



## KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint No.281/2022**

Present: Sri. M.P Mathews, Member

Dated 15<sup>th</sup> February, 2023.

### Complainant

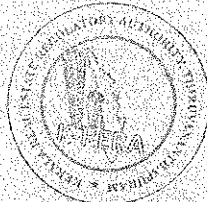
1. Harikrishnan.S,  
Thazhathel House,  
Poochara, Devarupara P.O,  
Idukki – 685588.
2. Preetha J  
Thazhathel House,  
Poochara, Devarupara P.O,  
Idukki – 685588.

(By Adv.B.Rajasekharan Nair)

### Respondents

1. M/s Galaxy Homes Pvt.Ltd.,  
Registered office at Rajaji Road Jn.,  
M.G.Road, Kochi – 638035.
2. P.A.Jinas,  
Managing Director,  
M/s Galaxy Homes Pvt.Ltd.,  
Registered office at Rajaji Road Jn.,  
M.G.Road, Kochi – 638035.

(By Adv.Rafeek V K )

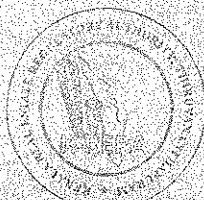


The above Complaint came up for virtual hearing today. The 1<sup>st</sup> Complainant and his Counsel & Counsel for the Respondents attended the hearing.

### **ORDER**

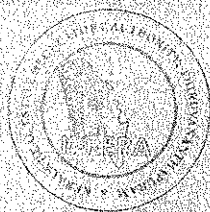
1. The Complainant is an Allottee of project named 'Galaxy Emerald' located at Elamkulam, Ernakulam district developed by the Respondents. The said project is registered with the Authority under section 3 of the Act, 2016. (Registration No.K-RERA/PRJ/263/2020).

2. The Complainants have booked a Flat in the said project and executed two agreements dated 08/08/2019, with Respondents for purchase of undivided shares of land for a consideration of Rs.2,99,520/- and for construction of three - Bedroom Flat No.F-8 with a car parking, at a cost of Rs.43,00,480/- An initial booking amount of Rs.25,000/- was paid to the Respondents on 25/07/2019. The Agreement amount of Rs.6,95,000/- and registration amount of Rs.2,00,000/- were paid on 07/08/2019. For the purpose of arranging a housing loan of Rs.36,80,000/- a tripartite agreement was made and executed between the Complainant, Respondent and Bank. In the agreement the Respondent expressly agree with the condition that the construction of the flat and release of payment to the Respondent will be as per schedule in the agreement.



3. The Complainant further submitted that the construction work was dragging in a slow pace, not in the required proportion and gradually pulled on far behind the schedule. The Respondents showed scant regard for the enquiries, complaints and follow ups of the Complainants. Despite this, the Complainants were promptly arranging the payments through bank, as per schedule till 15/10/2019. The total amount of Rs.13,79,000/- was paid by the Complainants to the Respondents. In the meanwhile the Respondents revised the payment schedule unilaterally and intimated the Complainants vide email dated 19/03/2020. The Complainant's disagreement over the revised pay schedule was conveyed to the Respondents on the same day by email on 19/03/2020.

4. It was further submitted by the Complainants that on 23/05/2020, the Respondents raised demand for an amount of Rs.17,00,000/- which was rejected by the State Bank of India, due to the reasons that work progress was far behind the schedule. The Complainant was sure that the Respondents were not in a position to finish the flat, in time as per the agreement. Hence the Complainants have issued a registered letter to the Respondents and thereby communicated all their serious concerns on all these matters on 12/04/2022. Later on 30/05/2022, the Complainants received an email from the Respondents which was an intimation invoking clause 20 of the construction agreement.



5. It was further submitted that the amounts required for the future payment was already in the bank loan and the Complainants were ready to arrange payments as per schedule. The Complainants never violated agreement conditions and the follow ups and reminder mails were ignored or negligently treated by the Respondents. As per the construction agreement the project was to be completed in all respects on or before 28/02/2021. While the work was far behind schedule, the Respondents attempted to extort undue amount from the Complainants and when objected resorted to cancellation notice. At this juncture, the Complainant realized that the Respondent is not in a position to honour the terms of agreement rather delivering the funds collected for this project to other purposes in an unethical manner. Under these circumstances the Complainant had no other option to take a decision to withdraw from the project and rush for alternate arrangements. Accordingly the Complainants replied by registered letter dated 08/06/2022 demanding refund of the amounts collected by the Respondents with interest. Hence this Complaint.

6. The reliefs sought by the Complainants are (1)refund of an amount Rs.13,79,000/- paid to the Respondents along with interest as per section 18 of the Act, 2016 (2) Rs.25,000/- towards cost of proceedings and compensation.

7. The Respondents have submitted objection by denying the averments in the Complaint and allegations against the



Respondents and submitted that the above Complaint is not maintainable before the Authority. The Complainants and the Respondents have entered into an agreement on 08/08/2019 whereby the Complainant agreed to purchase an apartment in the residential project. the Complainants agreed to pay a total amount of Rs.46,00,000/- towards the cost of the construction of the apartment having built up area of 836 sq.ft. in the 8<sup>th</sup> floor as Flat No.F-8. The construction cost of Rs.43,00,480/- is agreed to be paid in 17 monthly instalments of Rs.2,29,500/- and a sum of Rs.3,96,000/- was agreed to be paid on the date of agreement and further a sum of Rs.2,980/- as the last instalment. The monthly instalments payable as per the above agreement was not paid by the Complainant in time. This has placed the Respondents in immense troubles.

8. The Respondents further submitted that after the payment, at the time of executing the agreements, the Complainant arranged to pay two instalments. Thereafter the Complainant did not pay any instalments. In fact he had availed a loan from SBI and even though it was agreed to pay the instalments in time, the Complainant did not instruct the bank to release the balance amounts. The Complainant had committed defaults in paying the monthly instalments payable in terms of the agreement from the very beginning onwards. After repeated requests from the Respondents, the Complainant did not arrange to pay the balance amounts. This has placed the Respondents in huge financial crisis and difficulty. From the refusal of the Complainant in paying the periodical



instalments of the construction cost, it is evident that the Complainant was not ready and willing to abide by the terms of the agreement for construction from the beginning itself as he committed default in payment of instalments.

9. It was further submitted that as per clause 5 of the construction agreement dated 08/08/2019 *“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 28/02/2021, 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”*. As per clause 5 of the agreement, the date of handing over of possession become due only on the Complainant paying the entire amounts due to the Respondents. Since admittedly, the Complainant has paid only 20% of the consideration as agreed by the parties vide the agreement executed between them, the Complainant has no right to claim any of the reliefs.

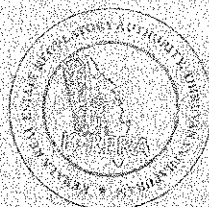
10. The Respondents further submitted that a person raising a claim of breach of contract should come with clean hands by performing his part of the agreement. Admittedly, the Complainant violated the terms of the agreement. The Complainant is now seeking the benefit of his own wrongs by filing the above Complaint which is impermissible under law. The Respondent had issued demand letter to the SBI-RACPC branch of Complainant bank



through email and intimated the same to the Complainant, but the Complainant failed to pay any amounts and thus deliberately caused breach of the terms of the agreement. In such circumstances the Respondent had no other option but to cancel the agreement by invoking Clause 20 of the Agreement.

11. It was further submitted that when the Complainant delayed inordinately and defaulted in paying the balance instalments and thereafter instructed his bank not to release the instalment amounts, the Complainant has unilaterally breached the terms of the agreement and as a result, the agreement stands cancelled as per Clause 20 of the agreement for construction dated 08/08/2019. The cancellation of the agreement was duly intimated by the Respondent to the Complainant vide letter dated 21/05/2022. The Respondents are ready and willing to refund the amounts as per Clause 21 of the agreement dated 08/08/2019. Hence the Complainant is not entitled to any of the reliefs sought for in the Complaint.

12. The Authority heard the learned counsel for both the parties and gave careful consideration to the submissions, and perused the material documents available on record. The documents produced from the part of the Complainant is marked as **Exbt.A1 to A10** and the documents produced by the Respondents are marked as **Exbt.B1 & B2**.



13. **Exbt.A1** is the copy of construction agreement dated 08/08/2019 executed between the Complainant and the 1<sup>st</sup> Respondent represented by its Managing Director the 2<sup>nd</sup> Respondent. As per Exbt.A1 Complainants agreed to purchase undivided share of 936/77500 over the land having an extent of 1097 Ares for the purpose of constructing an apartment No.F8 in the 18<sup>th</sup> floor, having super built up area of 836 sq.ft along with a car parking on the first floor of the project for a total consideration of Rs.43,00,480/-. It was also stated in the agreement that the Respondent shall construct the apartment and finish the work on or before 28/02/2021 and the possession will be handed over within 180 days from the date of paying the entire consideration.

14. **Exbt.A2** is the copy of agreement for sale dated 08/08/2019 executed between the Complainant and the 1<sup>st</sup> Respondent represented by its Managing Director the 2<sup>nd</sup> Respondent. As per Exbt.A2 the Respondents have agreed to sell and the Complainants have agreed to purchase 936/77500 undivided share in the land having an extent of 10.97 Ares for a total consideration of Rs.2,99,520/-.

15. **Exbt.A3** is the copy of Tripartite agreement dated 10/10/2019 executed between the Complainants, 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent and State Bank of India for the purpose of availing loan from the SBI for purchasing





the said apartment. The Completion date as per the agreement is 31/10/2021.

16. **Exbt.A4** is the copy of email dated 19/03/2020 issued by the Respondent to the Complainants by attaching new revised payment schedule. **Exbt.A5** is the copy of reply email dated 19/03/2020 issued by the Complainants regarding the disagreement over the revised payment schedule. **Exbt.A6** is the copy of letter dated 12/04/2022 issued by the Complainants to the Respondents seeking clarification regarding the revised date of completion and handing over possession of the apartment due to delay occurred in completing the project. **Exbt.A7** is the copy of cancellation letter dated 30/05/2022 issued by the Respondents via email by invoking clause 20 of the construction agreement, due to non payment of periodical instalments as per the payment schedule.

17. **Exbt.A8** is the copy of letter dated 08/06/2022 issued by the Complainants to the Respondents regarding the cancellation of construction agreement and requested the Respondents to refund the amount paid by the Complainants along with interest. **Exbt.A9 series** are the copies of emails issued to the Respondents demanding the refund of the amount paid by the Complainants along with interest.

18. **Exbt.B1** is the copy of demand letter dated 23/05/2020 issued by the Respondents to the SBI - RACPC demanding the instalment due with respect to the purchase of Flat

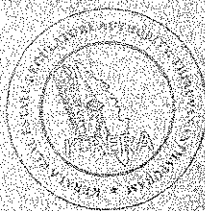


No.F-8 in the name of Complainants in the said project. Exbt.B2 is the copy of cancellation letter dated 30/05/2022 issued by the Respondents via email to the Complainants by invoking clause 20 of the construction agreement, due to non payment of periodical instalments as per the payment schedule.

19. From Exbt.A1 to A9 and from the website of the Authority it is clear that the project is not completed as per the terms of the agreement and Occupancy certificate not issued to the said project till date. Even after the receipt of Exbt.A8 notice and issuance of Exbt.B2 letter the Respondents did not refund the amount paid by the Complainant. As per section 18 of the Act, 2016 the Complainants are entitled to withdraw from the project and claim refund of the amount paid along with interest as the promoter has failed to complete and is unable to give possession of the apartment in accordance with the terms of the agreement.

20. From Exbt.A10 it is clear that the Respondents have received an amount of Rs.13,79,000/- from the Complainants. The details of the payment made to the respondents is as follows:-

<u>Date</u>	<u>Amount</u>
25/07/2019	Rs.25,000.00
07/08/2019	Rs.2,00,000.00
07/08/2019	Rs.6,95,000.00
15/10/2019	Rs.4,59,000.00
<b>Total</b>	<b>Rs.13,79,000.00</b>



21. 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”*. The Section 19(4) of the Act also specifies that *“The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of*



*suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder*". Here, in this case the Allottee is entitled to claim refund of the amount paid with interest, as the promoter failed to complete and is unable to give possession of the apartment as per the agreement.

22. 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 withdraw from the project and get refunded the amount paid by him to the Respondent/Promoter along with interest as provided under Section 18 of the Act, 2016.

23. Hence, the Respondents are liable to refund the amount received from the complainant along with interest according to section 18(1) of the Act, 2016. 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 14.15% with effect from 15/12/2022. The Complainant is entitled to get 16.15% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund as per Rule 18 of the Rules 2018. Hence it is found that the Respondent's 1 and 2 are liable refund an amount of Rs.13,79,000/- to the Complainants along with 16.15 % simple interest from the date of receipt of payment by the Respondents.



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

1. The Respondents shall return the amount of **Rs.13,79,000/-** to the Complainant with simple interest @ 16.15% per annum from the date of receipt of each payment, by the promoter as per the schedule till the date of realization.

2. If the Respondents fail to pay the aforesaid sum as directed above within a period of 60 days from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the above Respondents 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)



## Exhibits

### Exhibits marked from the side of Complainants

- Ext.A1- Copy of agreement for Construction dated 08/08/2019.
- Ext.A2- Copy of agreement for sale dated 08/08/2019.
- Ext.A3- Copy of Tripartite agreement dated 10/10/2019.
- Ext.A4- Copy of email dated 19/03/2020 issued by the Respondents.
- Ext.A5- Copy of email dated 19/03/2020 issued by the Complainants.
- Ext.A6 - Copy of letter dated 12/04/2022 issued by the complainants.
- Ext.A7- Copy of email dated 30/05/2022 issued by the Respondents.
- Ext.A8 - Copy of letter dated 08/06/2022 issued by the complainants.
- Ext.A9 series - Copy of email dated 30/08/2022 18/10/2022 issued by the complainants.
- Ext.A10- Copy of payment receipts and statement.

### Exhibits marked from the side of Respondents

- Ext.B1 – email Copy of demand letter dated 23/05/2020 issued by the Respondents.
- Ext.B2- Copy of email dated 30/05/2022 issued by the Respondents.



