

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 15.01.2019
Complaint No.	126/2018 case titled as Fresco Residents Welfare Cultural & Social Association V/S M/S Unitech Ltd. & Another
Complainant	Fresco Residents Welfare Cultural & Social Association
Represented through	Ms. Gunjan Advocate proxy counsel for Shri Approv Yadav Advocate for the complainant.
Respondent	M/S Unitech Ltd. & Another
Respondent Represented through	Shri Venkat Rao Advocate for the respondent.
Last date of hearing	29.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is not registered with the authority.**

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

The respondent No.1 is not present. This is a peculiar case where possession has been handed over by the promoters to the allottees without obtaining occupation certificate. Further more, the conveyance deed has also been executed in the year 2010. The status of grant of OC is not known. The matter is referred to DTP Gurugram to take suitable action as per the

conditions of licence and also considered giving relief to the allottees, if any, keeping in view facts and circumstances of the case. The various reliefs sought by the complainant are well within the ambit of Department of Town and Country Planning. It is understood that matter is also sub-judice in Supreme Court apart from many other forums. The department of Town and Country Planning may take a holistic view in the matter and dispose of matter as per rules, regulations and procedure in force. DTP Gurugram will undertake a site visit and ascertain whether the tower No.17 is incomplete. Whether Tower and common areas are incomplete as has been mentioned by the complainant. DTP should also ascertain whether quality of construction is sub-standard. The Department of Town and Country Planning is to ensure that the missing facilities as per terms and conditions of licence be provided by the respondent. The DTP Gurugram shall also look into the relief sought by the complainant which are mainly on account of not providing services but charges for the same.

Matter is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
15.01.2019

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

**Complaint No. : 126 of 2018**  
**Date of First Hearing: 08.05.2018**  
**Date of Decision : 15.01.2019**

Fresco Residents Welfare Cultural and Social  
Association

(through its President-Mr. Nilesh Tandon)

R/o House No.103, Tower 14, Fresco  
Apartments, Sector 50, Gurugram

**Complainant**

Versus

1. Mr. Ramesh Chandra, Chairman  
Unitech Ltd.

**Regd. Office:** Unitech House, L block South  
City 1, Gurugram.

2. Mr. Manish Peliwal, Chairman  
Pioneer Urban Land & Infrastructure Ltd.

**Regd. Office:** Paras downtown Center, 7<sup>th</sup>  
Floor, Golf course road, Sector-53, **Respondents**  
Gurugram.

**CORAM:**

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

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

**APPEARANCE:**

Ms. Gunjan proxy counsel for  
Shri Apporv Yadav  
Shri Venkata Rao

Advocate for the complainant.  
Advocate for the respondent.



## ORDER

1. A complaint dated 28.03.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant association through its President, Mr. Nilesh Tandon on behalf of the residents of Fresco Residents Welfare Cultural and Social Association against promoters Unitech Ltd. through its chairman and Pioneer Urban Land & Infrastructure Ltd. through its chairman on account of not providing the promised facilities/amenities as per the terms of buyer's agreement and offering possession of the apartment/unit without obtaining occupation certificate which is in violation of section 11(4)(b) of the act ibid.

2. Since the conveyance deed for the subject project has been executed in the year 2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore the penal proceedings cannot be initiated retrospectively, hence the authority has decided to treat this complaint as an application for non - compliance of



obligations on the part of the promoter under section 34(f) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Fresco" in sector - 50, Gurugram.
2.	Nature of real estate project	Group housing scheme
3.	Unit no.	Not all but illustrative- 1. S.K.Agarwal's - 1601, 15 <sup>th</sup> floor, block no. 3 2. Monty Jain's - 0501, 5 <sup>th</sup> floor, block no. 17
4.	Admeasuring area of the allotted unit	1. 1816 sq. ft. 2. 1816 sq. ft.
5.	RERA Registered/ unregistered	unregistered
6.	DTCP license	194 to 196 of 2005
7.	Date of flat buyer agreement	07.06.2006 & 23.06.2007 of above two mentioned units. <b>(Annx P/4)</b>
8.	Total consideration	Rs. 51,96,285/- and Rs. 79, 55,528 respectively.
1.	Total amount paid	Rs. 52,12,054/- and Rs.76,05,553/-respectively (as per the statement of accounts )
2.	Payment plan	Time linked payment plan <b>(Annx P/3)</b>
3.	Date of delivery of possession	June 2008 Note: Clause 4.a of the agreement- 36 months for



		the delivery of possession.
4.	Possession offered on	21.12.2013 23.08.2017
5.	Delay of number of months/ years upto 17.10.2018	5 years (approx.) for complainant 1 6 years (approx.) for complainant 2
6.	Penalty clause as per flat buyer agreement dated 07.02.2006 & dated 23.06.2007	Clause 4.e- If company is unable to deliver the possession by the mentioned time, it shall pay interest @Rs 10%per annum Clause 4.c- if the company is unable to deliver the possession by the mentioned time, it shall pay charges @Rs. 5/- per sq. ft. per month.

3. As per the details provided above, which have been checked as per record of the case file, a flat buyer agreement is available on record for unit no. 1601, 15<sup>th</sup> floor according to which the possession of the aforesaid unit was to be delivered by June 2008 similarly, for unit no. 0501, 5<sup>th</sup> floor the possession of the aforesaid unit was to be delivered within 36 months from the date of the execution of the agreement or the commencement of construction whichever is later. The promoter has failed to deliver the possession of the said unit to the complainants within the stipulated time.



Therefore, the promoter has not fulfilled his committed liability as per the flat buyer's agreement.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 08.05.2018, 06.06.2018, 17.07.2018, 30.08.2018, 26.09.2018, 17.10.2018, 26.10.2018, 29.11.2018 and 15.01.2019. The reply has been filed by the respondents on 30.05.2018 which has been perused by the authority.

**Facts of the complaint: -**

5. The complainants submitted that united fresco is project which has 830 flats in 16 towers (tower no 1 to 17, there is no tower no. 13) and is spread over 16.93 acres in sector 50, Gurugram. The project had started in 2005, residents booked their flats in phases between 2005-2008. Project was supposed to be completed in 2010. Possession of the flats were given Tower wise beginning 2010 while the handover of the last tower 17 was just few months back.



6. The complainants submitted that the project has various deficiencies including no occupation letter yet, no canal water, sewer water and storm water lines. Tower nos. 14 to 17 has missing common infrastructure and incomplete flats. Case studies of 2 owners are taken up and mentioned in details. Case 1 is of Mr. S.K. Agarwal who got his possession in 29.03.2014 i.e after a delay of 5 years and another case no. 2 of Mr. Monty Jain who booked his flat in tower 17 in the year 2007 and got incomplete possession in 2017 and is struggling to get the common area of tower 17 work completed of his own along with other 49 residents of tower 17.
7. The complainants took an illustration of two owners who booked an apartment measuring 1815 sq. ft. and another apartment measuring 1816 sq. ft. in the project named "Fresco" in sector 50, Gurugram. Accordingly, the complainants were allotted a unit bearing 1601 in tower 3 on the 15<sup>th</sup> floor and a unit bearing 0501 in tower 17 on the 5<sup>th</sup> floor.
8. The complainants submitted that all the residents have also paid IFMS amounting to approx. 11 crore and façade repair





deposit amounting to approx. Rs. 3.75 crore to the builder in 2007 which the builder was supposed to keep in an Escrow account which didn't do and spent the money elsewhere.

**Issues to be decided:-**

- i. Whether the possession has been offered to the members of the association without occupation certificate?**
- ii. Whether the possession has been given to the allottees without completion of construction and promised amenities?**
- iii. Whether the quality of construction is substandard?**

**Reliefs sought: -**

- I. Direct the respondents to rectify defects in the building immediately or an award of Rs. 11,00,00,000/- should be made to enable the petitioner to carry out the repairs etc.**
- II. Direct the respondents to refund Rs. 55,00,000/- for not providing facilities in swimming pool, AC lobbies, sofas in all lobbies in all towers and solar geysers by the developer which were agreed in the agreement.**



- III. Direct the respondents to make a deposit of Rs 3,75,00,000/- taken from the owners should be refunded (Rs. 75/- per sq. ft. of the constructed area, collected as IFMS) Total constructed area is 15,00,000 sq. ft.**
- IV. Direct the respondents to refund the amount of Rs. 3,75,00,000/- taken from the owners (Rs. 25/- per sq. ft. of the constructed area, collected from every residents towards façade repair).**
- V. That the project unitech fresco be brought under RERA as it is an incomplete project, OC has not been received yet.**

**Respondent no. 1's reply: -**

10. The respondents submitted that application for issuance of occupation certificate relating to tower no. 3 where Mr. S.K. Agarwal had his flat no. 1601 was applied on 23<sup>rd</sup> April, 2013. Similarly, application for issuance of occupation certificate for tower no. 17 where Mr. Monty Jain has his flat no. 501 was made on 24<sup>th</sup> April, 2017 to the Director, Town & Country Planning, Haryana which establishes that both the



flats in question along with respective towers are outside the ambit of Hon'ble Authority. It is denied that they were provided incomplete possession.

11. The respondent further stated that in terms of buyers' agreement for the respective flats, the IFMS/ maintenance deposit including for façade repair, security deposit shall be utilized towards replacement, refurbishing, major repairs and the balance amount of IFMS and façade repair deposit will be handed over to the RWA on receipt of occupation certificate for entire project in terms of buyers agreement. It is submitted that work on any snags and balance façade work on tower 17 etc. will be completed soon. Also, the permanent boundary wall for the major portion of the entire project is already constructed and certain left out portion will be completed by 31<sup>st</sup> December 2018.



**Respondent no. 2's reply: -**

11. The respondent submitted that the reliefs sought by the complainants are devoid of any merit 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. The respondent no. 2 denies each and every averment, statement, allegations, contentions raised by the complainant.

12. The respondent submitted that the project Fresco has already been completed and its occupation certificate has been applied for by the respondent no. 1 from the nodal agency DTCP. It is further submitted that the complainant resident welfare association has already filed complaint before sub divisional magistrate, Gurugram for redressal of the similar post developmental issues apart from the admitted criminal complaint before police and the individual complaints before national consumer disputes redressal forum and on this ground itself the instant complaint may be dismissed by this Authority.

13. It is further submitted that respondent no. 1 has obtained all statutory approvals in its own name such as license etc. and that is why the onus of complying with the same will be on it and from the beginning it was always in complete physical control of the project to this extent that if any information



was required to know by the respondent no. 2 he directly obtained it from the respondent no 1 instead of the project workers. It is important to mention that since beginning the respondent no 2 was not at all involved in day to day management of the project Fresco as is evident from various factors. Even the government department dealt with respondent no 1 for the project Fresco.

14. The complainants make a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

***“34 (f) Function of Authority -***

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”*

15. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

***“37. Powers of Authority to issue directions-***



*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."*

**Findings of the Authority: -**

16. 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. 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. 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.

17. On 30.08.2018, after hearing the arguments of both the parties, the authority has noted that in the present case, president of the RWAs (complainant's herein) of the project have stated that they are 839 members of the society and RWA is registered one. They have alleged that they have taken possession as well as conveyance deed has been executed by the builder in the year 2010. As per the provisions of section 14(3) of the Act *ibid*, the structural defects' liability is to be performed by the builder for five years only after which the RWA itself is responsible. This complaint seems not to lie within the purview of RERA. It has also been stated that many of the members of resident's welfare association have filed consumer complaint before NCDRC and the said matters are pending there.

18. This is a peculiar case where possession has been handed over by the promoters to the allottees without obtaining occupation certificate. Furthermore, the conveyance deed has also been executed in the year 2010. The status of grant of occupation certificate is not known. The matter is referred to DTP Gurugram



to take suitable action as per the conditions of license and also after giving due consideration for giving reliefs to the allottees, if any, keeping in view the facts and circumstances of the case. The various reliefs sought by the complainant are well within the ambit of Department of Town and Country Planning. It is understood that matter is also sub-judice in Supreme Court apart from many other forums.

**Decision and directions of the authority: -**

19. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions: -

- i. The department of Town and Country Planning may take a holistic view in the matter and dispose of matter as per rules, regulations and procedure in force. DTP Gurugram will undertake a site visit and ascertain whether the tower no. 17 is incomplete and whether the tower and common areas are incomplete as has been mentioned by the complainant. The DTP should submit its fact finding report within one month from the date of this order.





- ii. DTP should also ascertain whether the quality of construction is sub-standard. The department of Town and Country Planning is too ensure that the missing facilities as per terms and conditions of license be provided by the respondent.
- iii. The DTP should also look into the relief sought by the complainant which are mainly on account of not providing services but charges for the same.

20. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3 (1) of the Act be issued to the respondent. Registration branch of the authority is directed to do the needful.

21. Order is pronounced.

22. Case file be consigned to the registry. Copy of this order be consigned to the registration branch.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Judgement Uploaded on 18.02.2019



**HARERA**  
GURUGRAM

