



# Competition Commission of India



## Case No. 03 of 2014

### In Re:

**Shri Avtar Singh  
B-111, Mayapuri Industrial Area,  
New Delhi – 110064**

**Informant**

### And

**M/s Ansal Township and Land Development Ltd.  
1110, Ansal Bhawan, K. G. Marg,  
New Delhi - 110001**

**Opposite Party No. 1**

**Sh. Pranav Ansal**

**Opposite Party No. 2**

**Sh. Anil Kumar**

**Opposite Party No. 3**

### CORAM

**Mr. Ashok Chawla  
Chairperson**

**Dr. Geeta Gouri  
Member**

**Mr. Anurag Goel  
Member**

**Mr. S. L. Bunker  
Member**

**Present:** Mr. Manish Kapur, Advocate and Mr. Amarjeet Singh on behalf of the Informant.



**ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002**

1. This case, filed under section 19 (1) (a) of the Competition Act, 2002 (**'the Act'**), relates to the alleged abuse of dominant position by the Opposite Party No. 1 in allotment of commercial space in its project '**Ansal Highway Plaza**', Jalandhar, Punjab.
2. The Opposite Party No. 1 is stated to be a well known real estate development company in India. The Opposite Party No. 2 is the Managing Director and the Opposite Party No. 3 is the Joint Managing Director and Chief Executive Officer of the Opposite Party No. 1 and both are looking after the day-to-day functioning of the Opposite Party No. 1.
3. Factual matrix, as culled out from the information and the documents filed therewith, is briefly stated below:
  - 3.1 It is revealed from the information that the Opposite Party No. 1 along with the land owners Dr. Gurpreet Kaur and Dr. Ranjeet [**henceforth, the developer**], through a 'Collaboration Agreement' dated 25.11.04, have developed a shopping mall in the name of '**Ansal Highway Plaza**' at village Khajuria, Jalandhar – Phagwara, G.T. Road, Kapurthala, Punjab.
  - 3.2 In the aforesaid project, Ms Neena Sharma and Ms Pooja Sharma (**original allottees**) have booked two commercial space measuring super area of 867.37 sq. ft. and 723.48 sq. ft. for a total consideration of Rs. 10,40,844/- and Rs. 8,68, 176/-. Subsequently, Ms Neena Sharma and Ms Pooja Sharma have transferred the said allotment in the name of the Informant.
  - 3.3 It was agreed between the Opposite Party No. 1 and the original allottees that the allotted space will be leased further to a prospective lessee *i.e.*, a third party, through execution of a lease agreement between the prospective lessee and the developer and the allottees will have no objection whatsoever regarding negotiation of rent and execution of necessary documents in respect thereof. It was also agreed that any tenants suggested by the allottees may be considered by the Opposite Party No. 1.



3.4 As per the Informant, the allotment letter for the aforesaid commercial space stipulates that the Opposite Party No 1 will deliver the possession in about 18 months after obtaining all necessary sanctions and approvals from appropriate authorities. If the possession gets delayed due to unreasonable cause, it will pay the rent for the delayed period @ Rs. 37 per sq. ft. It is averred that though the Opposite Party No 1 had proposed to deliver the possession of the said commercial space by the January, 2006, the same was handed over only in December, 2007 and no payment toward rent for the delayed period was ever made to the allottees.

3.5 It is alleged that without giving any prior notice to the allottees and proper reason thereof, the Opposite Party No. 1 has illegally shut down the shopping mall in March, 2011 which is a case of abuse of dominant position on the part of the Opposite Party No. 1.

3.6 Further, it is alleged that para 21(*transfer of the unit including rights as a allottee will be at sole discretion of the developer and will need his prior approval*), para 25 (*the developer will have exclusive rights on behalf of the allottee to let out allotment unit to any tenant for the decided and agreed purpose and in furtherance thereof the developer shall have all rights regarding negotiation of rent and execution of necessary documents in respect thereof*) and para 34 (*in case of any dispute or controversy arising out of or in connection with the allotment, the same shall be referred to the arbitration of sole arbitrator to be appointed by the developer*) of the allotment letter are illegal, arbitrary which are in contravention of the provisions of Section 3 (1) of the Act.

4. Based on the facts and allegations enumerated above, the Informant has prayed the Commission:

- (i) to direct the Opposite Parties to open the shopping mall and handover the possession of the allotted units to the allottees.
- (ii) to direct the Opposite Parties to pay compensation and/or damages to the tune of Rs. 10 lakhs in favor of the Informant for the physical harassment and mental agony.
- (iii) to direct the Opposite Parties to pay the rent @ Rs. 37 per sq. ft. as per the agreed terms.
- (iv) to impose of exemplary costs on the Opposite Parties for the alleged violation of the Act.



- (v) pass any other order or orders which the Commission deems fit and proper under the facts and circumstances of the matter.
- (vi) to grant interim injunction against the Opposite Parties so as to restrain them from creating any third party interest in the property where the mall is located till the final disposal of the present information.
5. From the perusal of the information and arguments advanced by the Informant before the Commission, it is clear that this case pertains to the alleged infraction of the provisions of Section 4 of the Act *i.e.*, abuse of dominant position by the Opposite Party No. 1.
6. To examine the alleged contravention of the provisions of Section 4 of the Act, the primary requirement is to define the relevant market and then, to examine whether the contravening party is in a dominant position in that market or not.
7. Section 2 (r) of the Act defines the relevant market as “*the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets*”. As per Section 2(t) of the Act, the relevant product market is “*a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use*”. In the instant case, the relevant product market appears to be the market of ‘*the services for development and sale of commercial space in shopping malls*’ which is a distinct service/product in its category. No other services/products in its category such as development and sale of commercial space other than in shopping malls can be considered as the substitute of the services for development and sale of commercial space in shopping malls because of its unique physical characteristics and preferences of the shop owners (consumers) for commercial space in shopping malls. Shopping malls are equipped with the combination of facilities such as centralized air condition, escalators, lifts, state of art building and lobby, furniture, ancillary equipments *etc.*, which are remote to the other commercial space. Moreover, shopping malls act as hubs of leisure for the end consumers as it offers shopping, movies, food, games *etc.*, at one place.



8. Section 2(s) of the Act defines relevant geographic market as “*a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas*”. The geographical area of Jalandhar appears to be the relevant geographic market in the instant case. As nothing has been brought on record or is otherwise discernible therefrom to reflect heterogeneity in the conditions of competition with respect to the relevant product, it is to be assumed that the conditions of competition for the provision of the services for development and sale of commercial space in shopping malls are homogenous throughout Jalandhar. Hence, the relevant geographic market in the present case may be considered as ‘*the geographical area of Jalandhar*’.
9. Resultantly, the Commission is of the view that ‘*the market of the services for development and sale of commercial space in shopping malls in the geographical area Jalandhar*’ is the relevant market in the instant case.
10. The next issue is whether the Opposite Party No. 1 enjoys dominant position in the relevant market defined *supra*. In this regard it is observed that there are several large real estate developers having all India presence such as EMAAR MGF, DLF, TDI etc., are operating in the relevant market. A few projects of different large real estate developers providing commercial space in Jalandhar are Viva Collage of the Collage Group, MBD Neopolis, The Mall of Jalandhar of EMAAR MGF, The Galleria of DLF, Curo High Street of the Curo Group, Centrum Jyoti Mall of Three ‘S’ Group, Chunnum, Milestone 13, PPR Mall of the PPR Group, Magnum Mall of Vasal Group etc. The Opposite Party No. 1 is having only one project in the relevant market whereas TDI has been developing two projects such as TDI Centre and TDI Mall in Jalandhar. Also, presence of large number of players in the relevant market itself indicates that the consumers have choice and are not solely dependent on Opposite Party No. 1. Accordingly, the Commission is of the view that, *prima facie*, the Opposite Party No. 1 does not appear to be in dominant in the relevant market.



11. Since, the Opposite Party No. 1 does not appear to be in a dominant position in the relevant market the question of abuse of dominant position by it does not arise. As such the Commission finds that no *prima facie* case is made out against the Opposite Parties under the provisions of Section 4 of the Act.
12. In regards to the alleged infraction of the provisions of Section 3 (1) of the Act by the Opposite Parties, it is observed that the Informant has not been able to substantiate the allegations made in the information in this respect and considering the facts and circumstances of the case Section 3 of the Act does not appear to be attracted in this matter.
13. In view of the aforesaid, the Commission holds that no *prima facie* case is made out against the Opposite Parties either under the provisions of Section 3 or Section 4 of the Act for making a reference to the Director General for conducting investigation into the matter.
14. Accordingly, the Commission deems it fit to close the proceedings of the case under the provisions of Section 26 (2) of the Act.
15. The Secretary is directed to communicate the decision of the Commission to the parties accordingly.

Sd/-  
**(Ashok Chawla)**  
Chairperson

Sd/-  
**(Dr. Geeta Gouri)**  
Member



**Competition Commission of India**



Sd/-  
**(Anurag Goel)**  
Member

Sd/-  
**(S. L. Bunker)**  
Member

**New Delhi**  
**Date: 15-04-2014**