

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

Complaint no. : 1552 of 2018
First date of hearing: 14.03.2019
Date of decision : 14.03.2019

Mr. Bajrang Lal Jain,
R/o H.no. C-13/10, 2nd Floor,
Ardee City, near Gate no.3,
Gurugram-122003.

Complainant

Versus

M/s Anant Raj Industries Ltd.
Office Address: CP-1, Sector 8, IMT
Manesar, Haryana-122051.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Shanker Wij Advocate for the complainant
None for the respondent Advocate for the respondent

ORDER

1. A complaint dated 29.10.2018 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. Bajrang Lal Jain, against the promoter M/s Anant Raj Industries Ltd., on account of not refunding amount of Rs.30,00,000/- which the complainant has paid to the bank against the loan availed by



him to buy the captioned property along with additional 24% per annum interest on the amount deposited by the complainant in lieu of consideration for the unit in question.

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.	Allotment letter	08.10.2012
7.	Apartment/unit no.	J-602, 6 th floor, tower J
8.	Apartment measuring	1772 sq. ft.
9.	Date of execution of apartment buyer's agreement	11.10.2012
10.	Payment plan	Time linked/construction linked payment plan Page 54 of complaint
11.	Total consideration as per statement of account dated 28.03.2018	Rs.73,61,612/-
12.	Total amount paid by the complainant till date as per statement of account dated 28.03.2018	Rs.54,20,880/-
13.	Date of commencement of work	Cannot be ascertained as per documents available on record
14.	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 commencement of construction.	Cannot be ascertained



15.	Penalty clause as per the said agreement	Clause 7.7 i.e. Rs.10/- per sq. ft. of the super area of the said apartment per month for the period of such delay.
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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 respondent. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent filed reply on 24.12.2018 which has been perused. The case came up for hearing on 14.03.2019, but the respondent has failed to appear despite services of notices for hearing so the respondent has been proceeded ex-parte.

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 "Madelia", Sector M1, Manesar, Gurugram, Haryana. Accordingly as per its modus operandi and clandestine approach, the respondent company offered a residential unit at very attractive prices and amenities to Mr. Bajrang Lal Jain i.e. the original allottee, 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 sale consideration of Rs.76,33,852/- in the said project. As a consequence of the inducement made by the respondent, Mr. Bajrang Lal Jain made a joint application in his name along with his wife Mrs. Kavita Jain and booked a residential town house bearing no. J-602 measuring 1292 sq. ft. in the said project. They entered into an apartment buyer's agreement with the respondent company on 11.10.2012 and paid an amount of Rs.5,15,450/- as booking amount.

5. The complainant submitted that the complainant had already approached State Bank of India for availing home loan facility to buy the captioned property and on the basis of ITR's of complainant a loan amounting to Rs.55,00,000/- was sanctioned by the bank, out of which an amount of Rs.43,26,094/- was disbursed directly in favour of the respondent company. The complainant submitted that in 2012, the complainant paid the first EMI of Rs.55,838/- to the respondent company and till date is maintaining the discipline of paying EMIs to the bank in lieu of loan availed by the complainant in respect of captioned property.
6. 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 “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 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.

7. The complainant submitted that he had a specific purpose for purchasing the said residential town house 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.
8. The complainant submitted that he again approached the office of respondent on 22.03.2018 to know about the status of the property he 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 the respondent that as per the orders dated 12.03.2018 passed by Hon’ble Supreme Court in civil appeal no.8788 of 2015, all the third parties from whom money had been collected by the builder will either be entitled to the refund of entire amount or will be



allotted plots or apartments at the agreed price by HSIIDC after verification of claims.

9. The complainant submitted that after the information was received from the respondent and further HSIIDC itself issued public notices and a corrigendum confirming what complainant got to know from the office of the respondent. The complainant contacted respondent for seeking relief in payment of EMI's but the complainant was instead shocked to note the conduct of respondent as the officials of bank threatened him to initiate civil as well as criminal proceedings and also threatened to report the matter to CIBIL authorities to black list the name of complainant which will deter CIBIL score and no bank will give loan to the complainant in case the complainant withholds payment of EMIs.
10. 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 him and it is still subsisting and continuing. This hon'ble authority has jurisdiction to try and adjudicate the present complaint since the temple is situated within the jurisdiction of the authority and parties to the suit is also residing within the territorial jurisdiction.



11. Issues raised by the complainant are as follow:

- i. Whether the complainant is entitled for the interest amount of the total consideration paid to the builder, as the principal amount needs to be refunded by HSIIDC and interest amount needs to be refunded with penalty by the respondent.
- ii. 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?

12. Relief sought:

The complainant is seeking refund of amount of Rs.30,00,000/- which he has paid to the bank against the loan availed by him to buy the captioned property along with additional 24% per annum interest on the amount deposited by the complainant in lieu of consideration for the unit in question.

Reply on behalf of respondent

13. The respondent submitted that complainant entered into apartment buyer's agreement dated 11.10.2012 with the respondent for purchase of unit bearing number J-602 in the housing project 'Madelia'. The construction progress of the



said project was completed by 65% when the honourable Supreme Court of India passed a restraint order dated 24.04.2015 in special leave petition (civil) no. 5725 of 2015 (now civil appeal no. 8788 of 2015) titled as **Rameshwar and others versus State of Haryana and others** against the judgement 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 said project being developed by the respondent.

14. The respondent submitted that thereafter the construction progress of the project was brought to a complete halt which was beyond the control of the respondent. On 12.03.2018, honourable Supreme Court of India in civil appeal no. 8788 of 2015 titled Rameshwar and others versus State of Haryana and others pronounced judgement directing the land in question including the land for the said project to be vested with HUDA/HSIIDC.

15. The respondent submitted that judgement further gave relief to the third parties including the complainant herein who had paid money for purchasing flat/unit to recover their money after submitting their claims to HUDA/HSIIDC within one month from the date of pronouncement of the judgement. The relevant paragraphs of the judgement are reproduced below:



39. (b) *The decision dated 24.08.2007 was taken when the matters were already posted for pronouncement of the award on 26.08.2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24.08.2007 has been held by us to be an exercise of fraud on power, it is directed that an award is deemed to have been passed on 26.08.2007 in respect of lands (i) which were covered by declaration under section 6 in the present case and (ii) which were transferred by the landholders during the period 27.08.2004 till 29.01.2010. The lands which were not transferred by the landholders during the period of 27.08.2004 till 29.01.2010 are not governed by these directions.*

(c) *Subject to the directions issued hereafter, the lands covered under aforementioned direction (b) shall vest in the HUDA/HSIIDC as may be directed by the State of Haryana, free from all encumbrances. HUDA/HSIIDC may forthwith take possession thereof. Consequently all licences granted in respect of land covered by the deemed award dated 26.08.2007 will stand transferred to HUDA/HSIIDC.*

(h) *The third parties from whom money had been collected by the builder/private entities will either be entitled to refund of the amount from and out of and to the extent of the amount payable to the builder/private entities in terms of above direction, available with the State, on their claims being verified or will be allotted to the plots or apartments at the agreed price or prevalent price, whichever is higher. Every such claim shall be verified by a HUDA/HSIIDC...*

...In order to facilitate such exercise all third parties who had purchased or had been a lot of the plots or apartments shall prefer claims within one month from today, which claim shall be verified within two months from today."

16. The respondent submitted that the construction of the said project came to halt pursuant to the restraint order dated 24.04.2015 of the hon'ble Supreme Court of India and thereafter vide judgement dated 12.03.2018, the hon'ble Supreme Court of India directed to vest the said lands including the land for said project in favour of HUDA/HSIIDC.



17. The respondent with bonafide intent to develop a housing project had acquired the said land being completely unaware about the disputes. The respondent and its subsidiary were bonafide purchasers of the aforesaid land including the licenses from the erstwhile owners and altered its position by developing the aforementioned housing project by undertaking construction activity on the same from April 2012 and in a span of 22 months i.e. till February 2014 succeeded in erecting over and above 65% of the superstructure of the project buildings including the entire basement for the entire project and not only for the residential towers by incurring an investment exceeding Rs.178 crores on the side project.
18. The respondent submitted that the hon'ble Supreme Court of India vide its judgement has directed the third parties who have purchased flat or units built on this land in question to seek refund of money by submission of their claims to HUDA/HSIIDC. Hence, the claim of complainant under the present complaint does not survive qua the respondent as the complainant is only entitled to seek relief, if any from HUDA/HSIIDC.
19. The respondent submitted that it informed all its patrons of aforesaid final decision passed by the Apex Court vide email dated 26.03.2018. Thereafter the respondent along with its



subsidiary convened a meeting on 30.03.2018 at camp office Gurugram to assist its apartment buyers in the said project in regard with their claims, if any.

20. The respondent submitted that in pursuance of the aforesaid judgement passed by hon'ble Supreme Court, HSIIDC issued a public notice dated 05.04.2018 calling all such third parties (i.e. buyers/allottees of flats/purchasers) to submit their claims with HSIIDC. Thereafter a corrigendum to the aforesaid notice was issued by the HSIIDC again calling all such third parties to submit their claim with the HSIIDC.

21. The respondent submitted that also in pursuance of judgment passed by the hon'ble Supreme Court, similar cases that were filed on the present subject matter i.e. project Madelia before the hon'ble authority in CR/112/2018 titled "Manmohan Vig V/s Anant Raj Industries Ltd.", CR/128/2018 titled "Paramjit Singh V/s Anant Raj Industries Ltd" etc., has been disposed off by the hon'ble authority on the same aforementioned ground.

Findings of the authority

22. The counsel for the complainant has submitted a copy of order dated 16.11.2018 passed in complaint no.128 of 2016 complaint titled as "Mr. Paramjit Singh versus M/s Anant Raj Industries Ltd.". The contents of the order are as under:-



“We have clamored 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 12.03.2018 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:-

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.

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 interest is 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”.

23. Since the matter is civil in nature and has already been adjudicated upon by the authority, as such, this complaint does not lie before this authority.
24. The order is pronounced.
25. Case file be consigned to the registry.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 14.03.2019

Judgment Uploaded on 10.04.2019