



(Case No. 12 of 2013)

In Re:

Puri VIP Floors Owners Association

Informant

House No.398, Sector-16, Faridabad, Haryana-121002

And

M/s Puri Constructions Pvt. Ltd.

Opposite Party

4-7B, Ground Floor, Tolstoy House, 15 & 17 Tolstoy Marg,

New Delhi, 110001

CORAM:

Mr. Ashok Chawla  
Chairperson

Mr. H C Gupta  
Member

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

Mr. Justice (Retd.) S. N. Dhingra  
Member

Mr. S.L. Bunker  
Member

Present :Mr. Deepak Jaiswal and Mr. Gorav Kathuria for the informant.



**ORDER UNDER SECTION 26 (2) OF COMPETITION ACT 2002**

The present information was filed by the informant against the Opposite Party ( the OP) under section 19 (1) (a) of the Competition , 2002 (hereinafter referred to as ‘the Act’) alleging that the OP abused its dominant position with regard to its residential project named as “VIP Floors” developed in Sector 81, Faridabad, Haryana.

2. The Informant is a registered society of flat buyers, formed with the objective to protect the interests of the flat buyers in the above said project of the OP. The OP is a registered construction company engaged in the business of real estate development, construction of buildings and residential complexes, etc.

3. The informant stated that the members of the Informant had booked floors in the above said Project launched by the OP in April 2009. It was alleged that the OP did not sign the Floor Buyers Agreement with the members of the Informant even after 4-5 months and in some cases even after 16-17 months of booking of the floors. The Informant also stated that the terms and conditions of the said agreement were one sided framed in favour of the OP against the interests of the Informant.

4. The Informant alleged that clause no. 1.1 (a) - regarding description of the floor; clause no. 1.2 (c), (d), (f), (g), (h) - regarding sale price of floor; clause no. 5 (a) - regarding alterations/modifications in the layout plans and designs; clause no. 9 (b) - regarding representations and warranties of the floor allottee; clause no. 11(b); clause no. 12 (a), (b) – regarding delay in payments; clause no. 13 (a), (b) (ii) – regarding possession; clause 14 (d) regarding procedure for taking possession; clause 15 (a) – regarding compensation; clause 16 (16.1) – regarding failure to take possession; clause no. 17 (a) – regarding permitted use; clause 19.2 (a), clause no. 26 – regarding entire agreement; clause no. 31 (b) – regarding indemnification; clause no. 37 – regarding jurisdiction; clause no. 38 - regarding arbitration etc. of the Floor Buyers Agreement were heavily loaded in favour of the OP.



5. The Informant also submitted that as per the terms and conditions of the Floor Buyers Agreement the areas allotted to its members by the OP were tentative and were subject to change till final measurements and certificate by its architect. Further, an increase in the Super Area of the Floor would make the allottee liable to pay further consideration for the increased area at the same rate as calculated for the floor's price on the basis of earlier Super Area.

6. The Informant further submitted that at the time of execution of Floor Buyer's Agreement, the super areas of the units allotted to the buyers were stated to be 1238 Sq. Ft. for 300 sq. Yds. plots and 1810 sq. ft. for 500 sq. Yds. plots But, in June, 2012 the OP intimated the members of the Informant that the final super/saleable area of the unit had been computed and certified as 1445 sq. ft. for 300 sq. Yds. plot and 2155 sq. Ft. for 500 sq. Yds. plots. It was further submitted that with regard to increase in super floor area, the cost of 300 sq. Yds. plot had increased by 4.5 lakhs and that of 500 sq. Yds. plot by 8.5 lakhs.

7. Subsequently, the OP sent the demand letters to the Informant on the basis of revised area informing that the balance would be payable in terms of the construction linked plan and if any allottee failed to do so his/her agreement would be terminated. The Informant alleged that the OP increased the Super/ Built-up Area without any basis or justification.

8. On the basis of above information, the Informant alleged that by imposing highly arbitrary, unfair and unreasonable conditions on the floor buyers the OP abused its dominant position and therefore, infringed the provisions of Section 4 (2) (a) of the Act.

9. The Commission considered the information along with all documents on record besides hearing oral arguments.



10. In order to examine the allegations of the informant, first the relevant market is required to be defined. The informant has not stated anything about relevant market in the case. The Commission considers that '*provision of services of development and sale of residential flats in Faridabad*' would be appropriate relevant market in this case.

11. In order to examine the case under section 4 of the Act, the dominance of the enterprise needs to be examined under explanation (a) to section 4 of the Act with due regard to the factors mentioned under section 19(4). With regard to question of dominance section 19(4) of the Act states that the Commission needs to consider various factors stated under that section while assessing whether an enterprise enjoyed a dominant position or not.

12. It is pertinent to note that the informant in the information merely averred that the OP abused its dominant position, without alleging that the OP enjoyed a dominant position in the relevant market. Even otherwise, as per the information available in public domain, it is clear that the OP was not the only or a major real estate developer offering residential flats in Faridabad. Many other real estate developers like SPR Buildtech, Ganpati Builders, Bhoomi Group etc were offering residential flats in Faridabad. Presence of other real estate developers offering residential flats also indicates that the buyers were not dependent upon the OP for provisioning of residential flat. None of the factors stated under section 19(4) of the Act seem to support dominance of the OP in the relevant market. Therefore, the OP does not prima facie appear to be dominant in the relevant market of '*provision of services of development and sales of residential flats in the region of Faridabad.*'

13. As *prima faice* the OP is not a dominant player on his part in the relevant market, there is no question of abuse of the same. As such the Commission finds that no *prima facie* case is made out for directing Director General to carry out investigation into the matter under Section 26(1) of the Act.



14. In view of the foregoing, the Commission deem it fit to close the proceedings of the case under Section 26(2) of the Act.

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

New Delhi

Dated: 31-5-13

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(H C Gupta)  
Member

Sd/-  
(Dr.GeetaGouri)  
Member

Sd/-  
(AnuragGoel)  
Member

Sd/-  
(M.L.Tayal)  
Member

Sd/-  
(S. N. Dhingra)  
Member

Sd/-  
(S.L. Bunker)  
Member