

COMPETITION COMMISSION OF INDIA

Dated 8/5/2012

In re. Case No. 04/2012

Filed by: Poonam Gupta

Against: Unitech Limited

With

re. Case No. 05/2012

Filed by: Rohit Gupta

Against: Unitech Limited

Order under section 26 (2) of the Competition Act, 2002

The informants in both the matters have booked their properties with the same opposite party at Greater Noida (U.P). The main grievance of the informants is that the opposite party failed to fulfill its obligation by not handing over the possession as promised in time and therefore, violated the section 4 of the Competition Act, 2002 (the Act) by abusing its dominant position. Since both the matters filed against the same opposite party involve common facts and common issues, both these matters are clubbed together under Regulation 27 of the Competition Commission of India (General) Regulations, 2009.

2. The factual matrix of above informations is as under:



i) In Case No. 04 of 2012, the informant alleged that the opposite party was a leading real estate developer which developed a commercial complex known as "UNITECH HABITAT CORNER" on Plot No. 9, Sector - Pi-II (Alistonia Estate), Greater Noida, District Gautam Budh Nagar, Uttar Pradesh. In the year 2007, the informant booked a commercial space/unit in the said project by depositing booking amount of Rs.1,45,350/-. Thereafter, the opposite party sent two letters dated 09th May, 2007 and 18th May, 2007 to the informant and confirmed booking by allotting her Unit No. 125 on ground floor in the said complex with super area of 323 sq. feet and promised that the possession will be given to the informant by November, 2009.

ii) The informant alleged that the opposite party imposed onerous terms and conditions in the agreement while allotting the unit as aforesaid, which according to her were one sided and worded heavily in favour of the opposite party. The informant stated that, one such condition in the agreement was that, if the informant failed to make payment of installments in time, she was liable to pay 18% interest per annum compounded quarterly and whereas in case of delay in delivery of possession of the allotted unit, the opposite party would pay only an amount of Rs. 8 per sq. feet. This according to the informant was a meager amount and totally one sided. Thus, according to the informant, the opposite party discriminated and exploited the informant by imposing arbitrary terms and conditions in the agreement while booking the aforesaid unit. It was further stated that, the informant initially contemplated canceling the booking but on realizing that the entire booking amount would be forfeited by the opposite party, if she



canceled the booking, she was left with no option and opted to continue her booking.

iii) it is submitted that, in the year 2009, the opposite party failed to deliver the possession of the aforesaid unit as promised. Aggrieved thereby, the informant made several representations to the opposite party but to no avail. Subsequently, the opposite party sent a demand letter on 04th April, 2009 to the informant asking her to pay the remaining installments. The grievance of the informant is that, inspite of sending various reminders for redressing the concerns raised by her, the opposite party mechanically insisted upon her to pay the remaining installments without addressing her grievances. Finally, the informant served a legal notice to opposite party on 06th September, 2011 and asked the opposite party to handover the possession and title by executing and registering the relevant conveyance deeds of the property without charging interest for delayed payment and to provide the discount @10% on allotted shop to compensate the loss incurred by her due to drop in market value of the property and to pay compensation @ Rs.120 sq. feet for delay in delivery of possession from November, 2009 till the delivery of possession.

iv) The opposite party did not give response to aforesaid legal notice. The informant thus, filed this information before the Commission for appropriate action against the opposite party in accordance with the provisions of the Act. She alleged violation of section 4 of the Act. The informant prayed that investigation be conducted into the activities of the respondent and about abuse of dominant position and also sought other reliefs viz. directing the opposite party to provide discount @ 20% on the allotted unit to compensate the loss and to direct the opposite party to waive the



interest for delayed payment of 13th and 14th installments for the aforesaid unit.

3. In Case No.5 of 2012, the informant had booked a residential unit with the opposite party in the residential project known as 'UNITECH HABITAT' developed on Plot No. 9, Sector - Pi-II (Alistonia Estate), Greater Noida, District Gautam Budh Nagar, Uttar Pradesh. As per the information, he paid Rs. 5,00,000/- to book the apartment in the above named project in the year 2006 and consequently, was allotted apartment no. 501, Floor 5, HBTN Tower -7, Unitech Habitat with a super area of 1693 sq. ft vide the allotment letter on 12th October 2006. The rest of the grievances of the informant in this case are identical to that of informant in Case No.4 of 2012.

4. The 'explanation' of sub-section (2) of section 4 of the Act defines the expression 'dominant position' as under:

- a) *"dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-*
- (i) operate independently of competitive forces prevailing in the relevant market; or*
 - (ii) affect its competitors or consumers or the relevant market in its favour;*

5. In order to make out a case of abuse of dominance it is a prerequisite that the enterprise should firstly be enjoying a dominant status in the relevant market in India and while doing so should be shown to have abused its dominance to harm the competition or the consumers in the relevant markets. It is important to note that the Act does not prohibit the dominant position *per se* but its abuse is prohibited under the scheme of the Act.

6. The contention of the informant is that since UNITECH was having market capitalization of Rs.7888.15 crores being much more than the



market capitalization of its competitors like OMAXE (Rs.2655 crores) and PARSVNATH (Rs.2470 crores), UNITECH was in a dominant position. It is further submitted that UNITECH enjoyed a reserve and surplus of Rs.11060 crores as per financial results for the year ending 31st December, 2012 (it seems the informant meant 31st December, 2011) and therefore, UNITECH was in a dominant position.

7. It is also contended that the major chunk of the market was held by UNITECH as other entities such as PARSVNATH, Ansal API, OMAXE were relatively smaller players. The informant relied upon comparative charts prepared by it and given as Table A & Table B of the additional written submissions. The informant contended that the Opposite Party had taken up commercial projects in sector 18 NOIDA namely a mall called Garden Galleria and a combination of shopping and International Amusement Park whereas in residential segment it had 5 completed projects in greater NOIDA, 4 upcoming projects in NOIDA and one UNITECH Gold Course. It had also 3 office commercial spaces, one hotel and an upcoming Special Economic Zone, IT Park, Amusement Park in sector 62 NOIDA, Sector 135 NOIDA and UNITECH Infosys, NOIDA Expressway and a hotel Courtyard Marriot. It is stated that UNITECH had various other projects in Delhi and Delhi NCR. UNITECH was thus in a dominant position.

8. In order to consider dominance, the Commission has to identify first the relevant market and then identify different players in that market and see whether the Opposite Party was in a dominant position as envisaged under the Act. For identifying relevant market, one has to identify the product market and geographic market simultaneously. In the present case, the product market seems to be a commercial space on sale and residential units on sale. The geographic market according



to applicant is NOIDA, Greater NOIDA and area around NOIDA Expressway.

9. In order to make a prima facie opinion, whether an enterprise enjoys a dominant position or not, the Commission has to look into the market share of the enterprise in question as compared to the other players, size and resources of the enterprise in comparison to the size and resources of other players, size and importance of the competitors, economic power of the enterprise and the commercial advantage enjoyed by it over its competitors and the dependence of the consumers on the enterprise, entry barriers, countervailing buying power, market structure, size of market, relative advantage etc as provided under section 19(4) of the Competition Act. The informant has failed to specify as to what was the share of UNITECH in the market of NOIDA and greater NOIDA (according to respondent NOIDA and greater NOIDA was the geographic market). As per the information available in the public domain, there were numerous players active in this area which had come up and were still fast developing and plenty of commercial and residential space and offering the same for sale in competition with each other. These different players had even been offering discounts and other incentives to the public to attract customers. It is apparent that there was no dependence of customers on any single enterprise much less UNITECH.

10. The informant has given market capitalization of UNITECH. This market capitalization of UNITECH is of total operations of UNITECH throughout India. UNITECH is not confined to NOIDA or Greater NOIDA neither the other players with whom comparison has been given by the informant are enterprises active only in NOIDA and Greater NOIDA. An enterprise may be dominant in one geographic market and may still not be dominant in another geographic market. Market capitalization of an



enterprise having all India operations cannot be a criteria for considering its dominance in a particular area. It may have no operations at all in that area and still may have huge market capitalization due to its operations in other areas. It is not shown what commercial advantage UNITECH had over its competitors either due to its economic strength or due to its size and resources.

11. From the data available in public domain as well as given by the informant, we do not find that Opposite Party herein was prima facie a dominant player nor do we find that the dependence of consumers on the enterprise was such that it has to be considered as a dominant player. There were enough competitors in the market and the informants had lot of choice at the time of booking of commercial and residential units.

12. We find that no prima facie case was made out against the OP for referring the matter to DG for investigation. It is a fit case for closure under section 26(2) of the Act and is hereby closed.

Secretary is directed to inform all concerned accordingly.

Sd/-
Member (G)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Certified True Copy



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ASSISTANT DIRECTOR
Competition Commission of India
New Delhi