

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

**Complaint No. : 196 of 2018**  
**First date of hearing: 29.05.2018**  
**Date of Decision : 31.10.2018**

The Close South Apartment  
Owners Association,  
R/o. The Close South,  
Nirvana Country, Sector-50,  
Gurugram- 122018

**Complainant**

Versus

1.M/S Unitech Ltd.,  
Regd. Office: 6 Community Center,  
Saket, New Delhi - 110017

2.M/S Pioneer Profin Ltd.,  
Regd. Office:Paras Downtown Centre,  
7<sup>th</sup> Floor, Gold Course Road, Sector-53,  
Gurugram-122002

3.The Director General Town and Country  
Planning, Regd. Office: SCO 71-75, Sector-17C,  
Chandigarh- 160017

4.The District Town Planner, Dept. of Town and  
Country Planning, Regd. Office: HUDA Complex,  
Sector 14, Gurugram

**Respondents**



**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Ashutosh Jyoti  
Shri Ram Avtar  
Shri  
Shri Vijay Ahuja

Complainant in person  
Advocate for the complainant  
Advocate for the respondent 1  
Advocate for the respondent 2

### ORDER

1. A complaint dated 24.04.2018 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 the Close South Apartment Owners Association, against the promoters M/s Unitech Ltd., M/s Pioneer Profin, The Director General Town and Country Planning and The District Town Planner, in respect of the project named 'The Close South', sector-50, Gurugram, for not handing over the occupation certificate for the towers 4 to 12.
2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"The Close South", Sector-50, Nirvana Country, Gurugram
2.	Apartment/unit no. and nature of the project	Towers 4 to 12 and Group Housing Colony
3.	Apartment/Area measuring	20.792 acres( approx..)
4.	RERA registered/ not registered.	<b>unregistered</b>
5.	Booking date	2005
6.	Date of execution of apartment buyer's agreement	13.01.2005
7.	Payment plan	Construction Linked Plan
8.	Date of delivery of possession as per clause 4.a(i) of apartment	August 2007



	buyer's agreement (August 2007)  <b>[DTCP License No. 29 to 42/2003 and 49 of 1995]</b>	
9.	Delay in handing over possession till date	N.A. (as already occupied)
10.	Occupation Certificate (as per the respondent 1's reply)	Towers 14 to 19 : received towers 4,5 and 11 : application made on 02.08.2011 towers 8 to 12 :application made on 18.05.2009 towers 6 and 7 : application was made on 09.01.2013

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. An apartment buyer agreement was executed on 13.01.2005. The date of delivery of possession was due in the year of 2007 and it is already occupied by the residents and hence, there is no violation of clause 11(a) of the apartment buyer's agreement.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 29.05.2018, 12.07.2018 and 23.08.2018. The case came up for hearing on 29.05.2018. Reply was filed by the respondent 1 and 2 as on 15.06.2018.



### Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the complaint of the complainant are that on the M/s Unitech, a company incorporated under the Companies Act, 1956, are well known developers operating in various parts of the country. They obtained the license from the Department of Town and Country Planning, Government of Haryana to develop a group housing colony named “The Close South” comprising of 15 towers, a community center with swimming pool, kids pool and shops on land measuring 20.792 acres (approx..) situated at south city, phase-II, sector-50, Gurugram, Haryana, India.
6. The complainants further submitted that the TCS apartment owners association was registered under the Societies Registration Act, 1860 on December 4, 2007. The members of the society, considering the facilities and amenities being offered by the respondents entered into the purchase of apartments in the project ‘The Close South’ and accordingly, the flat buyers agreement were signed from 2004 onwards. Subsequently, around the time of commencement of handing over of possession in 2009 onwards, conveyance deeds were executed by the buyers for their respective apartments with the respondent 1 and 2.



7. The complainants further stated that as per the buyer agreement the respondents were required to handover the possession of apartments in three years. However, there was considerable delay in handing over the possession. The respondents started giving possession of apartments in towers 14 to 19 in January,2009 and for towers 4 to 12 from January 2011 onwards. Occupation Certificate for towers 14 to 19 was received in the year 2010.
8. The complainant further submitted that the occupation certificate in respect of towers 4 to 12 is yet to be obtained by the respondents despite the fact that possession of the said flats has been handed over for these 9 towers since 2011 onwards and all towers have been 95% occupied since the past so many years. Various requests were made to senior officials of M/S Unitech Ltd. and Govt. agencies since 2011 and they failed to evoke any positive response. M/s Unitech is silent on this issue since we have begun formally raising this from 2014 onwards and is not cooperating with the AOA in any endeavor to obtain the occupation certificate for towers 4 to 12.
9. The complainant submitted that the complaint has been filed in NCDRC for deficiency of services and recovery of sinking fund. No relief has been asked for occupation certificate in the proceedings before NCDRC. The complainant further



stated that a civil suit is pending before the court of Ms. Indu Bala, Civil Judge, Junior Division, Gurugram, which was dismissed in default on 18.07.2016 and an application for restoration of the said suit has been made and the next date of hearing was scheduled on 05.07.2018

**Issues raised by the complainants are as follow:**

- i. Whether the respondent no. 1 is grossly negligent by not applying to the competent authority and supplying the OC to the apartment owners and giving possession to the owners without the OC was an illegal act?
- ii. Whether the respondents miserably failed to obtain the completion certificate of the project from the competent authorities?
- iii. Whether the respondents are liable to pay compensation to the apartment owners for the delay in the issuance of occupation certificate (OC) and the completion certificate of the Close South and also for the stress, anxiety and harassment caused to the owners?

**Relief sought:**

- i. The respondents be directed to supply the occupation certificates for the apartments of towers 4 to 12 and the completion certificate of the said project.



- ii. To direct the respondents to compensate the apartment owners in towers 4 to 12 for not supplying the OC and CC to them.

### Respondent 1 reply

10. The respondent submitted that the aforesaid project is outside the ambit and scope of the Haryana Real Estate (Regulation and Development) Rules, 2017 as the respondent as already applied for issuance of occupation certificate for the aforesaid project way back in 2013. Occupation certificates were already received for towers 14 to 19 on 20.12.2010. Application for grant of OC for tower no 4,5 and 11 was made on 02.08.2011. Similarly, the OC for tower no 8 to 12 was made on 18.05.2009 and application for tower no 6 and 7 was made on 09.01.2013.
11. The respondent further submitted that the application for grant of OC for remaining towers could not be processed due to the policy issue by Town and Country Planning Department, Haryana dated 14.06.2012 which made it mandatory that OC in case of group housing colonies shall be granted only after proportionate number of EWS units stand constructed and allotted. Also, due to a civil suit by association of apartment owners of TCS against the respondents, the construction of the EWS flats are stayed



since 23.02.2013. Further, as the entire development work is completed except construction of EWS flats which is stayed due to civil suit filed by the association of apartment owners it clearly establishes that the said complaint is outside the ambit of HRERA and the complaint needs to be dismissed at the threshold.

### **Respondent no.2 reply**

12. The respondent no. 2 contended that the reliefs sought are devoid of any merits and have been filed belatedly as an afterthought solely to harass and vex the respondent no 2 and therefore, the same is liable to be dismissed with costs, being filed without any cause of action. As per the information received from the respondent no. 1 the project has already been completed and its OC has been partly received and partly been applied for by the respondent no. 1 from the nodal agency Department of Town and Country Planning.

13. The respondent no. 2 further submitted that the instant complaint is not at all maintainable under the provisions of the Haryana Real Estate (Regulation & Development) Rules, 2017 and if allowed, it will be prejudicial against the justice, equity and interests of the respondents. As per the information received from the respondent no.1 the application for grant of OC for remaining towers could not





be proceeded due to the policy issued by the Town and Country Planning Department, Haryana. It is also submitted that the complainant resident welfare association has already filed the complaint before the NCDRC, for redressal of the similar issues and on this ground itself the instant complaint may be dismissed by this authority.

14. It is further submitted that under the sections 14 read with 71 of the Real Estate (Regulation and Development) Act 2016, this authority lacks the jurisdiction to adjudicate upon the issues pertaining to compensation only, which are required to be put before the adjudicating officer for consideration and on this ground alone the complaint may be dismissed by this hon'ble authority.

**Determination of issues:**

- i Regarding the **first issue**, it is held that giving possession to the owner without an OC is an illegal act and the builder in the present case has not been able to provide the OC and CC in time.
- ii Regarding the **second issue**, the appropriate authority DTCP will be called upon to know why the OC and CC has not been granted .



- iii Regarding **third issue**, for the award of compensation by the respondents, the complainant must make an application before the adjudicating officer.

### Findings of the authority

15. The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. The authority has complete 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.
16. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondents have failed to register its project under the Real Estate (Regulation and Development) Act, 2016 and hence has violated section 3 of the Act ibid attracting penalty under section 59 of the said Act and penalty which may extend to 10 % of the total cost of project.



### Decision and directions of the authority

17. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real

Estate (Regulation and Development) Act, 2016 hereby issues the following order in the interest of justice :

A notice under section 37 of the Real Estate (Regulation and Development) Act, 2016 as well as notice under section 63 of the Act ibid be issued to both M/s Unitech Ltd. as well as M/s Pioneer Profin Ltd. to show cause as to why action under these sections may not be initiated against them for not complying with the directions issued by the authority by way of not producing the occupation certificate and completion certificate.

18. The order is pronounced.
19. Case file be consigned to the registry.
20. Copy of this order be endorsed to registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated :31.10.2018

