



COMPETITION COMMISSION OF INDIA

Case No. 110 of 2015

In Re

**Smt. Sarita Punia w/o Shri P. D. Punia,
R/o HEWO Flat No. 61,
Sector-16A, Faridabad, Haryana.**

Informant

And

**Tulip Housing Private Limited,
Through its Director/M.D./Auth. Sign.
Registered Office:
S-12, Sector-8, Jasola Vihar, New Delhi.**

Opposite Party

CORAM:

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**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 present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (“Act”) by Smt. Sarita Punia (“**Informant**”) against Tulip Housing Private Limited (“**Opposite Party/OP**”) alleging, *inter-alia*, contravention of the provisions of Section 4 of the Act.
2. The Informant is a resident of Faridabad, Haryana. OP is stated to be a real estate developer. It is further stated that OP had offered for sale free hold residential flats in its Group Housing Colony Project, named as “Tulip Heights” (the “Project”) located in Sector-11, Faridabad, Haryana.
3. As per the information, the Informant had booked a residential apartment in the said Project and in that regard, a Buyer’s Agreement (“Agreement”) dated 6th December 2011 was executed between the parties, as referred above. In terms of the Agreement, the Informant is stated to have paid Rs.47,38,020/- towards full and final payment for buying the said apartment.
4. The Informant has alleged that as per the Agreement, OP assured him that the construction of apartment will be completed within 30 months from the date of signing of the Agreement and the said period would be extendable by 6 more months, in the event of any *force majeure*. However, OP failed to offer possession of the apartment within the stipulated time, despite several requests made by the Informant. It has also been alleged that OP failed to pay penalty @Rs.5/- per square ft. of super area per month for the period of delay to the Informant. Therefore, the Informant is stated to have served a legal notice to OP. Based on the above, the Informant had alleged that OP has been abusing its dominant position and has contravened the provisions of Section 4 of the Act.
5. In view of the above, the Informant had prayed to the Commission, *inter alia*, to direct OP to handover the possession of the flat without any further



delay. The Informant has also sought similar interim relief under Section 33 of the Act.

6. The Commission has given a considered thought to the information and other material available on record. 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) is required to be delineated before examining the alleged abusive conduct of OP.
7. The dispute in question relates to a residential flat booked by the Informant in a Project developed by OP. It is noted that real estate property can be broadly classified into two main categories: residential and commercial. Residential property can be further categorised into residential apartment/flat and plots. Residential apartments form a separate relevant product market because the intention and factors considered while buying a residential flat are different from those when buying a residential plot. Further, the requirements and prospects of a consumer buying a residential apartment are different from a consumer buying a residential plot. Unlike residential apartments where the real estate developer completes the construction of the apartment before handing over the possession to the allottee, buyer of a plot has the freedom to decide the floor plan, number of floors, structure and other specifications subject to applicable regulations. Thus, taking into account factors such as substitutability, characteristics of service offered, prices and intended use *“provision of services for development and sale of residential apartments/ flats”* is considered as the relevant product market in the present case.
8. With regard to the relevant geographic market, the Commission is of the view that the geographic region of ‘Faridabad’ exhibits homogenous and distinct market conditions as compared with other regions of NCR including Gurgaon, Noida. Therefore, it is appropriate to consider ‘Faridabad’ as the relevant geographic market. In view of the above, the relevant market in the



instant case would be the market for “*provision of services for development and sale of residential apartments/flats in Faridabad*”.

9. With regard to dominance, it is noted that the underlying principle for assessing dominance of an enterprise is linked to the market power enjoyed by the enterprise. An enterprise could be regarded as dominant if it enjoys/possesses a position of strength in the relevant market, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour. In this regard the Commission observes that other than OP, there are many other real estate developers such as BPTP Limited, Omaxe, The SRS Group, Piyush Group, Puri Constructions, Espire Infrastructure, The Uppal Group, Shiv Sai Infrastructure, RPS Group Builders, Auric Group, V P Builders & Developers Pvt. Ltd and Achievers Builders *etc.*, which are rendering their services in the relevant market. The competitors of OP have projects of varying magnitude and are comparable with OP in terms of size and resources. The presence of a number of other players indicates that the buyers have options to choose from similar projects of other developers in the relevant market.
10. It may also be relevant to mention that the Commission has dealt with similar cases in the said relevant market *i.e.* Case No. 33/2013 (Mr. Rajiv Kumar Vs. BPTP Ltd) and 14/2015 (Mr. Ravinder Pal Singh Vs. BPTP Limited). In these cases, the Commission was of the view that many builders are operating and competing with each other. The Commission is of the view that the condition in the market does not seem to have altered. Accordingly, OP does not enjoy a dominant position in the relevant market. In the absence of dominance, the assessment of alleged abuse does not arise.
11. In light of the above analysis, the Commission finds that no case of contravention of the provisions of Section 4 of the Act is made out against OP in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.



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

Sd/-
(Devender Kumar Sikri)
Chairperson

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
Date: 10.02.2016