

COMPETITION COMMISSION OF INDIA

August 07, 2012

Case No.10/2012

Filed by

Iqbal Singh Gumber & Mrs. Hardeep Kaur

.... **Informant**

Against

(1) **Purearth Infrastructure Ltd. & Others**

.... **Opposite Parties**

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

This application under section 19 has been filed by the two informants stated above. The application is in the form of a complaint about misuse of dominant position, misleading, falsehood, unresponsiveness, delays and high interest charges @ 18% per annum for delays. It is stated by the applicant at the outset that the applicants were not advocates and therefore the complaint made may be bereft of technicalities and legal arguments.

2. The informants stated in the information that they booked a show room No. P-3/104 having an area of 1949 sq. feet with Opposite Party No.1 who was constructing a mall/commercial complex at Central Square, Bara Hindu Rao, Delhi. The booking was done in April, 2006 and the informants paid Rs.16 lakhs to OP-I. The initial agreement was signed with OP-I on 20th June, 2006. The informants kept on paying the amount as per the agreement and completed 100% payment on 20th July, 2008, which included Rs.6 lakhs towards car parking space.

3. It is alleged by the informants that at the time of booking they were given to understand that the complex would be world class business centre having aesthetic surroundings of the same standard. Two Singapore parties, who had experience of developing mall in middle east, namely, Guocoland Ltd. and Thakral Brothers Pvt. Ltd. were the promoters of the project. It was represented that the dedicated footfalls of over 10,000 persons per day would be there. The space booked by the informants would have 20 feet high ceiling, mammoth inner courtyard, escalators, etc., etc. The landscape plan stated about planting and development of several kind of trees, shrubs, palms, etc. It was represented that around 830 trees, 466 palms and 5000 shrubs would be there in the landscape around the central square. The website of the Opposite Party No.1 also depicted all these things. The applicants were lured by these



representations and had booked show room/shop in the Plaza. It was represented to them that Plaza-3 of the mall will be completed and show rooms will be delivered by September, 2007. However, Plaza 4 adjoining Plaza-3 would open after six months i.e. in March, 2008. The applicants stated that communications were received from Opposite Party No.1 from time to time and these publications mentioned the space as commercial space with aesthetic of the world class. During the construction, he was informed that possession would be given in 2008. Despite all the representations and receiving full payment, the possession of the commercial space had not been handed over to them till date and Plaza-IV construction has not even started.

4. About a year back, they received a telephone call from one Mr. Thakkar of Opposite Party-1 informing that he had to pay Rs.900 per sq. feet towards conversion charges of the land use. They were shocked to hear this as it was never told to them either orally or in the agreement that the Opposite Party No.1 was constructing flatted factories and not shopping plaza/mall. All along it was represented that Opposite Party No.1 was constructing a shopping plaza and had invited people to book commercial space in the shopping plaza. After receiving this call, he sent mails to Opposite Party-1 but no response was received.

5. They also received a letter from Opposite Party-1 dated 29.7.2011 asking him to pay conversion charges without specifying any amount. It is stated by the applicants that this amount was not stated as the amount was huge and the Opposite Party No.1 did not want the allottees to protest and intended to lure them into paying this amount by abusing its dominant position. The letter also mentioned that the customer interested in availing this service may contact such and such a person and states that the Govt. on 12th August, 2008 notified the land use change. It is averred by the applicants that they were not informed at the time of booking that the land was for flatted factories and not for commercial complex, neither the lay out plans, computerized picturisation and application forms depicted the place as flatted factories meant for manufacturing and assembling activities i.e. business to business activities not retail activities as mentioned by them in their brochure. It is further stated that the entire complex was made centrally air conditioned with escalators. Flatted factories are not made in this fashion. Nor at the time of signing agreement it was told that what was being booked was space for flatted factories.

6. The applicants made further following grievances:-

- (i) The entire agreement was one sided;
- (ii) Opposite Party No.1 has reserved for itself 18% interest in case of delay in payment, there was no mention for similar interest for delay in completion of construction and handing over of possession.
- (iii) In the agreement on page 8, many types of charges were mentioned but there was no mention of conversion charges. In the agreement there was no mention of the land use permitted to them being only flatted factories.



(iv) There was penalty for not taking possession within 90 days @ 5 sq. feet per month but there was no penalty on the builder for not delivering possession in time.

(v) The Agreement gave liberty to the developer of cancelling the booking in case of delays in payment by allottee but no consequences were mentioned for not handing over possession in time.

7. The applicants raised several questions against Opposite Party No.1 as to why OP-I behaved in this manner. The applicants sought relief of payment of interest of 18% to them from the date of receiving full payment i.e. 26th July, 2008 till the handing over of the possession and sought directions from Commission to Opposite Party No.1 not to demand conversion charges and to pay compensation @ 150 per sq. feet per month for show room booked by him but not handed over to him from the date mentioned in the agreement.

8. They also sought a levy of penalty on Opposite Party-I and its officials for causing mental torture to them and other buyers due to long delays, lack of transparency, misleading attitude and inordinate delay in handing over possession.

9. It is submitted by applicants that matter would attract clause 3 and 4 of the Competition Act.

10. The allegations of the informants pertain to abuse of dominant position by the Opposite Party No. 1 in regard to its project, viz. Central Square Mall in Delhi. Although the informants have not defined the relevant market in this case, considering the facts and circumstances of the present matter, the relevant market appears to be market of "services for development of commercial space for shopping malls in Delhi."

11. It is observed that the Opposite Party No. 1 is engaged in the business of development of real estate in India. The activities being performed by the Opposite Party No. 1 are covered under the definition of "enterprise" as per the provisions in section 2(h) of the Act.

12. For the application of section 4 of the Act, the enterprise in question must be in a dominant position in the relevant market. The relevant market has been defined supra.

13. As per the information available on public domain, DCM Ltd. is the owner of plot of land measuring about 66.53 acres situated at Bara Hindu Rao/Kishan Ganj, Delhi, comprising of both freehold and leasehold land. All development rights for the said Real Estate Projects on the said land have been conveyed to Purearth Infrastructure Limited (earlier called DCM Estate and Infrastructure Ltd. – DEIL). As per the agreement, M/s. Purearth Infrastructure Limited to undertake the development of entire project and would be responsible for the construction and sale of Project. Construction work at the site is presently in progress.

14. Further, as per the information available on the public domain, there are many shopping malls and residential complexes in the geographical area of Delhi developed by various developers. Out of the more than 80 members listed in Confederation of



Real Estate Developers Association of India in Delhi-NCR Chapter, the prominent builder/Real Estate Developer are Ansal API, Ansal Housing, DLF Ltd., DLF Home Developers, Omaxe Ltd., Parsvnath Ramprasth, Supertech, Unitech, Vatika and TDI. These major developers are developing commercial as well as residential space in Delhi – NCR. The presence of the Opposite Party No. 1 in real estate development sector does not appear to be so substantial compared to the above said developers.

15. Further, as per Knight frank Research Report, Q1 of 2010, on India Organised Retail Market Diagnosis and Research Studies on Malls in India, May, 2011 by asipac, the retails space, comprising of Mall/Shopping in delhi is around 6.5 million sq.ft. in 2010, 8.22 million operational as on April 2011 and 1.99 million sq.ft. expected as on April, 2011 spread over 45 major malls in Delhi, totaling to approximately 11.89 million sq.ft.

16. The Opposite Party No. 1, M/s. Purearth, is developing approximately 2,00,000 sq.ft. spread across the four plazas as per its website. This is approximately 3.71% of available space in 2010, 2.43% in 2011 and 1.68% of total projected space available space by the end of 2012.

17. On the basis of the information given above, it cannot be deduced that the Opposite Party No. 1 is dominant player in retail space of mall/shopping in Delhi as its share is very low and it is not a prominent developer in Delhi-NCR as mentioned.

18. The informants have also not placed any fact or material on record to show the dominant position of the Opposite Party No. 1 in the relevant market.

19. As, prima facie, the Opposite Party No. 1 does not appear to be in dominant position in the relevant market, the question of abuse of dominance under the provisions of Section 4 of the act as alleged by the Informant does not arise. Therefore, the Commission is of the view that the Opposite Party has not contravened any provisions of Section 4 of the Act. With this observation, the matter is closed under section 26(2) of the Competition Act.

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

Sd/-
Member

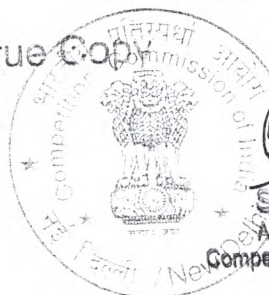
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S. P. Gahlaut
07/08/2012
S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi

07-08-2012