

PROCEEDINGS OF THE DAY

Day and Date	Friday and 07.12.2018
Complaint No.	561/2018 Case Titled As Mr. Parveen Kumar V/S M/S Anant Raj Industries Ltd
Complainant	Mr. Parveen Kumar
Represented through	Shri Shanker Wig, Advocate for the complainant.
Respondent	M/S Anant Raj Industries Ltd
Respondent Represented through	Shri Rajesh Kumar Garg, Advocate for the respondent.
Last date of hearing	18.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments heard.

Reply has already been filed by the respondent.

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 HSIIDC 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 HSIIDC 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 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 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)

BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

Complaint no. : 561 of 2018

First date of hearing : 18.09.2018

Date of decision : 07.12.2018

Praveen Kumar

R/o H No: 642, Sector 10,

Near Blue Bells Public School, Gurugram.

..Complainant

Versus

1. M/s Anant Raj Industries Ltd.

Office Address: H-65, Connaught Circus,
New Delhi-110001.

...Respondents

2. HSIIDC, plot no C-13,14 sector 6,
Panchkula: 134109

CORAM:

Dr. K.K. Khandelwal

Shri Samir Kumar

Shri Subhash Chander Kush

Chairman

Member

Member

APPEARANCE:

Shri Shanker Wig

Advocate for the complainant

Shri Rajesh Kumar Garg

Advocate for the respondent



ORDER

1. A complaint dated 19.07.2018 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, Praveen Kumar against the promoter, M/s Anant Raj Industries Ltd., on account of violation of the clause 7.1 of apartment buyer's agreement executed on 08.03.2013 in respect of apartment described below in the project 'Madelia' for not handing over 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: -

- **Nature of the project- Group Housing Colony**
- **DTCP License no: 67 of 2009 dated 19.11.2009**

1.	Name and location of the project	Madelia, Sector M-1A, Manesar, Gurugram.
2.	Registered/Unregistered	Applied for registration on 01.08.2017
3.	Payment plan	Construction linked
4.	Date of agreement	08.03.2011
5.	Unit no.	703, tower L, 7 th floor
6.	Area of unit	1292 sq. ft.
7.	Total amount paid by the complainant as per statement of account dated 17.08.2015	Rs 48,37,730 /-
8.	Date of delivery of possession as per clause 7.1 of the apartment buyer's agreement i.e. 36 Months	08.08.2014



	+ 180 days grace period from the date of commencement of construction	
9.	Delay till date	4 years 3 months 30 days

3. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed on behalf of the respondent.

FACTS OF THE CASE:

4. The respondent company advertised for allotment of residential flat in its upcoming residential project named "Madelia", Sector M1, Manesar, Gurugram, Haryana in the year 2011 and accordingly the complainant was offered a residential unit who was misled by the false representations made by the directors of the respondent company who induced the complainant to purchase a residential flat for a total consideration of amount of Rs 65,47,272 in the said project and as a consequence of the inducement made by the respondent company the complainant made a joint



application in his name with his name along with his wife Mrs Kalpana and booked a residential town house bearing L 703, area admeasuring 1292 sq. ft. in the said project and entered into an apartment buyers agreement with the respondent and paid an amount of Rs 5,15,450 as booking amount.

5. That on 01.11.2012 the complainant had already approached the HDFC bank for availing hone loan facility to buy the property and a loan amounting to Rs 46,87,479 was sanctioned out of which an amount of Rs 32,39,396 was disbursed directly in favour of M/s Anantraj Limited.
6. That in 2013 the complainants paid the first EMI of Rs 32,578 to the respondent and till date the complainant is maintaining the discipline of paying EMI to respondent in lieu of loan availed by the complainant from the above mentioned bank in respect of the said unit.
7. That on 28.06.2017 the complainant came to know about the ongoing dispute between the farmers and the respondent company which includes the entire project of the developer



company named “Madelia” and there is no likelihood on the said site in near future.

8. That on 28.08.2017 complainant approached the office of the developer company and had meetings with various executives to know about the fate of their money, but the directors of the company had no concrete reply.
9. That the intention of the respondent company was fraudulent and dishonest since inception and whenever the complainant try to approach the office of the respondent company and had meetings with various executives to know about the fate of their legitimate money, the directors of developer company do not have any concrete reply and only evasive replies and assurances have been offered to complainant who have put in his hard earned money.
10. That the respondent company is not even inclined to refund the amount received in lieu of consideration. That the complainant again approached the office of the developer company on 22.03.2018 to know about the status of the property he purchased from the respondent.



11. The respondent informed the complainant that as per orders dated 12.03.2018 passed by the hon'ble Supreme Court in civil appeal no 8788 of 2015 all the third parties from whom money had been collected by the builders will either be entitled to the refund of entire amount or will be allotted plots as the agreed price by HSIIDC after verification of claim forms made to HSIIDC.
12. That after the information was received by the respondent from builder, further HSIIDC itself issued public notices and a corrigendum conforming what complainant had known from the office of developer company. The complainant contacted bank for seeking relief in payment of EMI's but the complainant was instead shocked to note the conduct of bank officials. They threatened the complainant to initiate civil as well criminal proceedings against the complainants and also threatened that they will report the matter to CIBIL authorities to black list the name of complainant which will deter the CIBIL score of complainant and no bank will give loan to the complainant.



13. That the cause of action to prefer the present suit arose when the complainant got the information regarding the refund of payment by HSIIDC, it again arose when the respondent threatened the complainant and it is still subsisting.

ISSUES RAISED BY THE COMPLAINANTS:

14. The following issues have been raised by the complainant:
- Whether the complainant made the first payment to the respondent company for an amount of Rs 5,15,450- in respect of the captioned property vide cheque No. 132356 in favour of respondent company?
 - Whether an amount of Rs. 32,39,396/- was disbursed directly in favour of the respondent company from the loan account of complainant?
 - 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.



- d. 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?

RELIEF SOUGHT BY THE COMPLAINANTS:

15. In view of the facts mentioned the following relief have been sought by the complainant:

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 BY RESPONDENT NO 1

16. 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

17. 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 & Ors vs. State of Haryana & 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

18. 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 abovementioned matter which infact 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

19. 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 abovementioned 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.



20. 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 & Ors. Vs State of Haryana & Ors" against the judgment of the High Court of Punjab & Haryana and which has been continued further vide order dated 02.06.2015. On 12.04.2017, the hon'ble Supreme Court reserved judgment in the said SLP titled "Rameshwar & Ors. Vs State of Haryana & Ors."

21. 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

22. 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 & Ors. Vs State of Haryana & 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 with 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.

23. 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 persons.

24. 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."

25. 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.

FINDINGS OF THE AUTHORITY:

26. 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 & 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.



27. 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

28. 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/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.”

29. 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

30. The authority relies on para 6 of Supreme Court judgment dated 25.07.1997 titled as K. Ajit babu and others v. Union of India and others (1997 6 SCC 473) which mentions about the doctrine of precedent. Since the authority has taken a view in complaint bearing no.112/2018 case titled as Mr.



Manmohan Vig versus M/s Anant Raj Industries Ltd. & anr.
and other similar situated cases, the authority cannot go
beyond the view already taken

31. The order is pronounced.

32. Case file be consigned to the registry.

(Samir Kumar)

Member

Date: 07.12.2018

(Subhash Chander Kush)

Member



HARERA
GURUGRAM



Judgement Uploaded on 05.01.2019