

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

Complaint No. : 437 of 2018
**Date of First
hearing** : 07.08.2018
Date of Decision : 16.11.2018

Mr. Hari Om Sharma, R/o House no. 22-B,
Friends Colony, Gurugram

...Complainant

Versus

M/s Anant Raj Industries Pvt. Ltd. (through
Chairman Ashok Sarin)
Plot no. CP-1, Sector-8 IMT Manesar
Gurugram, Haryana 122051
Corporate Office: ARA, Centre, E-2,
Jhandewalan Extn., New Delhi

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Mukul Kaushik with Advocate for the complainant
complainant in person

Shri Suhael Buttan Advocate for the respondent



ORDER

1. A complaint dated 14.06.2018 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. Hari Om

Sharma, against the promoter M/s Anant Raj Industries Pvt. Ltd., on account of violation of clause 7.1 of the apartment buyer agreement executed on 11.04.2012 for unit no. D-1101, tower D, admeasuring super area of 1772 sq. ft. in the project “Madelia” for not giving possession on 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” in Sector M-1A, Manesar, Gurugram
2.	Unit no.	D-1101
3.	Project area	12.45 acres
4.	Nature of real estate project	Group housing colony
5.	Registered/ not registered	Not registered
6.	DTCP license	67 of 2009 dated 19.11.2009
7.	Date of apartment buyer agreement	11.04.2012 (as per the complaint)
8.	Total consideration	Rs. 51,80,855/- (as per the agreement, pg 36)
9.	Total amount paid by the complainant	Rs. 29,05,573/-
10.	Payment plan	Construction linked plan
11.	Date of delivery of possession	Clause 7.1 – 36 months from commencement of construction, i.e. 06.04.2012(on completion of construction, as per demand letter cum



		service invoice, annexure-I) + 6 months grace period i.e. 06.10.2015
12.	Delay of number of months/ years upto 15.11.2018	3 years 1 month
13.	Penalty clause as per apartment buyer agreement dated 11.04.2012	Clause 7.8- refund of amount paid with interest @9% p.a. for the period developer holds the amount received

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer agreement is available on record for unit no. D-1101, tower D, admeasuring 1772 sq. ft. according to which the possession of the aforesaid unit was to be delivered by 06.10.2015. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 30.08.2018. The case came up for hearing on 07.08.2018, 30.08.2018, 11.09.2018, 11.10.2018 and 15.11.2018. The reply has been



filed on behalf of the respondent on 08.08.2018.

Facts of the complaint

5. The complainant submitted that M/s Kalinga Realtors Private limited registered under the Companies Act, 1956 having its registration office at office H-65, Connaught Circus, New Delhi 110001 is a wholly owned subsidiary of the respondent M/s Anant Raj Industries Private Limited, was owner of land admeasuring 12.45 acres situated at residential Sector M-1A in the revenue estate of village Manesar, Distt. Gurugram, Haryana and the license no 67 of 2009 of the said land was transferred from M/s ABW Infrastructure Pvt Ltd to M/s Kalinga Realtors Pvt Ltd by Town and Country Planning vide office Endst. No. 8677-89 dated 12.07.2010.
6. The complainant submitted that the respondent and M/s Kalinga Realtors Pvt Ltd entered into an arrangement for the development of the said land whereby M/s Kalinga Realtors Pvt Ltd has granted right to respondent to develop, market and sell the developments/flats/floors on the said land.
7. That, after the aforesaid arrangement, M/s Anant Raj Industries Private Limited launched a residential project in the name and style of "Madelia" situated at residential Sector M-1A in the revenue estate of village Manesar, Gurugram.



8. It is submitted that on 18.03.2011, the respondent issued the transfer of provisional allotment of residential apartment no C-1301, Tower "C" on 13th Floor admeasuring 1772 sq feet (Regn. no 0208) at Madelia, Sector M-1A, Manesar, Gurugram, Haryana vide letter Ref No ARIL/MADELIA/1123/11 dated 18.03.2011 in favour of complainant.
9. The complainant submitted that in the said letter, the respondent confirmed transfer of said apartment from Mr. Rajeev Lochan Tyagi to complainant Hari Om Sharma and also credited an amount of Rs. 9,91,745/- in favour of complainant which was deposited by the previous allottee.
10. The complainant submitted that the respondent executed apartment buyer agreement with him on 11.04.2012. At the time of execution of said agreement, unit no C-1301 which was initially allotted to the complainant was changed from C-1301 to D-1101 on 11th floor, Tower D admeasuring 1772 sq. ft. The apartment buyer agreement was also executed regarding the apartment unit no D-1101, Tower No D, Floor 11 (super area 1772 sq feet).
11. On 11.04.2012, apartment buyer agreement was entered into between the parties wherein as per clause 7.1, the construction should have been completed within 36 months



from the commencement of construction +6 months grace period, i.e. by 06.10.2015. Till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 29,05,573/-.

12. The complainant further submitted that the Hon'ble Supreme Court vide judgment dated 12.03.2018 passed in case titled "**Rameshwar v. State of Haryana & Others**" set aside the sale deeds, license, transfer regarding the land of the village Manesar Lakhnaula, Naurangpur. The said project also falls in the said disputed land. So, the same cannot be completed. The complainant paid his hard-earned money amounting to Rs 29,05,573/- to the respondent but respondent failed to handover the above-said unit to the complainant even after passing of more than 7 years. So, as per clause no 7. 8 of the said apartment buyer agreement, the complainant is entitled to refund of the amount received by the respondent/developer together with an interest of and agreed rate of 9% per annum for the period the respondent/developer holds the amount received from the complainant/allottee(s). The clause 7.8 of apartment buyer agreement is as follows: -



“The Developer hereby covenants with the Allottee(s) that in case, due to any unforeseen event, the developer is not in a position to handover the possession at all, the Allottee(s) is entitled to refund of the amount received by the developer together with an interest of and agreed rate of 9% per annum for the period the developer hold the amount received from the allootee(s).”

13. As per clause 7.1 of the apartment buyer agreement, the company proposed to hand over the possession of the said unit by 06.10.2015. The clause regarding possession of the said unit is reproduced below:

“7.1-.....the developer proposes to complete construction/development of the said Apartment to the Allottee(s) within a period of 36 months from the date of commencement of construction unless there shall be any delay or failure due to force majeure. The Allottee understands and agrees that the developer shall be entitled to a grace period of 180 days after the expiry of the aforesaid 36 months.....”

14. Issues raised by the complainant

The relevant issues as culled out from the complaint are as under:

- I. Whether the respondent breached the terms and condition of the apartment buyer agreement executed between the complainant and the respondent?
- II. Whether the respondent failed to construct the residential project “Madelia” within the agreed period of 3 years and



the complainant is entitled to recover Rs.29,05,573/- along with penal interest of 18% per annum for the period the respondent held the amount received from the complainant?

III. Whether the complainant is entitled to recover damages suffered by him due to breach of terms and conditions of the apartment buyer agreement by the respondent?

15. Relief sought

I. Direct the respondent to refund the amount of Rs 29,05,573/- along with penal interest of 18% per annum for the period the respondent held the amount received from the complainant.

Respondent's reply

16. The respondent submitted that the complainant had purchased an apartment bearing provisional allotment no. C-1301, tower C, on 13th floor, admeasuring 1772 sq. ft. in the project "Madelia". However, on request of the complainant, the said unit has been changed form C-1301 to D-1101 with the same terms and conditions as stipulated in the application for provisional allotment.

17. The respondent stated that the present complaint is not



maintainable as the complainant is not entitled to any claim from the respondent before the hon'ble authority. The construction progress of the said project was 65% in 2015 when the Hon'ble Supreme Court of India passed a restrain order dated 24.04.2015 in an SLP civil no. 5725 of 2015(now civil appeal no. 8788 of 2015) titled "**Rameshwar & Ors. v State of Haryana & Ors.**" against the judgment of the High Court of Punjab and Haryana stating that there shall be no further construction on the land in question including the land for the project "Madelia". Thereafter, the construction progress of the project "Madelia" was brought to a complete halt which was beyond the control of the respondent.

18. It is submitted that on 12.03.2018, the Hon'ble Supreme Court of India in Civil Appeal no. 8788 of 2015 "**Rameshwar & Ors. v State of Haryana & Ors.**" pronounced judgment directing the lands in question including the land for the project "Madelia" to be vested with HUDA/HSIIDC. The judgement further gave relief to the third parties including the complainant herein who had paid money for purchasing flat/units to recover their money after submitting their claims to HUDA/HSIIDC within one month from the date of pronouncement of the judgment. They are entitled to refund of money by submission of their claims to HUDA or HSIIDC.



Hence, the claims of the complainant do not survive against the respondent as the complainant is only entitled to seek relief from HUDA/HSIIDC, if any and the same warrants outright dismissal of the complaint being not maintainable before this Authority.

19. The respondent further submitted that they have duly complied with the terms and conditions as stipulated in the application for provisional allotment as well as in the BBA. The delay caused in the construction of the project was beyond the control of the respondent and the same is covered under the “force majeure” clause of the agreement.
20. The respondent with bona fide intent to develop a housing project had acquired the said land being completely unaware about the disputes in the background pertaining to the said land between its erstwhile owners and altered its position by developing the aforementioned project by undertaking construction actively on the same and in a span of 22 months, i.e. till February 2014 succeeded in erecting over 65% of the super structure of the project building including the basement. A halt came due to unlawful and mala fide activities by some local village residents and despite that, the respondent made an endeavour to complete the project and also filed several



complaints to the SHO.

21. The respondent submitted that in view of the aforesaid judgment, the appropriate forum to seek relief, if any by the complainant is HUDA/HSIIDC. 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 the Hon'ble Supreme Court. Therefore, the present complaint is not maintainable and the same is liable to be dismissed.

Findings of the authority

22. **Jurisdiction of the authority**- The project "Madelia" is located in Sector M-1A, Manesar, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.

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.

23. 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 HSIIDC 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.

24. The 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/imburement 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.”

25. 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.

26. The order is pronounced.

27. Case file be consigned to the registry. Case file be consigned to the registration branch.



(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.	437/2018 case titled as Mr. Hari Om Sharma Vs. M/s Anant Raj Private Limited
Complainant	Mr. Hari Om Sharma
Represented through	Shri Mukul Kaushik, Advocate for the complainant.
Respondent	M/s Anant Raj Private Limited
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)