

COMPETITION COMMISSION OF INDIA

Case No. 02/2013

30th April, 2013

In re:

Kuldeep Singh s/o Balwant Sing Boora Informant

r/o H.No.741, PLA, Hisar, Haryana

And

PAL Infrastructure and Developers Pvt. Ltd Opposite Party

Pal Tower, 3rd Floor, M.G. Road, Gurgaon, Haryana

Order under Section 26 (2) of Competition Act 2002

The OP launched a residential flat complex, named, ‘Pal Aqua Polis’ in sector 70-A, Gurgaon, Haryana. The informant booked a residential flat in the said project on 31-03-2007 by depositing Rs. 3,50,000/-. The informant alleged that the OP abused its dominant position by imposing unfair and one sided conditions on the informant through agreement entered between them.

2. As per information, on 26.09.2008, the OP allotted a flat to the informant in Block B with super area 1304 sq.ft. Later, the OP changed project layout plan & in new layout plan block D replaced Block B. To retain flat on similar location, the informant requested a change in allotment and flat D – 102 was allotted to him on 25.04.2011. On 01.10.2011, the builder suggested the informant to apply for allotment of flat in block E, due to non – availability of earlier allotted flat D – 102. The informant was suggested to accept a larger size flat. With no other choice informant acted as advised and a new flat E – 301 with super area 1690 sq.ft was allotted on 01.10.2011. Since super area of new allotted flat was 386 Sq. Ft., more than that of previously allotted flat, the total price of new allotted flat was also Rs. 12, 24,500/- more than that of previously allotted flat. The OP thus increased financial burden on the informant.

3. The informant alleged that he first booked the flat on 31.03.2007 and till 05.06.2012 only the foundation work was completed. The informant noticed during visits to project site that only 12 to 15 workers were working at the site. The construction work was in progress at a snail's pace and no tentative date of completion of the said project was communicated to the informant till the date of filing of this information.

4. The informant further alleged that despite being forced to accept a larger size flat with additional cost burden of Rs. 12,24,500/-, the OP further abused its position by asking him to pay interest on the extra 'Due Amount' because of increased total price from 35.05.2007. At the most, these calculations could have been from the date of allotment of the new flat. This conduct of the OP was alleged to be unfair.

5. The informant, therefore prayed that the OP should be directed to enter into a flat Buyer's Agreement with the informant and the interest on due payments should start from the date of signing of Buyer's Agreement only. It was also prayed that a 'Compensation Clause' should be provided in flat Buyer's Agreement for the benefit to the informant also providing that the OP should either not charge the interest of 18% per annum on delayed payments from informant or should compensate the informant with same rate of interest on the investment made by the informant for the period of delayed delivery of possession.

6. On considering the material on record, including written submissions, it is found that the informant has alleged abuse of dominance by the OP against the informant because of one-sided conditions in the buyer's agreement and unreasonable delay in completion of the project.

7. In order to examine the allegations of the informant, the relevant market is to be defined. The informant has not stated anything about relevant market in the case. The Commission considers that '*provision of services of development and sale of residential flats in Gurgaon*' would be appropriate relevant market in this case.

8. In order to attract provisions of the section 4 of the Act, the dominance, if any, of the enterprise needs to be examined under explanation (a) to section 4 of the Act with due regard to the factors mentioned under section 19(4). With regard to question of dominance section

19(4) of the Act states that the Commission needs to consider various factors stated under that section while assessing whether an enterprise enjoyed a dominant position or not. It is pertinent to note that the informant in the information merely averred that the OP abused its dominant position, without alleging that the OP enjoyed a dominant position in the relevant market. Even otherwise, as per the information available in public domain, it is clear that the OP was not the only or a major real estate developer offering residential flats in Gurgaon. Many other real estate developers like Unitech Limited, DLF limited, Tulip Group, Parsvnath Developers Ltd, Bharti Realty Limited etc were offering residential flats in Gurgaon. Presence of other real estate developers offering residential flats also indicates that the informant was not dependent upon the OP for provisioning of residential flat. None of the factors stated under section 19(4) of the Act seem to support dominance of opposite party in the relevant market. Therefore, the OP does not prima facie appear to be dominant in the relevant market of ‘development of residential flats in the region of Gurgaon’.

9. As such, dominance of OP in the relevant market is *prima facie* not in existence and so there is no question of abuse of the same. The Commission finds that no *prima facie* case is made out for directing the Director General to carry out investigation into the matter under Section 26(1) of the Act.

10. In view of the foregoing, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.

11. The Secretary is directed to inform the parties accordingly.

Sd/-
(H.C. Gupta)
Member

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L.Tayal)
Member

Sd/-
(Justice (Retd.) S.N. Dhingra)
Member

Sd/-
(Ashok Chawla)
Chairperson