



COMPETITION COMMISSION OF INDIA

Case No. 101 of 2014

In Re:

Shri Dominic Da'Silva

Flat No. 402, IC Colony, 5th Cross Road,

Borivali (West) Mumbai - 400103

Informant

And

M/s Vatika Group

Flat No. 621A, 6th Floor Devika Towers

6 Nehra Place, New Delhi - 110019

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

Appearances:

Shri Dilip Kumar, Advocate



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

1. The present information has been filed by Shri Dominic Da'Silva (hereinafter referred to as the '**Informant**') against M/s Vatika Group (hereinafter referred to as the '**Opposite Party**') under section 19(1)(a) of the Competition Act, 2002 (the '**Act**') alleging, *inter alia*, contravention of provisions of section 4 of the Act.
2. It is submitted in the information that the Informant is a resident of Borivali (West) Mumbai. The Opposite Party is a registered company engaged, *inter-alia*, in the business of real estate development and has developed a number of world-class residential and commercial projects. It has commercial properties located in some of the major Indian cities like Ambala, Jaipur and Delhi NCR including Gurgaon & Faridabad.
3. The Informant alleged to have purchased a commercial unit admeasuring 1500 sq. ft. in Vatika Professional Point Sector, bearing No. 601 (hereinafter referred to as '**Project**'), being developed by the Opposite Party in Sector 66 Gurgaon, Haryana. The Informant, out of agreed total consideration of Rs. 1,02,75,000/-, paid an amount of Rs. 7,12,500/- as booking amount to the Opposite Party *vide* cheque dated 05.03.2007.
4. The Informant had opted for construction linked payment plan. It has been stated by the Informant that the Opposite Party delayed construction of the project for more than a year from date of booking and even before starting of construction, took payment of Rs.35,25,000/- i.e. more than 33% of the total consideration under the threat of forfeiture of amount



already paid. The Opposite Party further demanded payment of Rs.8,43,750/- *i.e.*, around 42.5% of the total consideration.

5. It is alleged that the Opposite Party committed to complete the project within three years of booking. But when the Informant approached the Opposite Party and expressed his concerns over delayed start of project, the Opposite Party gave assurance that the construction would be complete within stipulated time. The Informant has stated that despite assurances given by the Opposite Party, the project was not completed on time.
6. Informant has submitted that in terms of Clause 13 of the Builder-Buyer Agreement (hereinafter referred to as '**Agreement**'), the Opposite Party is vested with the right to make any alterations in buildings and it had absolute discretion to change the super area. Further, as per clauses 12 and 20 of the agreement, the liability of the Opposite Party was limited to @Rs 5 sq. ft. of the super area per month for delay, whereas allottees were subjected to payment of interest @ 15% per annum for the first 90 days and additional interest @ 3% per annum for a period exceeding 90 days. Further, under clause 50 of the Agreement, the Opposite Party had reserved for itself all the rights to modify, amend or change the annexures attached to the Agreement at its sole discretion.
7. The allotment of the Informant was finally terminated unilaterally by the Opposite Party and the refund was delayed for a considerable period. A sum of Rs. 13,37,700 is alleged to have been forfeited by the Opposite Party by citing certain company policies.



8. The Informant has identified the relevant market as the market for commercial units in Gurgaon. The Informant has also attempted to highlight the dominance of the Opposite Party, by citing factors such as:
- i) The Opposite Party owns a very large share of land base in Gurgaon which it acquired quite early and developed integrated township in Gurgaon. As such, there is superlative brand power in favour of the Opposite Party which affects consumers in its favour.
 - ii) Entry barriers exist in the real estate sector in the form of high cost of land and the established brand value of the Opposite Party. The Opposite Party has been in this business since 1988, unlike other players who have commenced their business recently in Gurgaon.
 - iii) The political patronage enjoyed by the Opposite Party, which has enabled it to sway policy decisions in its favour and allowing advantages over other competitors.
9. The Informant submits that the unfair and discriminatory conduct of the Opposite Party is possible because of their dominant position in the relevant market. Based on these facts, the Informant has alleged contravention of section 4 of the Act by the Opposite Party. Accordingly, the Informant has prayed, *inter alia*, for the initiation of enquiry against the Opposite Party for abuse of its dominant position in the relevant market.
10. The Commission considered the information and the material placed on record by the Informant. The counsel for the Informant appeared before the Commission on 26.02.2015 and sought adjournment for presenting the case. The Commission adjourned the case for 12.03.2015 but none appeared on the date of hearing.



11. The Informant is primarily aggrieved by the alleged abusive and discriminatory conduct of the Opposite Party. The allegation of the Informant in the present case relates to purchase of a commercial unit in Vatika Professional Point Sector in Sector 66 of Gurgaon, Haryana. Considering the facts of the present matter, the relevant product market appears to be the market of *“services for development and sale of commercial units”*. The relevant geographic market would be *“Gurgaon”* because the conditions of competition for provision of the relevant product is distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. Thus, the relevant market to be considered in the present case would be the market of *“services for development and sale of commercial units in Gurgaon”*.

12. In an earlier case No. 24 of 2014 also, the Commission held that *“The services of development and sale of commercial space appears to be a distinct product. No other services/products in its category such as development and sale of residential units, development and sale of plots of land etc., can be considered as the substitute of the services for development and sale of commercial space because of its unique physical characteristics and consumer preferences”* and *“availability of land for real estate development, differences in commercial real estate price per sq. ft., relatively low rent for office spaces, proximity to the national capital, connectivity to airport, presence of a large number of IT/ITES firms, availability of residential apartments and other infrastructure facilities, Gurgaon appears to be a distinct geographical market”*.

13. After determination of the relevant market, the next step is to assess the dominance of the Opposite Party in the said relevant market. As per the



information available in public domain, there are a number of real estate developers in the relevant market offering commercial projects such as Raheja (3 Projects), DLF(15 Projects), Unitech (21 Projects), Vatika (12 Projects), Ansal (2 Projects), Emaar MGF (5 Projects), Spaze Group (10 Projects), Baani Group (11 Projects), M3M (5 Projects) and JMD (9 Projects) etc. Presence of such players in the relevant market indicates that the buyers have the option to choose developer of their choice in the relevant geographic market. Since there is no information available on record and in the public domain to show the position of strength of the Opposite Party which enables it to operate independently of competitive forces prevailing in the relevant market, *prima facie*, the Opposite Party does not appear to be in a dominant position in the relevant market. In the absence of dominance of the Opposite Party in the relevant market, its conduct cannot be examined under the provisions of section 4 of the Act.

14. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the Opposite Party in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.
15. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson



Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

New Delhi

Dated: 01/04/2015