



COMPETITION COMMISSION OF INDIA

Case No. 103 of 2015

In Re:

**Mr. Raghubir Mertia
E-163, Kataria Colony, Ram Nagar (Extn.),
Sodala, Jaipur**

Informant

And

**1. M/s Aura Real Estate Pvt. Ltd.
Plot No. 2, Level 3&4, Galaxy Garden,
Next to Mocha Café, North Main Road,
Koregaon Park, Pune**

Opposite Party No. 1

**2. M/s Waghare Promoters
109/1, 110/1, Pimpri,
Opp. Annasaheb Magar Stadium,
Nehru Nagar, Pimpri, Pune**

Opposite Party No. 2

CORAM

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**



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Mr. U. C. Nahta

Member

Mr. M. S. Sahoo

Member

Justice G. P. Mittal

Member

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

1. The information in the instant case has been filed by Mr. Raghubir Mertia, representing his son Mr. Dev Mertia and daughter-in-law Mrs Manisha Mertia (hereinafter referred to as the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against Aura Real Estate Pvt. Ltd. (hereinafter referred to as '**OP 1**') and M/s Waghere Promoters (hereinafter referred to as '**OP 2**') (collectively, hereinafter referred to as '**OPs**'/ '**Promoters**') alleging, *inter alia*, contravention of the provisions of section 4 of the Act in the matter.
2. As per the information, OP 1 is a company incorporated under the Companies Act, 1956 and OP 2 is partnership firm registered under the Indian Partnership Act, 1932. It is stated that OP 1 and OP 2 promoted/ developed a residential housing project in the name of 'Kalpataru Harmony' at Wakad in Pune (hereinafter referred to as the '**Project**'). After payment of Rs. 3,00,000/- as earnest money the Informant was booked a 2-BHK flat in the said project. Accordingly, *vide* letter of allotment ('**LOA**') dated 28.08.2012, the Informant was allotted flat no. 1007 on the 10th floor of Building No. 1 Wing 'C' along with a below podium car parking space. Thereafter, an 'Agreement for Sale'(hereinafter referred to as the '**Agreement**') dated 21.09.2012, as



prepared by the Promoters, was executed between the Informant and OPs. In the 'Agreement' the date of possession of the flat was promised as 30.06.2014.

3. Subsequently, on 22.04.2014, the Informant received a letter dated 17.04.2014 from OPs informing that the project will be delayed due to '*unforeseen force majeure circumstances*' and the possession of the flat will likely to be given by the end of December, 2014. The Informant, thereafter, contacted OPs over phone and *vide* letter dated 14.05.2014, but no reply was received. It is alleged that OPs had drawn unfavorable payment schedule because of which nearly 85% of the total cost of construction was paid by the Informant, whereas ordinarily 40-50% of the total cost is incurred during RCC (Reinforced Cement Concrete) structure stage.
4. It is submitted that the Informant *vide* letters dated 04.08.2014, 02.09.2014 and 03.11.2014 had asked the OPs to pay interest @ of 18% on the excess amount collected against the delay involved in delivery. OP 1 *vide* its letter dated 19.12.2014 had replied that they regretted the delay and it is not their policy to pay interest on the amount received for the delay in giving possession of the flat. Thereafter, the Informant received a letter dated 27.05.2015 from OPs asking him to pay the remaining amount with a promise to give possession of the flat within 20 days from receiving the remaining amount. The Informant had paid the demanded amount along with a letter on 12.06.2015. However, during inspection of the flat on 27.07.2015, it was found that a lot of work were pending in the flat. The Informant has alleged that after much follow up, the possession of the flat was given on 01.08.2015 with a promise that whatever shortfalls and pending jobs will be completed shortly. The Informant has averred that OPs have taken an undertaking from him in the form of a possession letter which contains various unfavorable terms and conditions.
5. Furthermore, the following allegations have been raised by the Informant against the OPs:



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- (i) In LOA and in the 'Agreement', OPs have mentioned that "the purchaser has read, understood and agreed to the terms and conditions". This, according to the Informant, is a false statement. It is alleged that the Informant was neither given any advance copy nor was he explained anything in this regard.
- (ii) At the time of payment of earnest money, the total area of the flat discussed was 1146 sq. ft. and the total purchase price of the flat was calculated at the rate of Rs. 4975/- per sq. ft. It is alleged that in the 'Agreement', the area was changed to carpet area of 882 sq. ft. and the total purchase price was changed from rate per sq. ft. to a lump sum amount of Rs. 57, 01, 350/- plus Rs. 2, 50,000/- for car parking space. Based on this, the price per sq. ft. of the flat was increased to Rs. 6465/- from Rs. 4975/-.
- (iii) OPs had promised to update their website showing progress of construction work. Though they kept on raising demand for payments, it is alleged that the updating of the website about the progress in the construction work was discontinued. Also, no information was given about the actual progress of the work even over telephone.
- (iv) OPs made the Informant to agree and to fulfill the various terms and conditions which are allegedly designed in favour of them.
6. In view of the above averments, the Informant, *inter alia*, has requested the Commission to:
- (i) Direct OP 1 to pay an interest @ 21% on the excess amount collected compared to the actual amount spent for carry out the construction upto RCC structure level.



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- (ii) Direct OP 1 to refund excess amount on account of society deposits and other charges collected on 1146 sq. ft. instead of 882 sq. ft.
 - (iii) Direct OP 1 to disclose the details of amount collected towards corpus fund, club house, apex body, development charges *etc.*
 - (iv) Direct OP 1 to refund maintenance and outgoing charges collected for three years and to refund Rs. 10,000/- collected on account of interior work.
 - (v) To grant suitable relief in view of the above facts put before the Commission.
7. The Commission has perused the information and the documents available on record. It is observed that the Informant, *inter alia*, appears to be aggrieved by the conduct of OPs in not delivering the possession of the aforementioned flat in a timely manner, imposing unfair terms and conditions through LOA and the 'Agreement' and not addressing the related concerns.
8. Since the allegations of the Informant pertain to violation of the provisions of section 4 of the Act, the relevant market in terms of section 2(r) needs to be delineated first, before examining the alleged abusive conduct of OPs.
9. Since the dispute in question in the instant matter relates to a residential flat booked by the Informant in Kalpataru Harmony, a residential project developed by OPs; the market of 'the provision of services for development and sale of residential apartments/ flats' may be considered as the relevant product market. Residential apartments form a separate relevant product market because the motive behind buying and factors considered while buying a residential flat are different from buying a residential plot. Further, the requirement, scope and prospect of the consumers in buying a residential apartment is different from that of a residential plot. In case of residential



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plots, unlike residential apartments where the real estate developer completes the construction of the apartment before the possession is given to the allottee, the buyer of a plot has the freedom to decide the floor plan, the number of floors, the structure, and other specifics subject to applicable regulations. Thus, taking into account the substitutability, characteristics of services, prices and intended use ‘the provision of services for development and sale of residential apartments/ flats’ is considered as the relevant product market in the present case. With regard to the relevant geographic market, the Commission is of the view that the geographic region of Pune exhibits a homogenous and a distinct market condition as compared with adjacent areas. Therefore, the relevant geographic market may be considered as the area of Pune. In view of the above, the relevant market in the instant case may be defined as the market for “*the provision of services for development and sale of residential apartments/ flats in Pune*”.

10. Now, it is to be examined whether the OPs are in a dominant position in the relevant market delineated *supra*. In this regard it may be noted that the underlying principle for assessing dominance of an enterprise is linked to the concept of market power which allows an enterprise to act independently of the competitive constraints further, such independence affords an enterprise with the capacity to affect the relevant market in its favour, to the detriment of its competitors and consumers. In this regard the Commission observes that in the relevant market, other than OP 1 and OP 2, there are many other large real estate developers such as Marvel Realtors, Rama Group, Pristine Properties, Akshar Developers, Adi Group, Sanskruti Group, Omega Promoters Pvt. Ltd., Clover Realty, Brahma Corp, Panchshil Realty, Gulmohar Development, Kumar Urban Development, *etc.* operating and competing. The competitors of OPs have projects with varying magnitudes and are also having comparable size and resources compared to OPs. Presence of such players indicates that the buyers have options to choose from other developers in the relevant market. So, the Commission is of the view that neither OP 1 nor OP 2 possesses market power to act independently of competitive forces prevailing



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in the relevant market; or to affect its competitors or consumers or the relevant market in its favour. Thus, none of the OPs are found to be dominant in the relevant market.

11. In the absence of dominance of any of the OPs in the relevant market, the assessment of their alleged abusive conduct does not arise. Accordingly, the Commission finds that no case of contravention of the provisions of section 4 of the Act against OPs.

12. The Secretary is directed to inform all the parties accordingly.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

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

New Delhi

Dated: 07.01.2016