RAJASTHAN REAL ESTATE REGULATORY AUTHORITY JAIPUR

Comp. No. RAJ-RERA-C-N-2023-6129

Ravi Tara **Complainant**
502 Krishna Kripa 3
Subhash Nagar
Shastri Nagar Jaipur Rajasthan-302016

Vs

R-Tech Capital Galleria Jaipur LLP **Respondent**
CP1-231RICO, Industrial Area,
Jagatpura, Jaipur Rajasthan 302022

Hon'ble Member : Sudhir Kumar Sharma

Present

1. Adv Mohit Pareek on behalf of the complainant
2. Adv Samkit Jain on behalf of the respondent

ORDER **25.03.2025**

1. The factual matrix of the case is that the complainant has lodged a complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') with regard to the project **'CAPITAL GALLERIA (JAIPUR) – Phase 1'** bearing registration No. **RAJ/P/2017/153** situated at **Khasra No./Plot No. 3 (A) RIICO INDUSTRIAL AREA, KANAKPURA, Jaipur – 302034 (Rajasthan)**.

2. The brief facts of the case are that based upon the alluring assurances made by the respondent, the complainant applied on 10.12.2018 to book a commercial shop/unit bearing no. A-FF-07 after making payment of booking amount of Rs. 2,62,752/- against which allotment letter dated 10.01.2019 was issued to the complainant. The total sale consideration for the said unit is Rs. 26,85,075/- inclusive tax, out of which complainant has made a total payment of Rs. 25,38,310/- till 10.10.2022. The respondent has

failed to deliver the possession of said shop/unit by 30.09.2021 i.e. within the agreed time limits of 48 months from the date of start of construction 30.09.2017 as per the clause 7.1 of the executed agreement for sale between the two parties on dated 30.01.2019. Moreover, the respondent has leased out the unit booked by the complainant to a company before hand without any information and legal consent of the complainant. The complainants seek immediate possession of their booked unit and payment of interest on their ₹25,38,310 payment until date of possession. The complainant also requested to halt further sales of unsold units during the complaint, penalties under Section 61 of the Act, and an interim order preventing the respondent from creating any third-party rights on the unit, and cost of Rs. 50,000/- be imposed on the respondent.

3. Reply of the respondent to this complaint was filed on 30.10.2023 stating that the complainant failed to make payments against the total sale consideration i.e. Rs. 26,85,075/- for the said shop as agreed upon between the two parties in the executed agreement for sale dated 30.01.2019 and eventually respondent imposed late payment charges of Rs. 1,25,779/- for the non-payment of dues which is also acknowledged by the complainant on record. Thereafter, a declaration cum undertaking was given by complainant on 08.09.2022 to waive the payment which was done by the respondent. Further, the respondent considering the mutual benefits of allottees and project in near future, informed all allottees details of proposal of letting out the project area of 8300 sq.ft. on Tower-A on ground, 1st & 2nd floor by merging the booked shop of the complainant also. On verbal consent of the complainant, no objection was asked through letter dated 18-10-2022 from the

complainant by sending copies of MoUs to the complainant. No Objection letter was received even after service of communication and majority of the allottees did not raise any objection on this proposal. Thus, considering the acceptance of majority of the allottees in the interests of Public/ major allottees, the respondent let out the area to Trent Ltd. on 02.06.2023. Monthly rental is received by the respondent and is being paid to the allottees. The project was delayed due to COVID-19 pandemic and extension of 12 months was granted by the Authority from 30.09.2021 to 29.09.2022. Since no delay has been caused, the respondents request dismissal of the complaint and immediate execution of a Memorandum of Understanding and sale deed by the complainant. The respondent further seeks an order preventing the complainant not to raise any objection or obstacles in the interest of project of respondent.

4. During the course of arguments, the counsel for complainant stated that the shop was leased out to a third party i.e. Zudio without the consent or prior knowledge of the complainant, even after paying of over 95% of the total sale consideration amount. For leasing out, no consent was taken. No notice from respondent was received and no proof of service of notice was produced by the respondent. The allotted shop of the complainant was taken by the respondent for himself by authorizing himself without the consent of the complainant. Rent was also determined at his own level. Later, site inspection was also conducted by the authority in which it was concluded that the present promoter of the project has committed forgery by giving possession of the said unit to a third party i.e. Zudio. The signing on the declaration cum undertaking on

08.09.2022 was for the waiver of penalty on account of non-payment of installments of sale consideration timely and it was for the due amount on the date of signing this undertaking.

The counsel for complainants argued that the respondents have clearly violated the agreement and utterly failed in the timely delivery of possession of the said unit. The complainant prayed that his prayers in the complaint be allowed.

5. On the contrary, counsel for respondent argued that Zudio and landowner are the third parties and these should be impleaded as per the agreement for sale executed between the two parties dated 30-09-2019 and lease deed executed on date 02-06-2023 in the present case. If these two parties are not included as respondents, then no proper adjudication can be done in the present matter. There is no dispute with regard to sale consideration and amount paid by the complainant. A Declaration and Undertaking was given by the complainant on 08.09.2022 for not claiming interest for delayed possession. Further, a letter to complainant was sent on 18.10.2022 to give consent for leasing out space/ area and sign MoU within 7 days, failing which his consent will be deemed. It was also informed that agreed rental mentioned in draft MoU will be paid directly in the account of the complainant. Rent is being paid regularly in the account of the complainant as evident from the copy of ledger annexed with the reply.

The respondent stated that all the arguments of the complainant are beyond the pleading and are not allowed. The prayer by the complainant is barred by the undertaking given by him.

6. Heard and perused the record.

7. The status of said project on the official website of the Authority is verified by the Law Officer. The project is currently marked under the "**LAPSED**" category. Total two extensions were sought by the respondent, and the current extension has expired on dated 29-09-2023. Quarterly Progress Reports (QPRs) are filed up to the quarter of July to September, 2023 in which percentage completion of construction work (as per Project Engineer's Certificate, R-2) showing the value of 79% work completed. Annual Progress Reports (APRs) are filed up to the annual year of 2023-24 in which percentage of work completed in the said project is 81%. The said project status on the official website of the Authority is taken in judicial notice by the Authority.

8. It is observed that during the course of hearing on 16.01.2024 before the Authority, it was pointed out that the promoter is not handing over possession of the said unit despite lapse of four years. The Authority then directed the technical team of the Authority to visit the site of the said project. The visit was done on 07.02.2024 and it was reported "that at present construction work of the front part is completed and promoter provided possession to a few of the allottees and the construction of the back side is under process and

अग्रवाल

will be completed in 6-8 months. The shop number A-FF-07 is on the first floor of the front side of the project and at present this shop along with adjoining shops of ground and first floor is with the possession of ZUDIO clothing brand which can be perused from the site photographs attached with the report."

9. It is observed that there is no dispute between the parties with respect to sale consideration, amount paid by the complainant, delay in completion of the project, extensions given by the Authority and promised date of possession of the shop.

10. The issues need discussions and decision are:-

i) Third Party Implead : Whether the land owner and Zudio be impleaded,

ii) Whether the declaration cum undertaking given by the complainant was for relinquishing his claim for the delayed possession; and

iii) Whether the complainant has agreed for leasing out the allotted unit to the 3rd party.

11. Observations:-

i) The arguments of respondent to implead land owner in the case as well as also Zudio is not acceptable as the Agreement for Sale was executed with the complainant on 30.01.2019 and the promoter declared in clause 2(h) of this agreement that the respondent-developer *is completely authorized by the land owner and have conceived all rights and authority to develop commercial project and entitled to develop Market, sell and deal with the Unit(s)/Shop/Space(s)/Spaces etc. to be constructed on the said land and develop commercial complex and shall have right to complete, in all respects. The Developer or Promoter is also well authorized by the land owner to deal, negotiate, sign and execute Agreement.* Similarly, the agreement with Zudio was done by the respondent at his level post the execution of the agreement with the complainant.

Thus, the argument of respondent-developer to implead land owner and Zudio is not agreed here.

ii) The argument of the complainant that his signing on the Declaration and Undertaking on 08.09.2022 was in reference to delayed payments of installments due on the date of signing this declaration, is acceptable. The complainant being defaulter cannot claim now interest for delayed possession till signing of this declaration and undertaking on dated 08.09.2022. On the other hand, respondent cannot claim that after this signing, the allottee has relinquished his claim for delay in case of further delay in handing over of possession. The statutory right of allottee to get the possession within timecannot be taken away, if project is delayed. Thus, the complainant is entitled to get interest for delayed possession after 08.09.2022.

iii) So far as issue of deemed consent given by the complainant for renting out / leasing out the allotted shop/ unit to third party is concerned, the submissions/ arguments made by the respondent are not acceptable.

In para 6 of the reply the respondent himself admitted that there was not written accent by the complainant for leasing out the booked unit. The respondent has used the word 'verbal' in this para. In this para again the respondent claimed to issue a letter to the complainant for written consent / no objection along with a MoU. The complainant has denied that such letter was ever issued to him or received by him. The Annexure R-4 of the reply by the respondent is a letter dated 18.10.2022 wherein it is stated that *"you have been informed that from this Building/Project* ***"Zudio" Store of Trent Ltd.*** *have decided to run and Open Mega Store and executed LOI/Term-Sheet with* ***R-Tech Capital Galleria (Jaipur) LLP, along with other Shops/Area*** *(About 8007 Sq.ft or Carpet Area consisting of Ground Floor, First Floor & Second Floor Area) of said Building and detail of which shared in this regard to you and requesting your Good self to give your Consent letter for leasing out Space/Area and sign MOU, attached herewith, within 07 days, failing which it shall be deemed that you have provided your consent for the same and would not have any dispute in future and same shall be appreciated so that, this renowned store could start fit-out and operate its business from this Building. Kindly note that immediately after Operation of Stare, the agreed rental, as mentioned in MOU would be paid directly to your Account by Developer."*

The respondent further claimed in his reply that no objection was received from the complainant to the consent even after service of this communication. Majority of the allottees of the project accepted the offer and in the interest of majority public/ allottees the respondent deemed the acceptance of this offer to allottees in good faith including complainant.

The above action of the respondent forcing complainant to respond within 7 days and in absence of reply from him, deeming it as consent clearly shows violation of the agreement executed with the complainant. It is clear that respondent has not obtained consent from some other allottees also, and has purposely / deliberately and intentionally rent out the shop and adjoining area for personal gain and failed to hand over the possession of the shop to the complainant with an intent to deceive the innocent complainant.

This was done by the respondent despite taking substantial part of the sale consideration from the complainant under the garb of inferred /deemed consent of the complainant. How can respondent determine on behalf of the complainant that leasing out the area to third party is in the interest of complainant? How he calculated the monthly rate payable to the complainant and also decide that **'so much'** monthly rent will be financially good for the complainant. How can he decide that running of booked shop by the allottees will do not good for the complainant? The complainant booked the shop for the purpose of livelihood. There is no doubt that respondent caused him financial lose and harassment by breaching the contract executed with the complainant. What public interest as claimed by the respondent in his reply, has been served by leasing out the area to third party is not clear.

Interestingly the respondent's claim that rental is being deposited in the account of the complainant is also mis-leading. The ledger produced by the respondent shows that only three installments paid to the allottees and that too have been adjusted against the balance payment receivable from the complainant.

Thus, the act of respondent of leasing out the area to third party, deciding rent on his own level is arbitrary and blatant disregard to agreement executed between them and also against rights of allotee under RERA Act, 2016.

12. In view of above discussions and conclusions, the respondent is directed to:-

i) Handover the possession of the shop/unit earmarked for the complainant as agreed in Agreement for sale dated 31.01.2019, by erecting or by restoring it to orginal planned or by re-building adequate safe structure in the area given to Zudio. The access to the shop will be as per original plan.

ii) Pay interest from 09.09.2022 @ 11.10% i.e. Highest MCLR of SBI i.e. 9.10% + 2% till possession of the booked shop is handed over to the complainant.

13. Cost of RS. 25,000/- is also imposed on respondent which is payable to the complainant.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY, JAIPUR (RERA)

14. The complainant will be at liberty to approach Adjudicating Officer of the Authority for claim of compensation.

15. The complaint stands disposed of in terms of above directions. The order be uploaded on the website of the Authority and be also sent to all the concerned parties with placing a copy of order in file.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY, JAIPUR (RERA)

(**Sudhir Kumar Sharma**)
Member