

PROCEEDINGS OF THE DAY

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| Day and Date | Friday and 07.12.2018 |
| Complaint No. | 562/2018 Case titled as Mr. Sanjay Kumar V/S M/S Anant Raj Industries Ltd. |
| Complainant | Mr. Sanjay 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

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)
7.12.2018

Subhash Chander Kush
(Member)
7.12.2018

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

Complaint no. : 562 of 2018
First date of hearing: 18.09.2018
Date of decision : 07.12.2018

Mr. Sanjay Kumar,
R/o. 615, Tower B-4, Sidco Shivalic
Apartments, Sector-1, Manesar,
Gurugram-122005.

Complainant

Versus

1. M/s Anant Raj Industries Ltd.
Office Address: H-65, Connaught Circus,
New Delhi-110001.
2. HSIIDC,
Plot no. C-13,14, Sector-6,
Panchkula-134109.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

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 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 Mr. Sanjay Kumar, 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 01.01.2013 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. Since, the apartment buyer's agreement has been executed on 01.01.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. 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

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| 1. | Name and location of the project | Madelia, Sector M-1A, Manesar, Gurugram. |
| 2. | Project area | 12.45 acres |
| 3. | Registered/ not registered | Applied for registration on 01.08.2017 |
| 4. | Apartment/unit no. | L-603, 6 th floor, tower 'L' |
| 5. | Apartment measuring | 1292 sq. ft. |



| | | |
|-----|---|----------------------------------|
| 6. | Date of execution of apartment buyer's agreement | 01.01.2013 |
| 7. | Payment plan | Construction linked payment plan |
| 8. | Booking amount paid by the complainant | Rs.5,15,450/- |
| 9. | Total consideration as per payment plan annexed with the said agreement | Rs.66,06,962/- |
| 10. | Date of delivery of possession as per clause 7.1 of the apartment buyer's agreement i.e. 36 Months + 180 days grace period from the date of execution of the agreement i.e. 01.01.2013. | 01.07.2016 |
| 11. | Delay in handing over possession till date of decision | 2 years 5 months 6 days |

4. 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 through their counsels appeared on 18.09.2018. The case came up for hearing on 18.09.2018 and 07.12.2018. The reply filed on behalf of the respondent no.1 on 15.11.2018 has been perused. The respondent no. 2 filed reply on 18.09.2018 and the same has been perused.

Facts of the complaint

5. 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 “Madelia”, Sector M1, Manesar, Gurugram, Haryana. Mr. Sanjay Kumar made a joint application in his name along with his wife Mrs. Indu Kumari and booked a residential town house bearing number L-603, area measuring 1292 sq. ft. in the said project. On 01.01.2013, the complainant and the respondent entered into an apartment buyer’s agreement and paid an amount of Rs.5,15,450/- as booking amount/earnest money to the respondent. On 18.12.2012, letter of allotment was issued by the builder in favour of the complainant.

6. The complainant submitted that on 01.11.2012, he approached State Bank of India for availing home loan facility to buy the captioned property. A loan amounting to Rs.50,00,000/- was sanctioned by the bank, out of which an amount of Rs.48,00,000/- was disbursed directly in favour of the respondent company. The complainant submitted that in 2013, he paid the first EMI of Rs.31,708/- 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 no.2 company named “Madelia”, Sector M1, Manesar, Gurugram, Haryana and there is no likelihood of



construction on the said site in near future. On 28.08.2017, the complainant approached the office of respondent no.2 company and had meetings with various executives/directors to know about the fate of their legitimate money but the directors of respondent company did not have any concrete reply.

8. The complainant submitted that the intention of the respondent company was fraudulent and dishonest since inception. The complainant submitted that though the complainant as individuals have been able to perform his part of obligation meticulously whereas respondent company being a corporate has miserably failed on all fronts.
9. The complainant submitted that on 22.03.2018, he again approached the office of respondent no.2 to know about status of the property purchased from the respondent company and to know about the fate of their legitimate money but the executives of the developer company did not give any concrete reply. The complainant was also informed by respondent that as per the orders dated 12.03.2018 passed by Hon'ble Supreme Court of India in civil appeal no.8788 of 2015, all the third parties from whom the money had been collected by the builders/private entities will either be entitled to refund of entire amount or will be allotted plots or apartments at the



agreed price by HSIIDC after the verification of claim forms made to HSIIDC.

10. The complainant submitted that after the information was received from the respondent company and further HSIIDC itself issued public notices and a corrigendum conforming what complainant got to know from the office of respondent no.2, the complainant contacted respondent no.1 for seeking relief in payments of EMI'S. However, the complainant was instead shocked to note the conduct of respondent no.1 as the officials of bank threatened the complainant to initiate civil as well as criminal proceedings against the complainant. Also, threatened that they will report the matter to CIBIL authorities to blacklist the name of the complainant which will deter the CIBIL score of complainant and no bank will give loan to the complainant in case the complainant withholds the payment of EMIs.

11. The complainant submitted that the cause of action 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 continuing.



12. 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?

13. 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



24% 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 i.e. M/s Anant Raj Industries Ltd.

14. 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 complainant had booked flat no.L-603 in the said project out of his own free will and choice in 2012.
15. The respondent submitted that in the year 2010, M/s Sheel Buildcon Pvt. Ltd., M/s Ecotech Buildcon Pvt. Ltd., Divyajyoti Enterprises Pvt. Ltd., Progressive Buildtech Pvt. Ltd., Jassum Estate Pvt. Ltd. c/o M/s ABW Infrastructure Ltd. (herein referred as 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 respondent no.1 which was duly granted by DTCP vide memo no. LC-1613-JE(B)-2010 dated 02.03.2010. In compliance of the memo, erstwhile owners transferred the project land comprising 12.45 acres of land in favour of the subsidiary of respondent



no.1 company by way of sale deed dated 23.04.2010 for a consideration of Rs.40 crores approx.

16. The respondent submitted that pursuant to aforesaid, the license to develop the said group housing society was transferred in the name of subsidiary of respondent company vide order dated 12.07.2010 passed by DTCP. Therefore, respondent no.1 company and its subsidiary were bonafide purchasers of the aforesaid land from the erstwhile owners and altered its position by developing the aforementioned housing project by undertaking construction activity on the same from April 2012.
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 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 Gurugram, 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 under the garb of orders of the Hon'ble High Court of Punjab and Haryana in the above-mentioned matter. The said fact was not within the knowledge of the respondent till such time, and the locals 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, 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 ITS 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 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.



21. 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. 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.
22. 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.



23. 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.

Reply on behalf of respondent no.2 i.e. HSIIDC

24. 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.

25. 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.

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.



Findings of the authority

27. 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 14.12.2017 issued by Department of Town and Country Planning, 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.
28. 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.

29. 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/reimbursement 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."



30. 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.

31. 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 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.
32. The order is pronounced.
33. Case file be consigned to the registry.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated:07.12.2018

Judgement Uploaded on 05.01.2019