



Case No. 11 of 2014

In Re:

**Mr. Dalip Singh Arshi
B4-208, Sufdarjung Enclave,
New Delhi-110029**

- Informant

And

**M/s Aerens Jai Reality Pvt. Ltd.
1411 Chiranjeev Tower,
43, Nehru Place, New Delhi – 110019**

- Opposite Party 1

Managing Director, Aerens JAI Reality Pvt. Ltd.

- Opposite Party 2

Authorised Signatory, Aerens JAI Reality Pvt. Ltd.

- Opposite Party 3

CORAM

**Mr. Ashok Chawla
Chairperson**

**Dr. Geeta Gouri
Member**

**Mr. Anurag Goel
Member**

**Mr. M. L. Tayal
Member**

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

Present: Advocate Shri Manjit Singh Ahluwalia, Advocate Shri Bhavneet Singh and Shri Gurmeet Singh on behalf of the Informant.



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

1. Under the provisions of Section 19(1) (a) of the Competition Act, 2002 (**'the Act'**) Mr. Dalip Singh Arshi has filed the information in the instant case. The case pertains to the alleged abuse of dominant position by the Opposite Party No. 1 with respect to its residential project '**Rose Villas/Lotus Floors**' in Aerens Jai City, Jagadhari, Yamunanagar in the state of Haryana. The Opposite Party No. 2 and the Opposite Party No. 3 (the officials of the Opposite Party No. 1) have been made proforma party to the case.
2. As per the information, the Informant was allotted one full tower bearing the number F-15 consisting of Ground Floor, First Floor, and Second Floor in the aforesaid project of the Opposite Party No. 1 in January, 2011 for a total consideration of rupees fifty one lakhs. 25% of the total consideration *i.e.*, rupees twelve lakhs seventy five thousand has been paid at the time of booking of the complex. As per the project map and brochures, the allotted tower was to be park facing and to be located in a corner.
3. It is submitted that at the time of booking the Opposite Party No. 1 did not demand any Preferential Location Charge (PLC) for the complex to be in a corner and park facing. As per the Informant, PLC was never be a part of the agreement for booking of the said complex. In fact, PLC was shown to be nil in the schedule of due payment letters sent to him on 15th March 2011. It is the case of the Informant that subsequently, the Opposite Party No. 1, with a malafide and dishonest intention, has included PLC in the schedule of due payment letters sent to him on 13.05.2011 and 15.06.2012.
4. The Informant alleged that though it was promised by the Opposite Party No. 1 to hand over the allotment letter and the possession of the complex within the stipulated time period of 24 months from the date of booking *i.e.*, by Jan 2013 but, it has failed to give possession of the complex within the said time period.
5. As per the Informant, the Opposite Party No. 1 has been engaged in development of multiple residential projects in Karnal and Jagadhari due to which it has acquired a



position of dominance. Because of which it has been imposing discriminatory and unfair prices/conditions on the buyers and indulging in practice which results in denial of market access to other players in the market.

6. Accordingly, the Informant prayed to the Commission to:

- (i) initiate an inquiry against the Opposite Parties under the provisions of the Act for alleged abuse of dominant position.
- (ii) direct the Opposite Parties to hand over the allotment letter and possession of the complex.
- (iii) direct the Opposite Parties to pay damages/penalty to the tune of Rs. 50 lakh.
- (iv) impose exemplary cost/penalty on the Opposite Parties.
- (v) pass an ex-parte ad interim stay whereby restraining the Opposite Parties to cancel the allotment of the said complex.
- (vi) pass such other or further order(s) as the Hon'ble Commission deems fit and appropriate.

7. The Commission has perused the material placed on record and heard the advocates who appeared on behalf of the Informant. From the facts of the case, it is observed that the Informant is primarily aggrieved by the alleged abuse of dominant position by the Opposite Party No. 1 in terms of imposition of PLC after booking of the complex and not giving allotment letter and possession of the complex within the agreed time period.

8. Since, the allegations of the Informant relates to booking of a residential complex in 'Aerens Jai City' project developed by the Opposite Party No. 1, the relevant product market in the present case appears to be market for *'the services of development and sale of residential apartments'*. The *'geographic area of Yamunanagar'* may be considered as relevant geographic market in the present case because the conditions of competition in Yamunanagar for the provision of the services of development and sale of residential apartments are distinct from the conditions of competition prevailing in its adjacent areas. The buyers may not prefer the areas which are far away from Yamunanagar for purchase



of residential apartments. The argument of the Informant that the geographic areas of Jagadhari (Yamunanagar) and Karnal should be the relevant geographic market in the instant case cannot be accepted because of the distance between the two areas. Rather, Jagadhari and Karnal can be considered as two separate relevant markets because the conditions of competition in the said two areas are distinct and distinguishable from each other. Thus, the Commission is of the view that the market for *'the provision of services for development and sale of residential apartments in Yamunanagar'* is the relevant market in the present case.

9. The question of abuse of dominant position under Section 4 of the Act arises only if the enterprise in question is in a dominant position in the relevant market. It is apparent from the information available in public domain that in the relevant market there are many other large and renowned real estate developers such as M/s Omaxe Construction Ltd., M/s Ansal Housing and Construction Ltd., M/s MVL Ltd. etc., are operating. The RIVERCITY project of MVL Ltd., Ansal Township Project of Ansal Housing and Construction Ltd., Omaxe City of M/s Omaxe Construction Ltd. etc., are some of the big residential projects in Yamunanagar. Though the Opposite Party No. 1 appears to be one of the renowned builders in the relevant market, the active presence of other large well known builders in the relevant market indicates that the market is competitive and these players can pose enough competitive constraints to the Opposite Party No. 1. Moreover, the presence of the above said renowned builders is an indication of availability of wider choice to the customers in the relevant market.
10. Considering factors stated above, the Commission is of the *prima facie* view that the Opposite Party No.1 is not in a dominant position in the relevant market defined *supra*.
11. Since the Opposite Party No. 1, *prima facie*, does not appear to be in a dominant position in the relevant market, there seems to be no question of abuse of its dominant position by it within the meaning of the provisions of Section 4 of the Act.
12. In view of the above, the matter relating to this information is disposed of accordingly and the proceedings are closed forthwith under the provisions of Section 26(2) of the Act.



13. The Secretary is directed to communicate this order of the Commission to the Informant and the Opposite Parties accordingly.

**Sd/-
(Ashok Chawla)
Chairperson**

**Sd/-
(Dr. Geeta Gouri)
Member**

**Sd/-
(Anurag Goel)
Member**

**Sd/-
(M. L. Tayal)
Member**

**Sd/-
(S. L. Bunker)
Member**

New Delhi

Dated: 03 Apr. 2014