

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 112 of 2018
First date of hearing: 01.05.2018
Date of decision : 16.11.2018

Mr. Manmohan Vig,
R/o. A-23/5, Tilak Nagar,
New Delhi-110018.

Complainant

Versus

1. M/s Anant Raj Industries Ltd.
Office Address: H-65, Connaught Circus,
New Delhi-110001.
2. General Manager, HSIIDC,
Vanijya Nikunj, Udyog Vihar, Phase V,
Gurugram, Haryana - 122008

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Shanker Vig Advocate for the complainant
Shri Anshul Yadav Advocate for the respondent 1
Shri Rajesh Kumar Garg Advocate for the respondent 2

ORDER

1. A complaint dated 26.03.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Manmohan



Vig, against the promoter M/s Anant Raj Industries Ltd. and HSIIDC, on account of violation of the clause 7.1 of apartment buyer's agreement executed on 07.03.2012 in respect of apartment described below in the project 'Madelia' for not handing over the possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	Madelia, Sector M-1A, Manesar, Gurugram.
2.	Project area	12.45 acres
3.	Nature of project	Group housing colony
4.	DTCP license no.	67 of 2009 dated 19.11.2009
5.	Registered/ not registered	Applied for registration on 01.08.2017
6.	Apartment/unit no.	C-1101, 11 th floor, tower C
7.	Apartment measuring	1772 sq. ft.
8.	Date of execution of apartment buyer's agreement	07.03.2012
9.	Payment plan	Construction linked payment plan
10.	Total consideration as per payment plan annexed with the said agreement	Rs.56,35,208/-
11.	Total amount paid by the complainant till date as per statement of account dated 04.02.2016	28,89,982/-
12.	The demand for commencement of construction was raised by the respondent on	31.01.2011
13.	Date of delivery of possession as per clause 7.1 of the	31.07.2014



	apartment buyer's agreement i.e. 36 Months + 180 days grace period from the date of commencement of construction	
14.	Delay in handing over possession till date	4 years 3 months approx.

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondents. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents appeared on 1.05.2018. The case came up for hearing on 1.05.2018, 5.06.2018, 19.07.2018, 06.09.2018, 11.10.2018 and 15.11.2018. The reply has been filed on behalf of the respondent no.1 on 15.05.2018 which has been perused. The respondent no. 2 filed reply on 06.09.2018 and the same has been perused.

Facts of the complaint

4. Briefly stated, the facts of the complaint are that in 2011, the respondent company advertised for allotment of residential flats in its upcoming residential project named "Anant Raj, Madelia", Sector M1, Manesar, Gurugram, Haryana. In 2012, Mr. Pawan Kumar Sharma i.e. the original allottee booked a flat bearing number 1101, tower 'C', 11th floor in the said project.



On 07.03.2012 Mr. Pawan Kumar Sharma and the respondent entered into an apartment buyer's agreement.

5. The complainant submitted that on 24.09.2012 the captioned property was transferred to Mr. Vishal Gupta on an application made by the original allottee vide a letter issued by respondent company. On 18.11.2013, Mr. Manmohan Vig i.e. the present complainant and Mr. Vishal Gupta entered into an agreement to sell regarding the sale of captioned property.
6. The complainant submitted that he approached Axis Bank Ltd. for availing home loan facility to buy the captioned property and a loan amounting to Rs.56,00,000/- was sanctioned by Axis bank, out of which an amount of Rs.40,65,879/- was disbursed directly in favour of the respondent company. The complainant submitted that on 26.11.2013, the complainant made their first payment to the respondent company for an amount of Rs.78,134/- in favour of the respondent company and in December 2013, he paid the first EMI of Rs.54,355/- to the bank and till date is maintaining the discipline of paying EMIs to the bank.
7. The complainant submitted that on 28.06.2017, he came to know about the ongoing dispute between the farmers and the respondent company which includes the entire project of the



respondent company named “Anant Raj, Madelia”, Sector M1, Manesar, Gurugram, Haryana and there is no likelihood of construction on the said site in near future. On 25.08.2017, the complainant approached the office of respondent company and had meetings with various executives/directors to know about the fate of their legitimate money but the directors of respondent company do not have any concrete reply.

8. The complainant submitted that he had a specific purpose for purchasing the said residential flat and this inordinate delay in the construction of the said residential flat has prejudiced complainant to a great extent and their financial interest have been seriously jeopardized and since it is a settled proposition that the time is the essence of all contract of property matters and that time having elapsed. The complainant is no longer interested to wait indefinitely and buy the fraudulent and misleading stories of respondent company.
9. The complainant submitted that due to the misrepresentation of facts and figures by respondent company has caused a wrongful gain to respondent and wrongful loss to the complainant and thus all the ingredients of cheating are satisfied and it is a case of not simple breach of promise but has number of criminal facets and the prime criminality lies on the directors, in which they made false statements pertaining



to their clear title of the said property at the time of launching of the project and at the time of execution of the agreement.

10. Issues raised by the complainant are as follow:

- i. Whether the complainant made the first payment to the respondent company for an amount of Rs.78,134/- in respect of the captioned property vide DD No. 600300 by Axis Bank Ltd. in favour of respondent company?
- ii. Whether an amount of Rs.40,65,879/- was disbursed directly in favour of the respondent company from the loan account of complainant?
- iii. Whether there is any ongoing dispute between the farmers and the respondent company which includes the entire project of the respondent company named "Anant Raj, Madelia", Sector M1, Manesar, Gurgaon, Haryana.
- iv. Whether the respondent company being a corporate has miserably failed to refund the amount received from the complainant in lieu of consideration for the above said property?



11. Relief sought:

The complainant is seeking refund of amount of Rs.28,89,982/- which the complainant has paid to the bank against the loan availed by him to buy the captioned property

shall be returned to the complainant along with additional 18% per annum interest on the amount deposited by the complainant in lieu of consideration for the shop in question.

Reply on behalf of respondent no.1

12. The respondent submitted that the present complaint filed by the complainant is a sheer abuse of process of law, has become infructuous, is not maintainable and same is liable to be dismissed. The apartment in question was initially purchased by one Mr. Pawan Kumar Sharma. Thereafter, the same was transferred in favour of one Mr. Vishal Gupta. Further, the said apartment was again transferred to the complainant, Mr. Manmohan Vig, who is the current/present allottee of the apartment in question.
13. The respondent submitted that the respondent entered into an agreement with M/s Kalinga Realtors Private Ltd., a wholly owned subsidiary of the respondent to develop, market and sell the project "Madelia" in question. M/s. Kalinga Realtors Private Ltd. was granted license bearing no.67 of 2009 dated 19.11.2009 by the Directorate of Town and Country Planning, Haryana Chandigarh to develop a group housing colony of land in question.



14. The respondent submitted that in the interregnum, some villager inhabitants who had originally sold the aforesaid land to the erstwhile owners, filed writ petitions in the year 2011, the lead matter being CWP No.23769 of 2011 titled as “**Om Prakash and Ors. vs. State of Haryana and Ors.**” before the Hon’ble High Court of Punjab & Haryana, challenging the sale of the several land parcels measuring 982 acres situated in the village Manesar, Naurangpur and Lakhnaula, Tehsil and District Gurgaon, Haryana which fact was not within the knowledge of the respondent till such time. The said 982 acres also comprised some part of the project land.
15. The respondent submitted that in the year 2014, the development/construction activity in respect of the said project initially got halted on account of unlawful and mala fide activities carried out by the local village residents who under the garb of orders of the Hon’ble High Court of Punjab and Haryana in the above mentioned matter which fact was not within the knowledge of the respondent till such time, wrongfully restrained the respondent from carrying out the construction activities at the aforesaid site, failing which they were threatened that if the work is not stopped immediately, respondent’s staff i.e. its labourers/contractors etc. shall face dire consequences including threat to their life and liberty.



16. The respondent submitted that in view of such impeding circumstances which were beyond the control of the respondent that the complainant and all other allottees who had booked flats with the respondent were informed by way of communication dated 26.09.2014 that the construction of project 'Madelia' had been obstructed due to the above mentioned factors and primarily due to the agitations by the local villagers and people living in the surrounding areas and that the respondent was doing the best to resolve the said issue and resume the construction at its earliest. Thereafter, the respondent at all given times kept all its allottees including the present complainant informed about the status of aforesaid litigation through various subsequent communications.

17. The respondent submitted that before the construction activities at the aforesaid site could be resumed in full swing by the respondent after the aforesaid litigation was finished and the impediment on construction was removed, a restraint order stating that there shall be no further construction on the land in question in the meantime was passed by the **Hon'ble Supreme Court of India** on 24.04.2015 in S.L.P. (Civil) No.5725 of 2015 (now Civil Appeal No.8788 of 2015) titled "Rameshwar and Ors. Vs State of Haryana and Ors" against the



judgment of the High Court of Punjab and Haryana and which has been continued further vide order dated 06.10.2015. On 12.04.2017, the Hon'ble Supreme Court reserved judgment in the said SLP titled "Rameshwar and Ors. Vs State of Haryana and Ors.". A communication letter dated 02.06.2017 intimating the same was sent to all the allottees including the complainant herein and the **final judgment** has been passed by the Hon'ble Supreme Court of India in the aforesaid matter on 12.03.2018.

18. The respondent submitted that vide aforesaid judgment the Hon'ble Supreme Court has directed the third parties from whom the builders had collected money (i.e. the buyers/allottees of flats/ purchasers) to file their claims with HUDA or HSIIDC and in pursuance of the aforesaid judgment passed by the Hon'ble Supreme Court, Haryana State Industrial and Infrastructure Development Corporation Ltd. "HSIIDC" issued public notice dated 05.04.2018 calling all such third parties (i.e. the buyers/ allottees of flats/ purchasers) to submit their claim(s) with HSIIDC. Thereafter, a Corrigendum to the aforesaid notice was issued by the "HSIIDC" again calling all such third parties (i.e. the buyers/ allottees of flats/ purchasers) to submit their claim(s) with HSIIDC.



19. The respondent submitted that in view of the aforesaid judgment passed by the Hon'ble Supreme Court, the appropriate forum to seek relief, if any by the complainant is HSIIDC/HUDA. This authority does not have jurisdiction to decide the subject matter dispute. It is submitted that any order passed by the authority contrary to the Hon'ble Supreme Court of India shall be in violation of the orders passed by Hon'ble Supreme Court. Therefore, the present complaint filed by the complainant is not maintainable and the same is liable to be dismissed.
20. The respondent denied that he adopted any fraudulent or clandestine approach as is wrongly alleged by the complainant. The respondent has always represented true and genuine facts to all its allottees. The allottees including Mr. Pawan Kumar Sharma, upon fully satisfying themselves in respect of the project in question applied for allotment in the said project. It is now wrong for the complainant to turn back and accuse the respondent on such baseless and unfounded grounds, as wrongfully alleged by the complainant.
21. The respondent denied that the respondent company has fraudulent, mala fide and dishonest intention to garb, cheat and forfeit the hard earned money of the complainant as is wrongfully alleged by the complainant. The respondent having



invested a huge corpus, was always ready and willing to construct and develop the said project and hand over the possession to the respective allottees. However, the subject matter was *sub judice* before Hon'ble Supreme Court and a stay order was in force. Thus, the respondent had no control over the prevailing circumstances and the same amount to force-majeure conditions. The final judgement has now been passed by the Hon'ble Supreme Court in this regard. Thus, in view of the aforesaid judgement, the appropriate forum to seek relief if any is HSIIDC/HUDA.

22. The respondent denied that the respondent has caused wrongful gain to itself and wrongful loss to the complainants as is falsely alleged by the complainant. It is also denied that the complainant has cheated or breached any promise as wrongfully alleged.

Reply on behalf of respondent no.2

23. The respondent submitted that the complainant is guilty of concealing the true and material facts. In fact, it is submitted that in civil appeal no.8788 of 2015 titled as "Rameshwar and Ors. Vs State of Haryana and Ors" before the Hon'ble Supreme Court of India, which has been decided on 12.03.2018, the Supreme Court ordered that this judgement be complied



within one year and quarterly progress report of the action taken in pursuance of this judgement be filed by the State in this court and final report of compliance be filed within one month after expiry of one year from today for such further direction as may become necessary.

24. The respondent submitted that the complainant has filed this application much before passing the period of one year as per orders of the Hon'ble Supreme Court. Hence, the application under reply is premature and the same is liable to be dismissed. The possession of the acquired land is still with the applicants. It is also submitted that the officials of the answering respondent including patwari Shri Ishwar Singh went to take possession and survey of 912 acres land on 14.08.2018, and patwari Shri Ishwar Singh was killed by some person.

25. The respondent submitted that the complainant has also filed claim before the answering respondent which is still under consideration before the answering respondent. Also, the complainant Paramjeet Singh, Manmohan Vig and Bajrang lal Jain have also filed civil misc. appeal no. 142 of 02.07.2018, 143 of 02.07.2018 and 144 of 02.07.2018 against Axis Bank Ltd. and M/s Anant Raj Industries before the court of Sh. Jasbir



Singh Kundu, Addl. District Judge, Gurugram in which the hon'ble court has passed the order:

"Appellant is held entitled for a cessation in his ongoing EMIs till passing of two months of the due speaking order with HSIIDC authorities have to pass latest by 11.03.2019 in compliance of Hon'ble Supreme Court directions and appellant would remain bound by his undertaking given to HSIIDC authorities that in case he is entitled for any refund of the amount, then same be made directly in favour of the Axis Bank."

26. The respondent submitted that the present complaint filed before March 2019 is pre-mature and the same is neither maintainable nor tenable in the eye of law and the same is liable to be dismissed. That the complainant has no cause of action to file the present complaint. The alleged cause of action is false and fictitious. That the complainant is estopped from filing the present complaint by his own act, conduct, omission, commission, admission acquiescence and laches.

Arguments raised by the respondent no.1

27. The answering respondent stated that he has incurred huge losses both in terms of money and reputation without having any fault of its own in regard with the project "Madelia". Pursuant to the judgement, respondent is already at disadvantage as the claims of buyers will be settled as priority from the claim of the builders thereby causing further hardship.



28. The respondent stated that he was a bona fide purchaser of land measuring 12.45 acres on which the said project was being constructed. That in year 2010, M/s Sheel Buildcon Pvt. Ltd., Divyajyoti Enterprises Pvt. Ltd., Progressive Buildtech Pvt. Ltd., Jassum Estate Pvt. Ltd. c/o M/s ABW Infrastructure Ltd. (erstwhile owners) sought permission from the Directorate of Town and Country Planning, Haryana for transferring the license bearing no. 67 of 2009 dated 19.11.2009 in favour of the subsidiary of the respondent company.

Findings of the authority

29. The authority has subject matter jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of



Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

30. The authority has clamoured for the interest and liability of M/s Anant Raj Industries Ltd as per provisions of section 65 of Indian Contract Act, 1872, on account of unjust enrichment and restitution as reported in two judgments of Hon'ble Apex Court in case titled as ***Indian Council for Enviro-legal action Vs. Union of India and others*** and in ***Sahakari Khand Udyog Mandal Ltd. Vs. CCE and Customs***. Since Hon'ble Apex Court has already given its verdict vide its order dated 12.3.2018 and has issued directions to HSIDC for taking over the project as well as to refund the principal amount of the investors. The order is pronounced. As such the action has to be taken by HSIDC by due date (March 2019) as directed by Hon'ble Apex Court.

31. The counsel for the respondent (M/s Anant Raj Industries Ltd.) has brought to the notice of the authority to para no. 33.6 and 33.7 of Hon'ble Apex Court judgment dated 12.03.2018 in case titled as ***Rameshwar and Others versus State of Haryana and Others in Civil Appeal No.8794 of 2015***, the relevant portion of the judgment reads as under:- (copy attached as Annexure-I):



“33.6. The builder will be entitled to refund/imbursement of any payments made to the State, to the landowners or the amount spent on development of the land, from HUDA on being satisfied about the extent of actual expenditure not exceeding HUDA norms on the subject. Claim of the builder will be taken up after settling claim of third parties from whom the builder has collected money. No interest will be payable on the said amount.

33.7. The third parties from whom money has been collected by the builder will be entitled to either the refund of the amount, out of and to the extent of the amount payable to the builder under the above direction, available with the State, on their claims being verified or will be allotted the plots at the price paid or price prevalent, whatever is higher. No interest will be payable on the said amount.”

32. Since the matter is being sorted out, as per directions of Hon’ble Apex Court to HSIIDC, as such, the complainant can take recourse in the matter with M/s Anant Raj Industries Ltd. if his interests are not safeguarded by HSIIDC. In that case, he can take up the matter with civil court in accordance with the directions of Hon’ble Apex Court. Since the matter with regard to interest is civil in nature.

33. The order is pronounced.

34. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 16.11.2018



PROCEEDINGS OF THE DAY

Day and Date	Friday and 16.11.2018
Complaint No.	112/2018 case titled as Mr. Manmohan Vig Vs. M/S Anant Raj Industries
Complainant	Mr. Manmohan Vig
Represented through	Shri Shanker Wij, Advocate for the complainant.
Respondent	M/s Anant Raj Industries
Respondent Represented through	Shri Anshul Yadav, Advocate for the respondent.
Last date of hearing	15.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

On the last date of hearing, as per the proceedings, counsel for the complainant was directed to file written arguments which he has submitted. We have clamoured for the interest and liability of M/s Anant Raj Industries Ltd as per provisions of Section 65 of Indian Contract Act, 1872, on account of unjust enrichment and restitution as reported in two judgments of Hon'ble Apex Court in case titled as **Indian Council for Enviro-legal action Vs. Union of India and others and in Sahakari Khand Udyog Mandal Ltd. Vs. CCE and Customs**. Since Hon'ble Apex Court has already given its verdict vide its order dated 12.3.2018 and has issued directions to HSIDC for taking over the project as well as to refund the principal amount of the investors. As such,

the action has to be taken by HSIDC by due date (March 2019) as directed by Hon'ble Apex Court

Counsel for the respondent (M/s Anant Raj Industries Ltd.) has brought to the notice of the authority to para Nos.33.6 and 33.7 of Hon'ble Apex Court judgment dated 12.03.2018 in case titled as **Rameshwar and Others versus State of Haryana and Others in Civil Appeal No.8794 of 2015**, the relevant portion of the judgment reads as under:- (copy attached as Annexure-I).

33.6. The builder will be entitled to refund/imbursement of any payments made to the State, to the landowners or the amount spent on development of the land, from HUDA on being satisfied about the extent of actual expenditure not exceeding HUDA norms on the subject. Claim of the builder will be taken up after settling claim of third parties from whom the builder has collected money. No interest will be payable on the said amount.

33.7. The third parties from whom money has been collected by the builder will be entitled to either the refund of the amount, out of and to the extent of the amount payable to the builder under the above direction, available with the State, on their claims being verified or will be allotted the plots at the price paid or price prevalent, whatever is higher. No interest will be payable on the said amount.

Since the matter is being sorted out, as per directions of Hon'ble Apex court to HSIDC, as such, the complainant can take recourse in the matter with M/s Anant Raj Industries Ltd. if his interests are not safeguarded by HSIDC. In that case, he can take up the matter with Civil Court in accordance

with the directions of Hon'ble Apex Court. Since the matter with regard to interest is of civil in nature.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)