behalf of the Respondent and on satisfying with the details stated in the brochure given by Respondent and on believing the assurances made by the 2<sup>nd</sup> Respondent, the Complainant decided to purchase 1221/175500 undivided share in all the lands having an extent of 36.36 Ares together with the right to construct a three bed room Apartment No. A-6 on the 6<sup>th</sup> floor of GALAXY CLOUD SPACE in Block-1 together with the right to construct a car parking area on the cellar floor size 4m x 2.4m marked as A-6 together with right of way over the said private road from the Respondent. In order to achieve the objective, this



Complainant made booking of the same on remitting Rs.25,000/- on 19.07.2016 though her son Balusamy M. Thereafter on the basis of the assurances given by the Respondent, this Complainant entered into an Agreement on 28/07/2016 for purchase of above-mentioned undivided share with the right to construct the apartment with the Respondent along with the right to construct a car park for a total sale consideration of Rs.1,36,752/-. As per the recital in the agreement, consideration of the undivided share should have been paid on or before 31.03.2017. As per the conditions stipulated in the agreement for sale, this Complainant entered into an agreement for construction with the Respondents on 28.07.2016 and the construction cost was fixed at Rs.34,77,968/- which is inclusive of Service Tax and VAT. It was further covenanted in the agreement for sale that, the construction will be on phased manner the project will be completed on or before 31.03.2017 and possession will be handed over within 180 days from the date of paying the entire sale consideration. Thus, the Complainant remitted the entire amount as stated in the agreement from 25/07/2016 to 05/04/2017.

3. The Complainant further submitted that in compliance of the recitals in the agreement, the Complainant made all payments in time. The payment schedule given in the construction agreement is inclusive of service tax of Rs.1,84,671/- and VAT of Rs.2,15,449/-. Moreover, it was specifically



covenanted in clause 19 of the agreement for construction that, 'if the terms of contract are not carried out by the First Party – (who is the Respondent herein) on account of the default of the First Party without any default on the part of the second party (who is the Complainant herein) then the first party shall be liable to pay all the amounts received from the second party together with penalty @ 10% per annum from the respective dates of payment.'

The Complainant, upon seeing no progress from the Respondent even after expiry of the period stipulated in the agreement, had informed the Respondent expressing grief on several times. It is evident from the receipts that this Complainant paid the entire amount in time as instructed by the Respondent. But the Respondent has not handed over possession of the Apartment till date. As per the terms of the agreement, the period stipulated for completion of construction was 31.03.2017 and the date fixed for giving possession was 30.09.2017. It is learnt that the construction has been completed by 09.02.2021. Without completing the construction, the Respondent issued a final bill to the effect that the Complainant has to pay additional amount of Rs.2,50,307/- In contravention of the terms of the agreement, the Respondent failed to complete construction within the stipulated time limit which caused grave difficulties to the Complainant. Moreover that, the collection of Rs.1,84,671 being the Service Tax and Rs.2,15,449/- being VAT is not at all acceptable as 1% only ought to have been collected as GST from the Complainant. Even though Complainant



made several requests the Respondent didn't heed any of the same and merely gave lame excuses for the delay in giving possession of the property. Now without making any productive progress and without fulfilling the sale deed as promised, Respondent upon colluding with each other cheating this Complainant and is utilizing the fund for their own use. So, the Complainant is entitled to get interest for the amount @18% from the date of each payment till 09.02.2021 – the date of completion for the non-delivery of possession. The Respondent has not delivered possession of the completed apartment till date and claim of additional amount is not at all acceptable. This Complainant is entitled to get possession of the completed apartment at the earliest along with the interest for the amount as stated above. But the Respondent is not considering any of the requests made by the Complainant. Hence this Complaint.

4. The reliefs sought by the Complainant are as follows: - (i) order allowing the Complainant to recover Rs.28,36,246/- being 18% interest for the payments made on the respective dates till 09.02.2021 and future interest @18% for the above payments till delivery of possession of the apartment from the Respondents and their assets. (ii) Restraining the Respondent from dealing with the allotted property in any manner. (iii) to recover the entire cost of the Complaint from the Respondent and their assets and (iv) Pass such other reliefs which this Hon'ble court deem fit in the interest of justice. The Complainant produced



copies of agreement for sale dated 28.07.2016, agreement for construction dated 28.07.2016 and copies of payment receipts issued by the Respondents.

5. The Respondents have filed preliminary objection statement challenging the maintainability of the above Complaint stating that the Kerala Real Estate Regulatory Authority as envisaged under the 2016 Act was constituted in the state of Kerala only on 05.10.2019 vide G.O.(P) No. 65/2019/LSGD. The agreement for sale of undivided share of property and the agreement for construction of the apartment were executed by the Complainant with the Respondent on 25.10.2014 which is much prior to the coming into force of the RERA Act 2016. Hence the Complaint is not maintainable. The Act, 2016 was not even enacted when the terms of agreement between the Complainant and the Respondent were entered into. Retrospective application of the penal provisions of the Real Estate (Regulation and Development) Act, 2016 violates the rights granted to the Respondents under Article 14, 19(1)(g) and 20 of the Constitution of India. Hence the Complaint filed by the Complainant is not maintainable. Article 20 of the constitution of India protects against conviction of offences. Article 20 is extracted below for reference: “20. Protection in respect of conviction for offences: (i) *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. (ii) No person shall be prosecuted and punished for the same offence more than once (iii) No person accused of any offence shall be compelled to be a witness against himself.* The reliefs sought for by the Complainant in the said Complaint are in the nature of a penalty which cannot be granted in view of the constitutional protection as above. The penal provision as above could be invoked only for agreements executed after the commencement of RERA Act. Retrospective/ retroactive application of provisions of the RERA Act are excessive, arbitrary and contrary to Article 14 and Article 19(1)(g) of the constitution. Giving retrospective/retroactive effect to Section 18 of the Act, would seriously prejudice the business of the Respondents and affects the rights of the Respondents to carry out trade and business. The Respondent is being forced to bear the brunt for the default on part of the Complainant and will be compelled to pay penal interest for delays which are solely attributable to the Complainant as the Act does not make a distinction between default on account of reasons attributable to the promoter and default on account of reasons attributable to the allottee. The Complainant has approached the Authority with unclean hands. The Complainant was issued with the final bill of Rs.3,12,837/- which includes the extra work amount, water and electricity connection charges and taxes and statutory charges in respect of



Apartment No. A-6 in Galaxy Cloud space project. Without settling the agreed amounts, the Complainant has filed Complaint before the Hon'ble Authority. The intention of the Complainant is to obtain possession of the apartment without paying the entire consideration and statutory charges due to the Respondent. The Complaint is not maintainable since the Complainant failed to pay the balance amounts due to the Respondent as per the terms of the agreement for construction entered into between the Complainant and the Respondent.

6. The Respondents further submitted that the Complaint is not maintainable for the further reason that the construction of the apartment has been completed and Occupancy Certificate has been issued by Thrikkakkara Municipality much before the date of completion, as stipulated in the Certificate of Registration issued to the Respondents. The Authority ought to find that since the Occupancy Certificate in respect of the project has been issued, the project has ceased to be a real estate project within the meaning of Section 2(zn) of the Act and the Complainant has ceased to be an allottee within the meaning of Section 2(d) of the above Act. Since the Complainant ceased to be an allottee and the project ceased to be a real estate project, the Hon'ble Authority ought to have found that it is not having jurisdiction to entertain the above Complaint or to grant the reliefs sought for in the above Complaint.



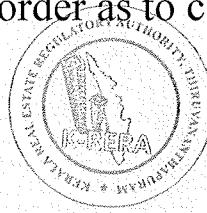
7. Thereafter the Respondents have submitted final statement of objection on 24/03/2022 via email stating that the construction of the project was completed on 22-05-2020 and application for Occupancy Certificate was submitted on 22-05-2020. Due to the spread of Covid pandemic, there occurred delay in processing the application. It is submitted that as per the second proviso to Rule 22(3) the Kerala Municipal Building Rules, 1999, if the Occupancy Certificate is not issued by the Secretary within 15 days from the date of application made by the Builder/Owner, it is deemed that such Occupancy Certificate has been duly issued to him. Since there was no communication from the Municipality, as per the second proviso to Rule 22(3) of the Kerala Municipal Building Rules, 1999, the Respondent has been granted a deemed Occupancy Certificate after the expiry of 15 days from the 22-05-2020, ie. from 05- 06-2020. The Complainant was issued with final Bill for Rs.2,97,837/- on 01-02-2018 which includes the cost of extra work as required by the complainant, the water and electricity installation charges, statutory taxes etc. and several reminders were sent to the complainant to remit the balance amounts due from the complainant. However, the complainant did not clear the dues. As per the terms of the agreement for construction, the possession of the apartment is to be handed over within 180 days from the date of paying the entire consideration including statutory charges. The complainant failed to pay the entire consideration and is now claiming interest for her own



wrong doing which is not permissible and the complaint is liable to be dismissed as not maintainable. The complainant also did not come forward to execute the sale deed in respect of the said apartment. Hence the booking of the complainant stands cancelled as the complainant failed to take possession of the apartment even after repeated reminders. The Respondents have not produced any documents.

8. Heard both parties of the above complaint in detail and examined the documents placed on record. The documents produced from the part of the Complainant are marked as Exbts.A1 to A3. After hearing the counsels on either side and perusing the pleadings and documents submitted by the parties with respect to the claim of the Complainant for interest for delay, the following points are being considered and decided herewith:-

- 1) Whether the Respondents/Promoters failed to complete and hand over possession of the apartment to Complainant in accordance with the terms of the agreement for sale?
- 2) Whether the Complainant herein is entitled to get interest for delay in completion and handing over possession as provided under Section 18(1) of the Act, 2016 or not?
- 3) What order as to costs?



9. **Point No.1 & 2:** - As mentioned above, the project in question is a registered project before this Authority under Section 3 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as the “Act 2016”] in which the proposed date of completion is shown as 04/06/2022. On perusal of the web page concerned, the Respondents have uploaded the occupancy certificate dated 27/01/2021 and the final fire NOC dated 23/09/2020 obtained for the project in question but they have neither uploaded Form-6 showing completion of the project nor taken any steps for extension of registration as provided under the provisions of the Act 2016 despite notices from the Authority.

10. When the above case was posted for hearing on 25/07/2022, 02/12/2022, 31/03/2023 & 03/10/2023, the Complainant was continuously absent and on 06/10/2023 a notice was issued to her informing that in default of her appearance on the next posting date, the above Complaint will be dismissed. But during the next two postings on 16/01/2024 and 08/04/2024 also, the Complainant failed to appear. Consequently, the complaint was dismissed by the Authority vide order dated 08/04/2024 for default. Thereafter, the Complainant had filed Restoration Petition No.64/2024 which was allowed on 31/07/2024.



11. The documents produced by the Complainant are marked as Exhibits A1 to A3. **Exhibit A1** is copy of the agreement for sale dated 28.07.2016 executed between the Complainant and the Respondent company represented by the 2<sup>nd</sup> Respondent. As per the said agreement the Respondents agreed to sell and the Complainant agreed to purchase 1221/17500 undivided share in the said property having 89.871 cents together with right to construct an apartment and a car parking area for a sale consideration of Rs.1,36,752/- . **Exhibit A2** is the copy of agreement for construction dated 28.07.2016 executed between the Complainant and the Respondent company represented by its Managing Director, the 2<sup>nd</sup> Respondent for constructing a three-bedroom apartment having a built-up area of 1121 sq. ft on the 6<sup>th</sup> Floor in the said project for a construction cost of Rs.34,77,968/- in which the promised date of completion is shown as 31.03.2017 and possession shall be handed over to the Complainant within 180 days from the date of paying the entire consideration including statutory charges. **Exhibit A3** series are copies of the receipts of payment made by the Complainant to the Respondents. The Respondents have submitted statement of objection through email. They have not produced any documents even those mentioned in their statement of objection.

12. During the hearing on 24/03/2022 the counsel for the Complainant submitted that the Complainant was ready to



pay the due amount at any time if the Respondent could offer possession of the apartment after completion as promised and she is ready to pay the final bill including the additional charges claimed by the Respondents even now, if she gets possession of the flat. Then, the Authority vide interim order dated 24/03/2022 issued directions as follows: - *(1) The Respondents shall handover possession of Apartment to the Complainant **within one week** from the date of payment of final bill, by the Complainant. (2) The Respondents shall execute Sale deed in favour of the Complainant **within one month**, on payment of required charges for registration by the Complainant.* During the hearing on 23/05/2022, the counsel for both the sides submitted that the Respondents have complied with the interim order dated 24/06/2022 and key has been handed over to the Complainant and sale deed has been executed in favour of the Complainant. The Complainant also filed a statement confirming the compliance of above said order by the Respondents on 04/04/2022.

13. According to Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as “the Act, 2016”], *“If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw*



*from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act-Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”* It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. Moreover, Section 18 (1) of the Act, 2016 clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. Here, the Complainant has opted to continue with the project and claim interest for delay in handing over possession of the apartment to her.

14. As per the Exbt. A2 agreement, Clause No. 4 is as follows: “*The First party shall construct the apartment as per the specifications attached hereto and try the utmost possible to finish the work on or before 31.03.2017 provided the entire amount due to the First Party from the Second Party including statutory*



*charges has been paid by the Second Party. Possession will be handed over within 180 days from the date of paying the entire consideration including statutory charges.” Exhibit. A2 agreement is seen executed by the Complainant and the Promoter Company, the Respondent No. 1herein represented by its Managing Director, Respondent No.2, on 28.07.2016 as per which the promised date of completion was on 31.03.2017. According to the learned counsel appeared for the Complainant, the Respondents handed over the key to the Complainant and possession of the apartment only after issuance of the interim Order dated 24/03/2022. It is admitted by the Respondents that the Occupancy Certificate has been obtained for the project only on 27-01-2021.*

15. Regarding the issue of maintainability raised by the Respondents/Promoters and argument that the Act 2016 has not retrospective effect, it is pertinent to note that the projects that are not completed and have not received the Occupancy Certificate on the date of commencement of the Act come under the fold of the Real Estate (Regulation & Development) Act 2016 and in this case, it is evident that the project has not been completed till date, as promised to the Complainant. In the judgement passed in M/s New Tech Promoters & Developers Pvt Ltd. Vs State of U P & Others, the Hon’ble Supreme Court of India confirmed that the Act 2016 is “retroactive” in nature and made observations in this regard as follows: “*the clear and unambiguous language of the statute is*



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

16. Even though, we had clarified many times through our previous orders with respect to the projects promoted by the Respondents herein, the counsel for the Respondents keeps on raising the very same contention in all the reply statements that 'the relief sought for by the Complainants 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 counsel for the Respondents have not pressed on the issue of maintainability as raised through their pleadings.

17. Here, the learned counsel for the Respondents mainly raised arguments that the completion date was subject to the performance on 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 A3 series, it reveals that the Complainant had made most of the payments before the handing over date. With regard to the contentions raised by the Counsel for the Respondents/Promoters that there was failure from the part of the Complainant in paying instalments on time, no documents/communications produced from the side of the Respondents to substantiate this contention because the Respondents could have sent notice of cancellation of booking to the Complainant at the time of the alleged delay in making payments, by invoking provisions under Section 19(5) and (6) of the Act, 2016 and under Clause 9.3 of 'Annexure 'A' Agreement for sale' under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018. Here, the occupancy certificate dated 27-01-2021 uploaded on the website of the Authority reveals that the construction according to the approved plan was completed only on 27-05-2020. In view of this, the Respondents have no right to blame the Complainant for any delay/irregularity in payments. Here, the promised date of completion was 31-03-2017. But possession of the apartment was handed over only on 04/04/2022. It can be seen that the delay in final payments occurred due to the non-completion of work as promised by the Respondent/Promoter. As stated above, the occupancy certificate uploaded in the website shows that the Respondents could not complete the project as promised and apart from that the said registration web page of the



project in question clearly reveals that the Project is not completed even now as the Respondent/Promoter has not yet uploaded Form-6 Certificate showing completion of the project.

18. Under Section 11(4) of the Act, 2016, the Respondent/Promoter is responsible to obtain the occupancy certificate, from the Competent Authorities and under Section 17 of the Act, 2016 after which, he is duty bound to hand over physical possession to the allottees. Section 17 of the Act, 2016 stipulates that “*conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate. After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand- over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate*”.

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.”* Even if the Complainant/allottee had made delay in any payment of instalments, the Promoter has undoubtedly made use of the investments of the Complainant’s hard-earned money for the past years and failed to complete the work and hand over possession as per the terms of the agreement.

19. It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. As per Exbt.A2 the Respondents should have Completed the apartment on 31.03.2017, and the Complainant could take over possession within 180 days. Since the Respondents could not hand over possession as per the terms of the agreement, the Complainant is eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. Proviso to sec 18(1) provides that “where the allottee



does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” It will not be out of place to mention here, 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 as follows: “*If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*”.

20. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondents/Promoters have 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 the proviso to Section



18(1) of the Act 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainant.

21. In the instant case, the Complainant had remitted **Rs.35,88,968/-** to the Respondents and the Complainant prayed for interest for the months of delay. As per Exbt.A3 series and the revised statement submitted by the Complainant, the respective dates of payments and amounts in total are as follows:

<u>Date</u>	<u>Amount</u>
25/07/2016	Rs. 20,00,000/-
31/08/2016	Rs.2,26,000/-
29/09/2016	Rs.2,26,000/-
31/10/2016	Rs.2,26,000/-
30/11/2016	Rs.2,26,000/-
24/12/2016	Rs.2,26,000/-
30/01/2017	Rs.2,26,000/-
28/02/2017	Rs.2,26,000/-
05/04/2017	Rs.6.968/-
<b>Total</b>	<b>Rs.35,88,968/-</b>

22. 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 herein is entitled to get interest for the period from 31/03/2017, the promised date for handing over till 04/04/2022, the date of handing over possession, on Rs.35,82,000/- 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 04/04/2022. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI PLR rate is 15.15% with effect from 15/06/2024.

23. On the basis of the facts and circumstances of the case, as detailed above and by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, we hereby direct as follows:

- 1) The Respondents No. 1&2 shall pay to the Complainant, simple interest @ 17.15% per annum, (a) for Rs.35,82,000/- the amount paid before 31/03/2017 (the promised date of completion), for every month from 01/04/2017 till 04/04/2022 (date of handing over possession) and (b) for the amounts paid after 31/03/2017 (the promised date of completion), for every month from the date of each payment till 04/04/2022.



2) If the Respondents No. 1 & 2 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 is 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.

Both parties shall bear their respective costs.

Sd/-

Smt. Preetha P Menon  
Member

True Copy/Forwarded By/Order



Secretary (legal)

## EXHIBITS

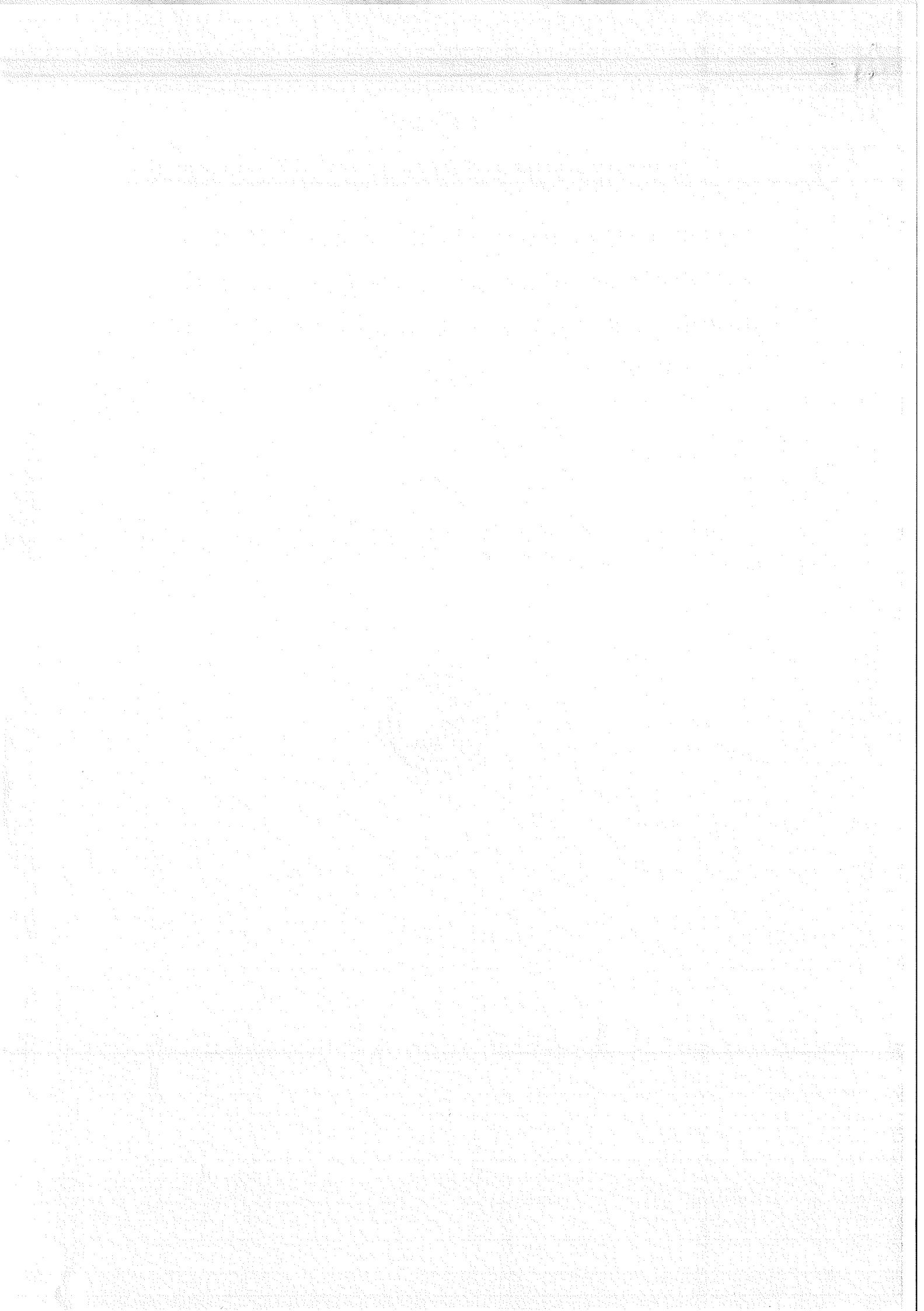
### Documents produced from the side of Complainant

**Exhibit A1:** Copy of agreement for sale dated 28.07.2016.

**Exhibit A2:** Copy of agreement for construction dated 28.07.2016.

**Exhibit A3 Series:** Copies of payment receipts issued by the Respondents.







**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

Present: Smt. Preetha P Menon, Member

**EP No. 79/2024  
in  
Complaint No. 276/2022**

**Dated 20<sup>th</sup> March, 2025**

**Decree Holder/Complainant**

Soundammal,  
Santhi Bhavan,  
T.B Road,  
Changanassery,  
Kottayam-686 101.

(By Adv. Rajasekharan)

**Judgement Debtors/Respondents**

1. M/s Galaxy Homes Pvt Ltd,  
Galaxy Square,  
Rajaji Road Junction, M G Road,  
Karithala Desom, Ernakulam, Pin - 682035
2. P A Jinas, The Proprietor,  
Galaxy Developers, Galaxy Square,



Rajaji Road Junction, M G Road,  
Karithala Desom, Ernakulam, Pin – 682035

The above Execution Petition came up for hearing on 20/03/2025 for which the counsel of Decree Holder attended the hearing. The Judgement Debtors did not attend the hearing or represented through any counsel.

### **ORDER**

1) The Decree Holder is the Complainant in Complaint No. 276/2021 in which the Authority issued an order dated 01/10/2024 in the said Complaint and directed as follows: “The Respondents No. 1&2 shall pay to the Complainant, simple interest @ 17.15% per annum, (a)for Rs.35,82,000/- the amount paid before 31/03/2017 (the promised date of completion), for every month from 01/04/2017 till 04/04/2022 (date of handing over possession) and (b) for the amounts paid after 31/03/2017 (the promised date of completion), for every month from the date of each payment till 04/04/2022. It was also stipulated that if the Respondents No. 1 & 2 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 is 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.



2) When the above Execution Petition came up for hearing, the counsel for the Decree Holder only attended and submitted that the order dated 01/10/2024 issued by this Authority has not been complied with so far by the Judgement Debtor and has prayed to take appropriate action under sec 40 & 63 of the Act against Judgement Debtor for recovery of amount from their assets. The Judgement Debtor has not preferred any appeal against the said order till now. It was also submitted by the counsel that the Respondent/Promoter is trying to alienate the unsold flats. Hence, it was decided by this Authority to restrain the Respondent/Promoter from doing the same, till recovery of the amount from them.

3) In view of the order dated 01/10/2024, the Authority holds that the Decree Holder is entitled to recover simple interest @ 17.15% per annum, (a)for Rs.35,82,000/- the amount paid before 31/03/2017 (the promised date of completion), for every month from 01/04/2017 till 04/04/2022 (date of handing over possession) and (b) for the amounts paid after 31/03/2017 (the promised date of completion), for every month from the date of each payment till 04/04/2022. As provided under section 40 of the Real Estate (Regulation & Development) Act, 2016, read with Rule 26 of the Kerala Real Estate (Regulation & Development) Rules, 2018, the recovery of all amounts including interests, penalty and compensation shall be carried out as per the provisions of the Revenue Recovery Act, 1968. According to Section 40 (1) of the



Act, 2016 “*If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.* Rule 26 of Rules 2018 specifies that “*Subject to the provisions of sub-section (1) of section 40, the recovery of the amounts due as arrears of land revenue shall be carried out as per the provisions of Revenue Recovery Act 1968 (Act 15 of 1968)*”.

4) Hence, it is hereby ordered to proceed as provided under the aforementioned provisions of the Act 2016. The Secretary (Legal) of the Authority shall issue Revenue Recovery Requisition to the District Collector, Ernakulam, against the property of the Judgement Debtor/Respondent, details of which are furnished by the Decree Holder, along with the above Petition.

5) The Respondents/Promoters are hereby restrained from alienating any unsold flats in the Project in question “Galaxy- Cloud Space” located at Kakkanad, Ernakulam till the recovery of the amount which is liable to be paid by them, as per the order dated 01/10/2024 passed by this Authority. A copy of this order shall be furnished urgently to the sub-registrar concerned and the copy of this order shall be exhibited on the



registration web page concerned of the project in question in the web portal of the Authority.

Sd/-  
Preetha P Menon  
Member

/True Copy/Forwarded By/Order/

  
  
Secretary (Legal)

