

COMPETITION COMMISSION OF INDIA

Case No. 09 of 2012

04<sup>th</sup> April 2012

M/s Sampark Securities Private Limited

...Informant

v.

Haryana State Industrial & Infra. Development Corp. Ltd.

...Opposite Party

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

1. The present Information has been filed by M/s Sampark Securities Private Limited ("the informant") against Haryana State Industrial & Infra. Development Corporation Limited ("opposite party/ or HSIIDC") alleging abuse of dominant position by the Opposite Party.
2. The informant, M/s Sampark Securities Private Limited, is a Private Limited Company, incorporated in India. Its main objects, as averred in the information, to act as agents and dealers in securities and to provide consultancy in financial matters etc. On the other hand, Haryana State Industrial & Infra. Development Corporation Limited is a public limited company wholly owned by the Government of Haryana. HSIIDC was set up in the year 1967 as a catalyst for promoting and accelerating the pace of industrialization in the State of Haryana.
3. It has been submitted by the informant that HSIIDC conducted an open auction on 11<sup>th</sup> August 2010 for the sale of some Shop-cum-Office plots ("SCOs") located at Sector 1, IMT Manesar, Gurgaon, Haryana. Informant registered itself as participant in the bid process and subsequently, it was declared successful in the bid process



being the highest bidder at Rs.3.00 crores for a plot. Informant deposited 10% of the bid amount on the spot in terms of the condition of the auction process.

4. It has been further submitted by the informant that as per the terms and conditions of the auction process, the bid was to be approved by the Competent Authority of the HSIIDC but no confirmation was received by the informant even after the expiry of 40 days from the date of auction. Instead, HSIIDC asked for additional documents and another auction was conducted on 23th November 2010. Subsequently, on 06<sup>th</sup> December 2010 a Regular Letter of Allotment was issued to the informant HSIIDC. In terms of the aforesaid allotment letter, the informant deposited allotment money of Rs. 45 lacs (equivalent to 15% of the bid amount) along with acceptance of the terms of allotment and complied with other formalities.
5. It is the case of the informant that even after depositing the requisite payment, HSIIDC has not delivered the possession of the property despite several requests, representations etc made by the informant in this regard. The informant subsequently wrote a letter to HSIIDC on 13<sup>th</sup> October 2011 requesting HSIIDC to issue fresh payment schedule on account of (i) delay in granting possession (ii) Informant's switching to new Estate Management Procedures 2011 ("EMP-2011") w.e.f.01<sup>st</sup> January 2011). In this regard, the informant approached the DGM (Estate) of HSIIDC at IMT, Manesar, Gurgaon on 17<sup>th</sup> January 2012 requesting him to hand over the possession of the property as the business of the informant was suffering badly on account of the failure on the part of HSIIDC to hand over the possession of the property.
6. It has been averred by the informant that inspite of the aforesaid requests, HSIIDC refused to accept the aforesaid request on the ground that the informant was a defaulter and possession of the property would not be delivered to the informant until the informant made all the payments fallen due in terms of a Regular Letter of Allotment dated 06<sup>th</sup> December 2010.



7. In view of the aforesaid averments, it has been contended by the informant that HSIIDC enjoyed a dominant position and it abused and continues to abuse its dominant position through its conduct.
8. We have considered the information supplied and arguments advanced by the informant. *Ex facie*, the grievance of the informant essentially pertains to non-adherence to the contractual obligations by HSIIDC in as much as HSIIDC allegedly failed to give/ hand over the possession of the property to the informant in terms of the auction conducted by HSIIDC on 23<sup>rd</sup> November 2010. It is apparent that HSIIDC was alleging that the informant had not fulfilled its obligations in terms of the auction sale. Be that as it may, it is quite clear that in essence, the grievance of the informant squarely revolves around the alleged breach of contract i.e. non-delivery of possession of the property by HSIIDC to the informant even after the informant has allegedly fulfilled all of its obligations/ stipulations as mandated by HSIIDC.
9. Further, the informant has itself averred in the information that the HSIIDC was treating the informant as a defaulter in payment of the installments and has taken the stand that the possession of the property would not be delivered to the informant until the informant makes all the payments that have fallen due in terms of a Regular Letter of Allotment dated 06<sup>th</sup> December 2010. That being the case, the appropriate remedy available to the informant for the alleged breach of contract or arbitrariness in the auction process, or unreasonable terms in the allotment letter etc, if any, lies elsewhere and not under the Competition Act.
10. It is well-settled that in order to attract the rigors of Section 4 of the Competition Act, the opposite party must be a dominant player in the relevant market and must have abused its dominant position in the relevant market. The informant has neither expressly nor by necessary implication explained what was the relevant market in the present case and how HSIIDC was a dominant player in such a market.
11. Resultantly, there exists no *prima facie* case and the matter deserves to be closed forthwith in terms of the provisions of section 26(2) of the Act.



12. It is ordered accordingly.

13. The Secretary is directed to inform all concerned accordingly.

Sd/-  
Member (C)

Sd/-  
Member (R)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member (D)

Sd/-  
Chairperson

