



**COMPETITION COMMISSION OF INDIA**

**Case No. 11 of 2015**

**In Re:**

**Nitesh Forest Hills Apartment Owners  
Welfare Association,  
Rain Tree Club, Nitesh Forest Hills,  
Seegehalli Village, Whitefield Hoskote Main Road,  
Bangalore, Karnataka Informant**

**And**

**Nitesh Estates Limited,  
Nitesh Timesquare, Level 7, #8 MG Road,  
Bangalore, Karnataka Opposite Party No. 1**

**Nitesh Property Management Private Limited,  
Nitesh Timesquare, Level 7, #8 MG Road,  
Bangalore, Karnataka Opposite Party No. 2**

**CORAM**

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

**Mr. Sudhir Mital  
Member**

**Mr. M. S. Sahoo  
Member**



**Present:** Shri P. S. Narayanan, Shri Sunil Kumar and  
Shri N. S. Natarajan for the Informant

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

1. The present information has been filed by Nitesh Forest Hills Apartment Owners Welfare Association (hereinafter referred to as the “**Informant**”) against Nitesh Estates Limited (**OP 1**) and Nitesh Property Management Private Limited (**OP 2**) under section 19(1)(a) of the Competition Act, 2002 (“**the Act**”) alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. As per the information, the Informant is a residential welfare society of Nitesh Forest Hills (‘the Project’) developed by OP 1. It is stated that OP 2 is the sister concern of OP 1 and provides management services such as maintenance services *etc.*, to the apartment owners.
3. It is submitted that the buyers were required to enter into a Maintenance Agreement (hereinafter referred to as the “said agreement”) with OP 1 wherein buyer agrees to pay for and avail of certain maintenance services being provided by OP 1. It is alleged that the execution of the said agreement was an inherent part of the transaction to purchase a flat in the Project thereby imposing diktat of OP 1 on all the buyers.
4. The Informant is alleged to have been barred by the said agreement to terminate the services of OP 2 in order to hire any other efficient/ economical maintenance service provider. It is averred that the said agreement was executed in breach of the terms and conditions of Sale Deed executed for the apartments. As per clause IV-B-4 of the Sale Deed, OP 1 had agreed to form an association which would be



the sole authority on all matters pertaining to the maintenance and issues incidental thereto for the apartments in the Project.

5. The Informant has alleged that the conduct of OPs is in violation of the provisions of section 3(3)(b) of the Act as it limits the competing services in the market. OP 1 is also alleged to be in violation of the provisions of section 4 of the Act for abusing its dominant position by indulging in practices which resulted in denial of market access to maintenance service providers and coercing the buyers to accept the supplementary obligations for conclusion of the contract for purchase of an apartment in the Project.
6. Aggrieved by the alleged abusive conduct of the OPs, the Informant has, *inter alia*, prayed for the issuance of an order directing OP 1 to constitute an association in terms of the Sale Deed executed for the apartment in the Project and initiate action against OP 1 for contravening the provisions of the Act.
7. The Commission has perused the material available on record and considered the arguments made on 29.04.2015 on behalf of the Informant.
8. The facts of the present case indicate that the Informant is aggrieved primarily by the alleged abusive conduct of OP 1 for coercing the buyers of apartments in the Project to avail the maintenance services of OP 2 only.
9. With regard to the allegation of contravention of the provisions of section 3 of the Act, the Commission notes that the Informant has not provided any cogent material to show that OP 1 has entered into an agreement with any enterprise who is engaged in similar trade



or business. Thus, *prima facie*, no contravention of the provisions of section 3(1) read with section 3(3)(b) of the Act is made out against OPs in present case.

10. So far as the allegation of contravention of the provisions of section 4 of the Act is concerned, it may be noted that the relevant product market appears to be the market of “*services for development and sale of residential apartments*”. With regard to the geographic market, it may be noted that the consumers, looking for a residential apartment in Bengaluru, may not prefer other areas. Various factors like proximity to workplace, regional or personal preference, transport connectivity etc. play a decisive role in a potential buyer’s decision making process while choosing a residential property in a particular area. Hence, the relevant geographic market would be “*Bengaluru*”. Based on the foregoing, it appears that the relevant market in the present case would be the market of “*services for development and sale of residential apartments in in Bengaluru*”.

11. For examining the alleged violation of section 4 of the Act, it is necessary to assess the dominance of OP 1 in the relevant market. The Informant has not provided any data or material to show the dominance of OP 1 in the relevant market. Having regard to the information available in the public domain (source: [www.bangalorecircle.com](http://www.bangalorecircle.com) and [property.magicbricks.com](http://property.magicbricks.com)), OP 1 does not appear to be a dominant player. It is observed that in the relevant market of “*services for development and sale of residential apartments in Bengaluru*” there seems to be many real estate developers such as Prestige Group, Adarsh Developers, Puravankara Group, Brigade Group, Sobha Developers, Mantri Group, RMZ Corp, Gopalan Enterprises (India) Pvt. Ltd., HM Group *etc.*, operating and competing with each other. Presence of these players in the relevant market indicates that buyers have



options to choose from other real estate developers in the relevant market and buyers do not seem to be dependent on OP 1 for purchase of residential apartments.

12. Since OP 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 within the meaning of the provisions of section 4 of the Act.

13. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of sections 3 and 4 of the Act is made out against OPs in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

14. The Secretary is directed to inform the parties accordingly.

Sd/-

(S .L. Bunker)  
Member

Sd/-

(Sudhir Mital)  
Member

Sd/-

(M. S. Sahoo)  
Member

New Delhi  
Date:21/05/2015