

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

Complaint no. : 128 of 2018
First date of hearing: 08.05.2018
Date of Decision : 16.11.2018

Mr. Paramjit singh
H.no. 83, DLF Park Place
Sector - 54, Gurugram

...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:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Shanker Vig
Shri Anshul Yadav

Advocate for the complainant
Advocate for the respondents



ORDER

1. A complaint dated 04.04.2012 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. Paramjit Singh, against the promoter M/s Anant Raj Industries Ltd, on the violation of clause 7.1 of the apartment buyer agreement executed on 07.03.2012 in respect of apartment no. H-1202, block H, 12th floor in the project 'Madelia', Gurugram with a super area of 1772 sq. ft. for not handing over possession on the due date i.e. 07.03.2015 which is an obligation 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, IMT Manesar,, Gurugram
2.	Unit no.	H -1202 Tower H, 12 th floor
3.	Nature of project	Group housing colony
4.	Registered/ Not registered	Unregistered
5.	DTCP license	67 of 2009
6.	Date of builder buyer agreement	07.03.2012
7.	Total consideration	Rs. 53,42,086/-
8.	Total amount paid by the complainant	Rs. 37,72,910/-
9.	Payment plan	Construction Linked Plan
10.	Date of possession Clause 7.1 36 months + 180 days grace period from the commencement of construction i.e. 31.01.2011	31.07.2014
11.	Delay of possession	4 years and 4 months
12.	Penalty clause (clause 7.7)	Rs.10/- per sq. ft of the



	super area
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3. As per the details provided above, which have been checked as per record of the case file. The apartment buyer agreement has been executed dated 7.03.2012 vide allotment letter unit no H -1202, tower H on 12th floor was allotted to the complainant.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 03.05.2018. The case came up for hearing on 8.05.2018, 6.06.2018, 11.07.2018, 28.08.2018, 29.08.2018, 06.09.2018, 11.10.2018, 15.11.2018 and 16.11.2018. The reply has been filed on behalf of the respondents on 08.05.2018.

Facts of the case

5. The complainant submitted that Mrs. Bindra i.e. original allottee booked a residential flat no. 1202, tower H in 'Anant Raj, Madelia', sector M1, Manesar, Gurugram for total consideration of Rs. 53,42,086/-and entered into the apartment buyer agreement with the respondent company on 07.03.2012.



7. The complainant submitted that on 22.09.2012 the apartment mentioned in above para was transferred to Mr. Sunil Kumar Pachar on the application by Mrs. Bindra to the respondents for the transfer of property.
8. The complainant submitted that on 01.10.2012 Mr. Sunil Kumar Pachar paid the amount Rs. 4,43,977/- to the respondents vide cheque no. 199741 dated 01.10.2012 drawn on Citi Bank, which was acknowledged by the respondent company in favour of Mr. Sunil Kumar Pachar.
9. The complainant submitted that Mr. Sunil Kumar Pachar continued to pay regular payment to the respondent company as the terms of the payment plan and on 10.09.2013 Mr. Sunil Kumar Pachar paid the amount for casting 8th floor of Rs. 5,63,018/- to the respondent vide cheque bearing no. 199751 dated 10.09.2013.
10. The complainant submitted that Mr. Sunil Kumar Pachar intimated the respondent company of transferring the apartment to Mr. Paramjit singh on 20.11.2013 and no objection certificate was issued by the respondent company regarding the transfer of apartment to Mr. Paramji Singh i.e. the present complainant.



11. The complainant submitted that in the month of November 2013 the complainant approached axis bank Ltd for availing the home loan facility to buy the property amounting Rs. 51,75,772/- that was sanctioned by axis bank and the said amount was disbursed directly in favour of anant raj industries Ltd.
12. The complainant submitted that on 07.01.2014 a nomination letter was issued by the respondents in favour of complainant wherein the captioned apartment was transferred in the favour of complainant.
13. The complainant submitted that complainant made the payment of Rs.4,39,538/- on 12.02.2014 in respect of the property on account of casting of 12th floor.
14. The complainant submitted that on 23.06.2017 the complainant came to know about the dispute between the farmer and the respondent company which includes the entire project of the respondent company.
15. The complainant submitted that on 27.09.2017 the complainant approached the office of respondent company and had meetings with various directors to know about the fate of their legitimate money, but the director of the respondent company does not have any reply



16. The complainant submitted that complainant again approached the office of respondents on 22.03.2018 to know about the status of the property he purchased from the respondent company, but the respondent company did not give any reply to complainant.
17. The complainant submitted that the intention of the respondent company clearly shows to cheat and forfeit the earnest money of the complainant.
18. The complainant submitted that the complainant has specific purpose for purchasing the residential flat and this infinite delay in the construction of said residential flat causes loss to the complainant.

Issues raised by the complainant.

Whether the respondent company has failed to refund the amount of Rs. 37,72,910/- received from the complainant in lieu of consideration for the above said property.



Relief sought

- I. To fully refund the amount paid by the complainant amounting to Rs. 37,72,910/-.
- II. To provide the interest of 18% per annum till the date of final settlement.

Respondent's reply

19. The respondents submitted that the present complaint is not maintainable in law or facts. The complainant booked a unit no. 1202, tower H, 12th floor in the project "Madelia" with the respondents. The apartment in question was initially purchased by one Mrs. Bindra vide apartment dated 7.03.2012. Thereafter the same was again transferred in favour of one Mr. Sunil Kumar Pachar. Further the said apartment was again transferred to Paramjit Singh, the present complainant, who is the current allottee of the apartment in question
20. It is submitted that the respondents 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.
21. The complainant submitted that villager who sold the aforesaid land to the owner, filed the writ petition in the year 2011, CWP No.23769 of 2011 titled as **Om Parkash & ors Vs**



State Of Haryana, before the hon'ble High Court of Punjab and Haryana, challenging the sale of the several land parcels measuring 982 acres situated in the village Manesar, Naurangpur and Lakhula Tehsil District Gurgaon, Haryana the fact that was not within the knowledge of respondent till such time. The said 982 acre also comprised of some part of the project land.

22. The complainant submitted that in year 2013 the development activity of said project got halted on account of unlawful activities carried out by local villagers
23. The complainant submitted that in view of such impeding circumstances which were beyond the control of respondents that the complainant and all the other allottees who have booked flats with the respondents were informed by way of communication dated 26.09.2014 that construction of project has been obstructed due to of unlawful activities carried out by local villagers and people living in the surrounding areas and the respondents were doing best to resolve the issue and resume the construction
24. The respondent submitted that before the construction activities at the site could be resumed in full swing by the respondents after the aforesaid litigation was finished and a



restraint order that there shall be no further construction on the land was passed by the hon'ble supreme court of india on 24.04.2015 in SLP.

25. The complainant submitted that on 12.04.2017, the hon'ble supreme court of India reserved judgement in the said SLP titled "**Rameshwar & Ors.**" Vs state of Haryana & Ors. A communication letter dated 02.06.2017 intimating the same was sent to all the allottees including the complainant.

26. The complainant submitted that judgement by the hon'ble supreme court of India has directed the third party from whom the builders have collected money will be entitled to get refund of the amount from the amount payable to the builder. Every such claim being verified by HUDA or HSIDC. In order to facilitate such exercise all the third parties who have purchased or have been allotted the plots or apartments shall prefer claims within one month from today, which claim shall be verified within two months from today.

27. The complainant submitted that pursuance of the aforesaid judgement the HSIDC issued public notice dated 05.04.2018 calling all such third parties to submit their claim.

28. The complainant submitted that in view of the aforesaid judgement passed by the hon'ble supreme court of India, the



appropriate forum to seek relief, if any by the complainant in HSIDC/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 order passed by hon'ble supreme court. Therefore, the present complaint filed by the complainant has become infructuous and the same is liable to be dismissed.

Inferences drawn by the authority

30. The authority has complete subject matter jurisdiction to decide the complaint regarding 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 complainants 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.



31. 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.

32. 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."

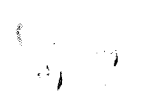
33. Since the matter is being sorted out, as per directions of hon'ble apex court to HSIDC, as such, the complainant can take recourse in the matter with M/s Anant Raj Industries Ltd. if his interests are not safeguarded by HSIDC. In that case, he can take up the matter with civil court in accordance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

34. The order is pronounced.

35. Case file be consigned to the registry.



(Samir Kumar)
Member



(Subhash Chander Kush)
Member

Dated: 16.11.2018



PROCEEDINGS OF THE DAY

Day and Date	Friday and 16.11.2018
Complaint No.	128/20 18 case titled as Mr. Paramjit Singh Vs. M/s Anant Raj Industries Ltd.
Complainant	Mr. Paramjit Singh
Represented through	Shri Shanker Wij, Advocate for the complainant
Respondent	M/s Anant Raj Industries Ltd.
Respondent Represented through	Shri Anshul Yadav, Advocate for the respondent on behalf of Anant
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

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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)