



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 76/2023

Dated, 10th November, 2023

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

Complainant

Praveen M.P., The Secretary,
Cloud Space Flat Owner's Association,
Cloud Space Apartments,
Thengod, Kakkanad Pin 682030

[Adv. B. Rajasekharan Nair]

Respondents

1.M/s Galaxy Homes Pvt Ltd
Rajaji Road Junction, M.G Road,
Kochi- 680018

2.Sri. P.A Jinas
Managing Director,
M/s Galaxy Homes Pvt Ltd
Rajaji Road Junction, M.G Road,
Kochi- 680018.

[Adv. Thomas John. P]



The above Complaint came up for hearing on 13-09-2023. The Counsels for the Complainant and the Respondents attended. The representative of the Association also attended online. Heard both the parties and passed the following:

ORDER

1. The Complaint is with regard to the real estate project namely 'Galaxy Cloud Space', at Thengod, Kakkanad, Kochi, which is registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016 [herein after referred to as 'the Act, 2016'] with Registration No. K- RERA /PRJ/122/2021 with proposed date of completion on 04-06-2022.

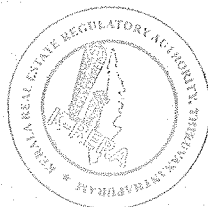
2. The case of the Complainant is as follows: The Complainant, is the Secretary of the Cloud Space Flat Owner's Association registered vide No. EKM/TC/21/2022 under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act with its registered office at Cloud Space Flat Owner's Association, Cloud Space Apartments Thengod, Kakkanad, Kochi. The above project was initially launched in early 2010 by the builder under name and seal M/s Galaxy Developers, a proprietary firm, later converted as M/s Galaxy Homes Pvt. Ltd the 1st Respondent and its Managing Director P.A. Jinas is the 2nd Respondent. The project is 14+1 storied flat building in an extent of 89.871 cents of land in Kakkanad Village.



After the launching the Respondents resorted to large scale advertisements and marketing of the project and there was good response from the prospective buyers and the Respondents were able to amass hefty amounts from the allottees who were offered completed flats in two or three years from the date of booking. But the project was delayed inordinately and the promises given to the allottees were not honoured. The allottees who had paid their hard-earned money for their cherished dream apartment in the year 2015, 2016 or thereafter got aggrieved and complained to the Respondents. The Respondents turned a deaf ear to the complaints. When the project completion was 30%, they extracted 80% or more of total flat cost from the allottees. After the advent of the RERA Act, several Complaints were registered against the Respondents and as intervened by the Authority the Respondents attitude was made to change, incidentally the project was registered in 2018, but the Respondents continued with their recalcitrant attitude committed violations of the Act. Many of the allottees got their sale deeds registered and got possession after repeated interim orders and directions from the Authority. As per section 11(4)(e) of the Act, 2016 the promoter shall enable formation of Association of Alottees, but despite repeated efforts the Respondents refused to carry out the role, thereafter, Owner's Association was formed at the initiative of few Allottees on 02-01-2021, but the Respondents are still reluctant to approve the Association or consider the proposals by the Association. The



project is incomplete in respect of promised amenities and further completion of remaining work either stopped or in dead slow pace. The respondents are ignoring the request of the Association and the association is constrained to file this Complaint. The amenities viz, swimming pool, interior and exterior painting car shed work are yet to be done. The water tank provided is not as per adequate capacity, STP is in name sake, not as per norms and specifications. The obligation of the Respondents as per Section 11 (4)(f)(g) are not complied. All relevant documents of the flat pertaining to permit, sketch, approved plan, electrical circuits, revenue records sewage lines etc are yet to be handed over to the Association. The amount collected by the Respondents in respect of one-time building tax, labour welfare fund, deposit of Rs. 5000/- are not paid to authorities nor returned to the Association. The Respondents disowned the monthly maintenance of flat in December, 2022 there after the Association had to make ad hoc arrangements. Water connection to the flat was disconnected by the KWA due to the default of outstanding dues which was restored after marathon efforts by the Association. Besides, the quality of construction is not up to the standard, water leakage in bathrooms, broken tiles at common area and car parking etc are few issues to be rectified by the Respondent. The commitments made by the Respondents in connection with the individual complaints were not complied with, in time by the Respondents. The penalty of Rs, 10,000/- per day imposed on Respondents vide



order dated 09-06-2022 of the Authority, for violating previous order is totally neglected by the Respondents. The reliefs sought by the Complainant were (i) direct the Respondents to complete the project within one month time(ii) direct the Respondents to comply with all obligations as per the Act, within one month time (iii) direct Respondents to meet the monthly expenses till completion of the project, (iv) direct Respondents to refund all expenses incurred by the Association in respect of monthly maintenance and dues to various agencies (v) appropriate penalty for non-compliance and violations of provisions of Section 11, 17, 40,61,and 63 of the Act. The Complainant has produced copies of memorandum of Association and bye law of the Association, registration certificate of association, order of Authority dated 09-06-2022, statement of current status of pending work and commitment by the Respondents and photographs of the project (20 number).

3. The Authority earlier issued an order on 24/06/2021 in Complaints No. 206/2020, 222/2020, 254/2020 & 46/2021 filed by the allottees of the same project in which it was directed as follows: (1) The Respondent shall complete the works related to essential services, mutation of flats in the name of Complainants, etc within One month and complete and hand over, the whole project 'Galaxy Cloud Space' to the Complainants, in all respects as committed/promised to them, along with all the amenities and facilities as agreed as per the



agreements entered into with them and with all the mandatory sanctions / approvals required to be received from the Authorities concerned, on or before 30.12.2021 without fail. (2) The Association of allottees formed and registered, shall monitor the progress of works and make sure that the work is being carried out as per the Work Schedule given in the Exhibit. B1 affidavit marked in the above said complaints and it was informed that in case of any default on the part of the Respondent, the Association can approach the Authority seeking further intervention. (3) The Respondents shall complete the executions of all sale deeds, if any, related to apartments / common areas of the project within the said time frame. (4) The Respondents shall handover all the documents pertaining to the project such as a) title deeds of land, b) permits/sanctions/approvals/NOCs, etc, c) all drawings of electricity, plumbing, etc. to the Association within one month from the date of receipt of the order, and (5) the Respondents shall submit before the Authority, the compliance report in the form of an affidavit on or before 03-01-2022 after serving copies to the Complainants. It was also stipulated that in the event of any non-compliance of the order by the Respondent, the Authority shall initiate severe penal actions as provided under Section 63 of the Act. Thereafter, several other Complaints were filed and the above said order was made applicable to those Complainants also. The Respondent/promoter did not comply with the order aforementioned and did not file any compliance report. After the



time limit for completion of the project as per the said order, the Complainants filed execution petitions as EP No. 13/2022,16/2022,15/2022,35/2022 &36/2022, after hearing which the Authority decided to impose penalty on the Respondents/Judgement Debtors as provided under section 63 of the Act,2016 and the Judgement Debtors were directed to pay Rs. 10,000/- per day as penalty from 1/12/2022 till the Compliance report in the form of an affidavit is filed in compliance with the earlier direction of the Authority.

4. When the above Complaint came up for hearing on 07-07-2023, the Authority noted seriously that the Respondent/Promoter had been intentionally and wilfully neglecting the directions issued by the Authority and hence decided to initiate proceedings to recover the penalty imposed on the Respondent/Promoter. With respect to the recovery of penalty ordered against the promoter, a demand notice has been sent to the Respondent/Promoter on 17-10-2023. The Respondent/Promoter was also directed to convene a meeting with the Association members for discussing the completion and handing over of the Project. The learned Counsel appeared for the Respondents submitted that the project has been completed and the Occupancy Certificate has been received. After hearing both sides, the Authority on 07-07-2023 directed 1) the Respondents/Promoter to issue 15 days prior notice to convene a meeting of the association of allottees within 2 weeks from the



date of receipt of this order for discussing the completion and handing over of the project, 2) the Respondent No. 2 to be personally present in the meeting and copy of the minutes of the meeting to be submitted before the next hearing date, 3) the Respondents/Promoters to transfer, all the documents including all the sanctions, plans, and approvals required to be received from the Authorities concerned to the Association within 30 days from the date of receipt of this order.

5. When the matter came up for hearing on 23-08-2023, the learned Counsel for the Respondents submitted that the meeting of allottees had been convened, as per the direction of the Authority. The Secretary of the Association who attended the hearing, also confirmed that he attended the meeting. During the hearing the Counsel for the Respondents requested 45 days to complete the pending works in the project, but the Authority reminded him that the penalty imposed on the Respondents is still running.

6. The documents produced by the Complainant are marked as **Exhibits A1–A5**. The copy of memorandum of Association and bye law of the Association is produced and marked as **Exhibit A1**. The copy of registration certificate of association dated 12-01-2022 is produced and marked as **Exhibit A2**. The copy of order of Authority dated 09-06-2022 is marked as **Exhibit A3**. The statement of current status of pending work and commitment by the Respondent is produced and marked as



Exhibit A4. The photographs of the project (20 numbers) is produced and marked as **Exhibit A5.**

8. The Respondents had produced a copy of minutes of meeting of the allottees of Galaxy Cloud space convened on 09-09-2023 as per direction of the Authority. The copy of the minutes of meeting produced is marked as **Exhibit B1.** As per the minutes, all owners had given consent to the formation of Association. The Galaxy Homes Management had informed in the meeting that works of following items will be completed within 45 days: 1) Fire pipeline balance works and Demo, 2) Courtyard roofing leakage works, 3) Common area painting works, Outside painting works, 4) STP maintenance works, 5) STP consent to operate from PCB and 6) swimming pool finishing works. In the meeting the Owners had given a separate list of requirements to be done at the project. The Galaxy management had agreed to fulfil the works which were not specified above. The galaxy Homes had given a set of documents to the Association, it had been decided to verify the documents and to provide additional documents, if any, that had not been provided. It was also decided that if the works started as scheduled, the Association would provide all support and will not hinder the sale of prospective flats. In the minutes, the list of documents handed over to the association had not been mentioned.



9. The Authority, after going through the facts and circumstances of the case and perusing the documents produced by the Complainant and the Respondents, invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, hereby direct the Respondents to hand over all documents and common area to the Association within 45 days from the date of receipt of this order after completing all the pending works as agreed to the allottees in the meeting of the association of allottees on 09-09-2023, and to submit compliance report before the Authority.

Sd/-
Preetha P. Menon
Member

Sd/-
P.H. Kurian
Chairman

True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits marked from the side of Complainant

Exhibit A1 - The copy of memorandum of Association and bye law of
The owners' Association.

Exhibit A2- The copy of registration certificate of association dated
12-01-2022.

Exhibit A3- The copy of order of Authority dated 09-06-2022

Exhibit A4 - The statement of current status of pending work and
commitment by the Respondent.

Exhibit A5- The photographs of the project (20 numbers).

Exhibits marked from the side of the Respondent

Exhibit B1- The copy of minutes of meeting of the allottees Association
Convened on 09-09-2023.

