



COMPETITION COMMISSION OF INDIA

Case No. 102/2013

In Re:

Arvind Kumar Sachdev
S/o Late B. R. Sachdev
R/o C-1/7, DLF, Phase-1,
Gurgaon, Haryana

Informant

AGAINST

1. M/s. Emaar MGF Land Limited
ECE House,
28, Kasturba Gandhi Marg,
New Delhi-110001
Opposite Party No. 1
2. M/s Active Promoters Pvt. Ltd.
17-B, Asaf Ali Road,
New Delhi-110001
Opposite Party No. 2
3. Directorate of Town & Country Planning, Haryana
SCO No. 71-75, 2nd Floor,
Sector-17C,
Chandigarh-160017
Opposite Party No. 3
4. Office of Chief Administrator
Haryana Urban Development Authority (HUDA)
Huda Complex, C-3; Sector-6
Panchkula, Haryana-145666
Opposite Party No. 4

(collectively referred to as 'Opposite Parties')



CORAM

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. S. L. Bunker
Member

Present: Shri Gautam Das (Advocate for the Informant) and Shri Arvind Kumar Sachdev (Informant)

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

The present information has been filed by the Informant against the Opposite Parties for alleged abuse of dominant position by them under section 4 of the Competition Act, 2002 ('the Act'). Opposite Party No. 1 is stated to be a renowned real estate company engaged in the real estate business across residential and commercial purposes etc.

2. As per the facts stated in the information, the Informant booked a commercial unit in the commercial project of Opposite Party No. 1 and Opposite Party No. 2 (a subsidiary of Opposite Party No. 1) namely 'The Palm Square' on 05.11.2007 in Gurgaon. After payment



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of an amount of approximately Rs. 40 lakhs, a Buyers Agreement ('the Agreement') was entered into between Informant and Opposite Party No. 1 on 29.12.2008. The Informant alleged that most of the clauses of the Agreement are onerous and one-sided in gross violation of section 4 of the Act. The Informant stated that the Agreement entailed an imposition of a high compound interest rate in case of delay in paying installment whereas Opposite Party No. 1 & 2 were liable for a nominal simple interest rate in case of delay on their part, if any. Further, Opposite Party No. 1 and Opposite Party No. 2 had the unilateral right to increase or decrease the super area without consulting allottee(s), and the allottee(s) were bound to pay additional amount demanded by Opposite Party No. 1 or accept a reduction in the area. The Informant further stated that initially he was allotted a retail space measuring 698.37 sq. ft. but when he visited the actual site he found that the space allotted to him was hardly 375 sq. ft. only i.e. almost half of the allotted space. It was further contended that Opposite Party No. 1 and Opposite Party No. 2 had unilateral right to change the Agreement without seeking any consent from the allottees. Apart from foregoing, the Informant was also aggrieved from preferential location charge (PLC), external development charges, infrastructure development charges, arrangement and leviable rates of power supply etc. as these charges were payable without allottees (like Informant) having any bargaining power.

3. The Informant contended that the unfair and discriminatory conduct of Opposite Party No. 1 and Opposite Party No. 2 was possible because of the dominant position they held in the relevant market. Based on these facts, the Informant alleged contravention of section 4(2)(a)(i) and 4(2)(a)(ii) of the Act by Opposite Party No. 1 and Opposite Party No. 2. Accordingly, the Informant prayed before the Commission, *inter alia*, for imposition of heavy penalty, rectification of the Agreement containing arbitrary and unfair conditions, cease and desist order against Opposite Party No. 1 and Opposite Party No. 2 etc.
4. The Commission perused the information, additional information filed by the Informant and heard the Informant at length. The allegations in the present case pertain to abuse of dominant position by Opposite Party No. 1 and Opposite Party No. 2 within the meaning of



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section 4 of the Act. For invoking section 4 of the Act, determination of relevant market is a *sine qua non*. Although the Informant had not proposed any relevant market in the information, vide written submission dated 25.02.2014 he has portrayed the relevant market as commercial retail space in the geographic market of Sector 65-66, Golf Course Extension Road, Gurgaon. The Informant, on the basis of land holding and undergoing projects in the said sectors, has argued that the Opposite Party No. 1 with a share of about 17% of the total land bank in the above said sectors holds a dominant position in the said relevant market.

5. The Commission, on the above aspect observes that although the Informant had suggested the relevant market, he has not supplied any reasoning to show how the said relevant market constitute a distinct relevant market. Considering the facts of the case, the Commission finds no cogent reason to restrict the geographic boundary of relevant market only to sector 65-66. *Prima facie*, there is nothing to suggest that the said sectors of the Gurgaon form a separate relevant geographic market. The facts and circumstances of the present matter suggest that the relevant market in the present case should be the market of 'services for development and sale of commercial units in the region of Gurgaon'. The Informant alleged that the Opposite Party No. 1 & 2, being dominant player in the relevant market, abused their dominant position by imposing unfair and discriminatory conditions on the allottees. Before the contention of Informant is analyzed, the dominance of Opposite Party No. 1 & 2 needs to be established. On the basis of information supplied by the Informant and that available in public domain, Opposite Party No. 1 and Opposite Party No. 2 do not appear to be a dominant player in the relevant market. In the relevant market, there are many well known real estate developers such as Vatika, DLF, Anantraj Group, Unitech, M3M, BPTP, IRTTO, Spaze, Ramprastha etc; operating and competing with each other. Though the Opposite Party No. 1 is one of the known builders in the relevant market, that fact in itself is not decisive for establishing dominance. Presence of other builders, *prima facie*, shows prevalence of competition in the relevant market. There is no material before the Commission to infer that Opposite Party could operate independently of competitive forces. Therefore, *prima facie* Opposite Party No. 1 and Opposite Party No. 2 do not appear to be dominant in the relevant market. Since Opposite Party No. 1 and Opposite Party No. 2, *prima facie*, do not appear to



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be in a dominant position in the relevant market, no question of abuse of its dominant position can arise in terms of the provisions of Section 4 of the Act.

6. For the reasons stated above, the case deserves to be closed and is accordingly closed under section 26(2) of the Act.
7. The Secretary is directed to send a copy of the order to all concerned.

New Delhi

Dated: 11/03/2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S.L. Bunker)
Member