



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

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

**Complaint No. 30/2022  
Dated, 13<sup>th</sup> January, 2023**

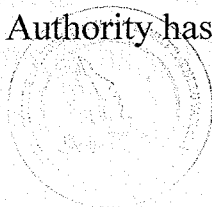
**Complainant**

Sajeev K. S.,  
Represented by the Power of Attorney Holder,  
Mr. Krishna Kumar C. R.,  
Chekkalathundil, Njarackal,  
Ashtamudi, Perinadu P. O.,  
Kollam- 69160.  
[Adv. B Rajasekharan Nair]

**Respondent**

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

The above Complaint came up for final hearing on this day for which the Counsel for the Complainant Adv. B. Rajasekharan Nair and the Counsel for the Respondent Adv. Thomas John attended online. After hearing both parties the Authority has decided to pass order as follows:



**ORDER**

1. The case of the complainant is as follows:- The Complainant is an allottee in the "Galaxy Cloud Space" developed by the Respondents situated near Info Park, Kakkanad, Ernakulam. The Complainant executed two agreements with the Respondents, one for purchase of undivided shares out of land of 89.871 cents and another for the construction of a three-bedroom flat, E-12, having an extent of built-up area of 1121 sq.ft with car parking. The Complainant was paying the instalment amounts to the Respondents regularly and promptly as per the agreements. Thus, an amount of Rs. 1,35,000/- was paid towards the cost of land and Rs. 25,04,500/- towards flat. It was submitted that the respective payments have been confirmed by the Respondents as per the final bill dated 10/02/2018 which is produced with the Complainant. As per the Construction Agreement, the project was to be completed in all respects on or before 31.12.2015 and possession was to be handed over within 180 days. The progress in the construction was very disappointing from the beginning of the year 2017. The Respondent/Builder was totally negligent and failed to complete flat within the promised and agreed time, in contravention to the Act. The Allottee's repeated follow ups with Respondents were in vain. The flat was booked by the Complainant out of his intense desire and dream to have a comfortable shelter for him and his family at the later stages of his life. The Complainant had spent all his hard-earned money for this flat as a long-cherished dream, which was shattered by the Respondents actions in violation of the terms of the Agreement. It was submitted that the Complainant has suffered mental agony and injury leading to take a hard decision to withdraw from the project and demand remedies as per sec. 18 of the Act,2016. The relief sought is to issue appropriate orders directing the Respondent to refund the amount of Rs. 26,39,500/- paid to the Respondents

with admissible interest from the date of each payment as per sec 18 of the Act, 2016 and cost of Rs. 25,000/- The Complainant has produced copy of the sale agreement dated 15-01-2013, copy of construction agreement dated 15-01-2013, copy of the Account statement, copy of the Final bill, copy of the email & photo from the Respondent to show status of the project in December, 2016 and the interest calculation statement.

2. In spite of getting ample time, the Respondents have not filed any objection statement to the Complaint. 1<sup>st</sup> Respondent is a Private Limited company, 2<sup>nd</sup> Respondent is the Managing Director, representing the 1<sup>st</sup> Respondent Company. The project was Registered under Section 3 of the Act, 2016, before this Authority as No K.REA/PRJ/122/2021 and Registration expired on 04-06-2022. The occupancy certificate for the project has been obtained from the local Authority on 27-01-2021.

3. After detailed hearing and perusal of the pleadings and documents submitted by the parties, the following points came up for consideration:

1) Whether the Respondents/Promoters failed to complete or was unable to hand over possession of the apartment to the Complainant in accordance with the terms of the agreement for sale or duly completed by the date specified therein or not?

2) Whether the Complainant herein is entitled to withdraw from the project at this stage and entitled for refund of the amount paid with interest as provided under Section 18 (1) of the Act 2016 or not?

3) What order as to costs?

4. **Points No. 1 & 2:** - The relief sought is for direction to refund the amount paid by the Complainant along with interest from the date of payment till the date of receipt of the amount. Section 18(1) of the Act

2016 stipulates 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.”* As per Section 19(4) of the Act 2016, *“the allottee shall be entitled to claim the refund of the amount paid with interest as such rate as may be prescribed, 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 the agreement for sale”*. Hence, Section 18(1) 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 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. In this case the Complainant selected the second option, to withdraw from the project and to claim refund with interest.

5. The documents produced by the Complainant are marked as Exhibit A1 to A7. The Respondents have not produced any document. The Power of Attorney dated 7<sup>th</sup> August, 2021 made in favour of Sri. Krishna Kumar C.R. by the Complainant Sajeev K.S., for matters connected with

filing of the Complaint before this Authority and other Forums is marked as **Exhibit A1**. The agreement for sale dated 15.01.2013 entered in to between Galaxy Developers and the Complainant, is marked as **Exhibit A2**. As per the said agreement, the Respondents had agreed to sell and the Complainant had agreed to purchase 1221/175500 undivided share in the property, having a total extend of 89.871 cents in Re-survey No 359/3 together with the right to construct a three bedroom apartment number E 12 on the 12<sup>th</sup> floor of the "Galaxy Cloud Space" having a super built up area of 1121 sq.ft. and together with the right to construct a car parking area on the cellar floor marked as number E 12 for a consideration of Rs.1,36,752, subject to the condition that construction of the apartment and the proportionate common areas and common amenities shall be entrusted to the builder under a separate agreement. In the said agreement, it was stated that the Respondents formulated a Scheme to construct multi storied building called 'Galaxy Cloud Space'. Accordingly, a separate agreement for construction dated 15.01.2013 was entered in to between the Respondents and the Complainant. A copy of the same is produced by the Complainant which is marked as **Exhibit A3**. As per the Construction agreement, the total construction cost was agreed as 25,87,095/- and the payments were agreed as per payment Schedule available in clause 2 of the said agreement. As per the Schedule, the payments were to be made between 31-05-2013 and 31-12-2015. In Clause 4 of the agreement, it was promised that the said apartment was to be constructed and the work to be completed on or before 31-12-2015 provided that the entire amount including statutory charges had to be paid by the Complainant to the Respondent Company. It was also promised that the possession would be handed over within 180 days from the date of payment of entire consideration including statutory charges. The Complainant has also produced copy of final Bill dated 10-02-2018 and the copy of statement of accounts with respect to the payments made by the

Complainant, furnished by the Respondent, shows the amount paid by the Complainant as per the agreement on various dates, which are marked as **Exhibit A4 and Exhibit A5**. As per Exhibit A5 account statement, the Complainant had made the entire payment before 31-12-2015 except Rs 1,41,000/- and Rs.2,11,000/- which were made respectively on 06-01-2016 and 22-06-2016, that itself was well before 30-06-2016. The copy of work status and photo of 'Galaxy Cloud Space' at Kakkanad dated 23-12-2016 forwarded by the Respondent to the Complainant through email, produced by the Complainant is marked as **Exhibit A6**. As per the work status report, inside plastering were only up to 55% completed and other works were progressing. The interest calculation Statement produced by the Complainant is marked as **Exhibit A7**. As per the statement, the Complainant has claimed an interest amounting to Rs. 37,20,016/- This was claimed at 14.5% Bench mark Prime Lending rate as against the prevailing rate of 14.15%.

6. The project is Registered under the Real Estate (Regulation & Development) Act 2016 and the certificate of registration was issued vide No. K-RERA/PRJ/122/2021 on 02-03-2021. The date of expiry of Registration was on 04-06-2022. The occupancy certificate for the project is seen issued by the Trikkakkara Municipality on 27-01-2021.

7. After hearing it is clear that the Respondents have no dispute, with respect to the payment of consideration made by the Complainant with respect to the unit and the allegation as to non-completion and non-delivery of possession of the unit as promised to the Complainant. The Respondent has not even submitted a reply/counter statement even though the Counsel was directed during the hearing. As per the Exhibit A3 agreement, the promised date of completion and handing over was on 30-06-2016, but Exhibit A6 reveals that the project remained incomplete at that time. Moreover, from the registration web portal, it is seen that occupancy

certificate is obtained for the project only on 27-01-2021. Hence it is clear that the Respondent/Promoter has grievously failed to perform his part and honour the promises given to the Complainant who trusted him and invested their hard-earned savings and have been waiting for a long period in the dream of a roof over the head. The Hon'ble Supreme Court in its landmark judgment dated 11.11.2021 in M/s Newtech Promoters & Developers Pvt. Ltd. vs State of U P & Ors., observed as follows: *"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/home buyer, 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"*. In these circumstances, the complainant herein is entitled to withdraw from the project under Section 18 of the Real Estate (Regulation & Development) Act 2016, and claim the return of the amount paid to the Respondents along with interest from the date of receipt of payment by the promotor till refund to the complainant with interest.

8. The interest payable by the Respondents to the allottees is at State Bank of India Benchmark Prime Lending Rate plus 2% from the date of payment till the date of refund, to be computed as simple interest, as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBIPLR rate is 14.15%. Hence, the allowable interest rate is  $14.15\% + 2\% = 16.15\%$ . The relevant portions of Rule 18 of the said Rules is extracted below: *"(1) The annual rate of interest payable*

*by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be at the State Bank of India's Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest. (2) In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment on such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement for construction or sale."*

9. From Exhibit.A5, it is clear that the Respondents have received an amount of Rs.26,39,500/- from the Complainant. The details of the payment made to the respondents is scheduled below:-

<u>Date</u>	<u>Amount</u>
23-12-2012	Rs. 25,000.00
15-01-2013	Rs.3,65,000.00
15-01-2013	Rs.1,35,000.00
18-06-2013	Rs.1,41,000.00
31-07-2013	Rs. 70,500.00
31-08-2013	Rs. 70,500.00
28-09-2013	Rs. 70,500.00
31-10-2013	Rs. 70,500.00
30-11-2013	Rs. 70,500.00
30-12-2013	Rs. 70,500.00
28-02-2014	Rs. 70,500.00
31-03-2014	Rs. 70,500.00
03-04-2014	Rs. 70,500.00
30-05-2014	Rs. 70,500.00
01-08-2014	Rs. 70,500.00
29-08-2014	Rs. 70,500.00
31-10-2014	Rs. 70,500.00



31-10-2014	Rs. 70,500.00
12-12-2014	Rs. 2,82,000.00
06-06-2015	Rs. 3,52,500.00
06-01-2016	Rs. 1,41,000.00
22-06-2016	Rs. 2,11,000.00

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**Total**

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**Rs.26,39,500.00**

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10. Hence, the Complainant is entitled for refund of the amount of Rs. 26,39,500/- paid by him along with interest at the rate of 16.15% Percent per annum, as simple interest from the respective dates of payment till date of realization of amount with interest. In view of the above, Points 1 & 2 are answered accordingly in favour of the Complainant.

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

- i) The Respondents shall return the total amount of, **Rs.26,39,500/-** received by them, as scheduled above, **with simple interest @ 16.15% per annum**, to the Complainant, from the respective dates of payment, as shown in the schedule above, till the date of realisation of amount.
- ii) If the Respondents fail to pay the aforesaid sum with 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 aforesaid

sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act, 2016 and the Rules thereunder.

The parties shall suffer their respective costs

Sd/-  
Preetha P. Menon,  
Member.

Sd/-  
Sri. P. H. Kurian,  
Chairman

True Copy/Forwarded By/Order/

  
Secretary (legal)

**APPENDIX**

Exhibits marked on the side of the Complainant

- Exhibit A1: Power of Attorney dated 7<sup>th</sup> August, 2021 made in favour of Sri. Krishna Kumar C.R. by the Complainant.
- Exhibit A2: Copy of agreement for sale dated 15.01.2013 between the parties
- Exhibit A3: The copy of agreement for construction dated 15.01.2013 between the parties
- Exhibit A4: Copy of final Bill issued on 10-02-2018 by the Respondent to the Complainant.
- Exhibit A5: Copy of the statement of accounts with respect to the payments made by the Complainant.
- Exhibit A6: Copy of work status and photo of 'Galaxy Cloud Space' at Kakkanad dated 23-12-2016.
- Exhibit A7: Copy of interest calculation Statement produced by the Complaint.

Exhibits marked on the side of the Respondents

NIL