



COMPETITION COMMISSION OF INDIA

Case No. 101 of 2015

In Re:

Shri Jatin Kumar

HEWO Flat No. 61, Sector – 16A,

Faridabad, Haryana

Informant

and

1. Estate Officer,

HUDA, Faridabad, Haryana

Opposite Party 1

2. Administrator,

Huda, Sector-12, Faridabad, Haryana

Opposite Party 2

3. Chief Administrator,

HUDA, Sector-6, Panchkula, Haryana

Opposite Party 3

4. Financial Commissioner - Principal Secretary

Town & Country Planning Department, Haryana,

New Secretariat Building,

Sector-17, Chandigarh

Opposite Party 4

CORAM

Mr. Ashok Chawla

Chairperson

Mr. Sudhir Mital

Member



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Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Mr. (Justice) G.P. Mittal
Member

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

1. The present information has been filed by Shri Jatin Kumar (the '**Informant**') under section 19(1) (a) of the Competition Act, 2002 (the '**Act**') against Estate Officer, Haryana Urban Development Authority (HUDA), Faridabad ('**OP 1**'); Administrator, HUDA, Faridabad ('**OP 2**'); Chief Administrator, HUDA, Panchkula ('**OP 3**') and Financial Commissioner-Principal Secretary, Town & Country Planning Department (TCPD), Haryana ('**OP 4**') alleging, *inter-alia*, contravention of the provisions of Sections 3 and 4 of the Act. OP 1 to OP 4 are hereinafter collectively referred to as 'Opposite Parties'/'OPs'.
2. As per the information, the Informant is a resident of Faridabad, Haryana. OP 1 to OP 3 are Officials of HUDA and OP 4 is official of TCPD, the nodal department of the Government of Haryana.
3. It has been submitted that a plot bearing No. 1720 P in Sector-62, Faridabad, Haryana ('**Plot**') was re-allotted to the Informant on 29.07.2011 which was originally allotted to Shri Sanjay Kumar on 14.05.2007 and possession was taken, after obtaining occupation certificate, by the Informant on 20.01.2012.



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The Informant has allegedly stated that at the time of physical possession, the road in front of the said plot was not constructed, whereas the Officials of HUDA (OP 1 to OP 3) had charged interests on all instalments and extension fees which was against the policy and provision of law and was liable to be quashed.

4. It has been further submitted that at the time of allotment, the approved plan of HUDA showed in their official site plan that the constructed road was going in front of the plot but factual position is that the road was never constructed. However, the Informant further asserted that finally the road was constructed after making various representations to the office of the HUDA.
5. It has been stated by the Informant that after requesting to OP 1 in writing at several occasions for construction of the road, it was confirmed by OP 1 in the reply dated 09.05.2012 to a Right to Information (RTI) application by the Informant dated 21.12.2011 that road could not be constructed due to litigation. In light of these facts, the Informant has stated that he is entitled for waiving off extension fee and interest given on all the instalments and refund of interest paid towards the same.
6. The grievance of the Informant is also related with non-execution of the conveyance deed for which he has paid the charges through non-judicial stamp of Rs.61,460/- in October, 2014. The Informant has stated that till date OP 1 has not executed the conveyance deed. When, the Informant personally met the officials in this regard, he came to know that original file along with non-judicial stamp paper was missing from the office.
7. The Informant has alleged that by the order dated 15/01/2015, competent authority waived the extension fee and exempted the interest till the date of completion of development work i.e. 30.3.2012. However, in order to harass



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the Informant OPs/Officials of HUDA intentionally and deliberately misplaced the original file as well as non-judicial stamp paper submitted by the Informant. The Informant filed an RTI application on 24.6.2015 and 26.5.2015, wherein the status of the confinement of the file pertaining to plot was sought. The Informant also made representations in this behalf to authorities but of no avail.

8. In light of the above facts, the Informant has alleged that the OPs are misusing their dominant position by not returning of extension fee and interest paid on the instalments and by not executing the conveyance deed, the file of which OPs have misplaced carelessly.
9. Therefore, the Informant has prayed, *inter-alia*, to the Commission to issue direction to the OPs to execute the conveyance deed and return the extension fee and interest paid on the instalments besides praying for other reliefs. The Informant has also sought *interim* relief under section 33 of the Act.
10. The Commission has perused the information and considered the material available on record. It appears that the Informant is mainly aggrieved with the non-refund of the extension fee and interest paid on the instalments for the period when development work (construction of the Road) was not complete and non-execution of the conveyance deed.
11. The Commission notes that being unable to get any relief from the officials/functionaries of the HUDA, the Informant has filed this information against the officials working in HUDA. However, the Commission observes that OPs were not doing any commercial function; rather they were individual officials of their respective employers and performing official functions during the course of their duty. In the light of this observation, OPs do not fall under the definition of 'enterprise' in terms of provision of the Act. The



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Informant has not made HUDA as one of the opposite parties. Notwithstanding that, the Commission considers it appropriate to look into the role of HUDA in the instant matter.

12. The Commission observes that the OPs 1, 2 and 3 are the functionaries of HUDA, which is a statutory body under Haryana Urban Development Authority Act, 1977 ('HUDA Act'). The functions of HUDA, *inter-alia*, are to promote and secure development of urban areas in a systematic and planned way with the power to acquire sell and dispose of property etc. OP 4 is the official of TCPD, Haryana which is the nodal department to enable regulated urban development in the State of Haryana.
13. Section 2(h) of the Act defines "enterprise" as a person or a department of the Government, who is engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind. The definition is very wide and covers every type of engagement in any activity including investment or business. The only exception which is carved out in the said definition is the sovereign function of the Government including Atomic Energy, Currency, Defence and Space. Since, OPs (HUDA and TCPD) are not performing any sovereign functions rather they are rendering services for charges which is a commercial/economic function being carried out by these entities; hence, they are covered within the ambit of the term "enterprise" as defined in the Act.
14. In the past, the Commission has consistently held that the Statutory Bodies like Delhi Development Authority which is created under the Delhi Development Act, 1957 and Indian Railway which reports to the Ministry of Railway are covered under the definition of enterprise. Therefore, like any other commercial entities (although created by the Act of Parliament or State



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Legislature), the HUDA is also covered under the definition of enterprise and amenable to the jurisdiction of the Commission.

15. After analysing the issue of the jurisdiction and nature of the function of OPs, the Commission finds that the allegations of the Informant needs to be examined on the touchstone of provisions of Sections 3 & 4 of the Act.

16. It is observed by the Commission, that the Informant has made allegations only under the provisions of Section 4 of the Act. Further, there is no horizontal or vertical restraints observed in the instant case by the Commission and as such application of Section 3 of the Act is not attracted.

17. With regard to Section 4 which relates to the abuse of dominance by person or enterprise or group, the relevant market needs to be delineated. The relevant market, as per section 2(r) of the Act, consists of either relevant product market or relevant geographic market or both. In this case, the subject matter in question is residential plot allotted by a statutory body. It is observed by the Commission that development and sale of residential plots by a statutory body is distinguishable with flats, apartments and other commercial space etc. as there is a vast difference when the property is developed by a private builder compared to Statutory Bodies. The ultimate aim of a private builder is to maximize profits whereas the Statutory Bodies may keep several other factors into consideration. As pointed out earlier, the HUDA is created for the purpose of establishing of an Urban Development Authority for undertaking urban development in the state of Haryana. Therefore, the Commission is of the opinion that the relevant product market, in the present case, appears to be *'provision of services relating to development and sale of residential plots by a Statutory Body'*.

18. It appears from the information that the Informant was allotted residential plot in the city of Faridabad. The geographic market *prima facie* emerged out to be



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Faridabad as it is distinct from other neighbouring areas of Delhi NCR due to various characteristics viz. price, land availability, distance, commuting facilities etc. Thus, after taking into account the facts of the present case and relevant provisions of the Act, in the opinion of the Commission, the relevant market would be the market of '*provision of services relating to development and sale of residential plots in Faridabad by a Statutory Body*'.

19. With respect to the position of dominance of HUDA in the relevant market, it is to be noted that HUDA is a Statutory Authority engaged in the work relating to planned development of urban areas/local areas and for that it sells the plots and residential units after the development. Report available on the webpage of HUDA states that up to 30.06.2013, it has acquired 61678.89 acres land in Haryana and in Faridabad Zone it has floated total number of 34 residential sectors during the period of 05.03.05 to 31.12.2012. In the same period, HUDA has 61,580 plots in Faridabad. *Prima facie*, HUDA appears to be dominant in the relevant market.

20. The Commission notes that the grievances of the Informant *prima facie* emerge from the issues of non-execution of the conveyance deed and non-return of the extension fee and interest paid on the instalments which appears to be in the nature of deficiency in services. The Commission also observes that the HUDA Act provides inbuilt mechanism for grievance redressal and provisions of Appeal are contained therein. Moreover, perusal of information brings out that the Informant has already made representation to the higher authorities for the redressal of the grievances pertaining to deficiency of services in allotment of the plot which are pending for resolution. Further, the Informant may also approach to other appropriate forums. It is also noted that the Informant has not provided adequate supporting materials and on plain reading of the allegations summarised above, abuse by HUDA is not established.



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21. In light of the foregoing analysis, the Commission is of the view that though HUDA *prima facie* appears to be dominant, however instances alleged to be abusive by the Informant seem to arise out of deficiency in services and have no competition concerns in light of the provision of Section 4 of the Act.
22. In light of the foregoing analysis and observations, the Commission finds that no *prima facie* case of contravention of the provisions of either section 3 or 4 of the Act is made out against the Opposite Parties in the instant matter. Accordingly, the matter is closed under the provision of section 26(2) of the Act.
23. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

Sd/-
(Justice G. P. Mittal)
Member

Sd/-
(Ashok Chawla)
Chairperson

New Delhi

Dated: 10.12.2015