

**COMPETITION COMMISSION OF INDIA**  
**Case No. 14 of 2013**

**10<sup>th</sup> April, 2013**

*In re:*

Mr. Tushar Kanti Dhingra

Informant

And

M/s Universal Buildwell Pvt. Ltd.

Opposite Party

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

The informant Mr. Tushar Kanti Dhingra filed the instant information against M/s Universal Buildwell Pvt. Ltd. (hereinafter referred to as ‘the opposite party’ – ‘the OP’) alleging violation of sections 3 and 4 of the Competition Act, 2002 (hereinafter referred to as “the Act”).

2. As per the informant, the OP was a real estate company engaged in the business of land identification and acquisition, project planning, designing etc. of residential and commercial buildings.

3. It is averred by the informant that being allured by residential project of the OP known as in Universal Greens, Faridabad (Haryana) he applied for allotment of Apartment No.902, A-1 Tower having covered parking space as an indivisible part; on 26.04.2006.

4. It is stated by the informant that though he had signed a Builder-Buyer-Agreement dated 29.09.2011 with respect to the aforesaid apartment with the OP however the terms of the said agreement were neither read over nor explained to him. As per Clause 3 of the Builder-Buyer agreement dated 29.09.2011 the informant was to pay a basic sale price of Rs.1,425/- per sq. ft. of the super area i.e. Rs.15,44,700/- in total. Out of this amount he paid a substantial amount of Rs.7, 70,909/- to the OP, duly acknowledged by the OP *vide* its letter dated 16.11.2011.

5. The informant alleged that though the booking was done by OP way back in the year 2006, but there was hardly any progress in the construction work of the abovementioned project, he therefore did not make any further payment of instalments as his hard earned money was being illegally retained by the OP and not utilized in construction works.

6. As per the informant on 19.04.2012, the OP, by abusing its dominant position, issued a termination letter to the informant in respect of the abovementioned flat. The informant thereafter made several requests for revocation/ cancellation of termination letter dated 19.04.2012 and also sent a detailed reply dated 03.10.2012 to the termination letter wherein the informant had undertaken to pay the balance instalments. The OP however, did not pay heed to the same. The informant on 24.01.2013 also made police complaints against the OP in this regard.

7. The informant therefore alleged that the OP abused its dominant position by imposing unfair and discriminatory conditions in the Builder-Buyer Agreement dated 29.09.2011. It has been further alleged that the termination letter dated 19.04.2012 amounted to unfair trade practices and deficiency in

service on the part of the OP. The informant also alleged that the agreement dated 29.09.2011 was signed by him, under duress/ misrepresentation which created adverse effect upon him.

8. The Commission has carefully perused the information and the documents filed therewith and considered the informant's oral submissions.

9. The informant though alleged violation of Sections 3 and 4 of the Competition Act, however, no averment whatsoever in respect of violation of Section 3 was made in the information and no material in this regard is there. Even otherwise the Agreement for Sale of flat between a seller and purchaser does not fall within the purview of Section 3(3) of the Act and the informant and the OP cannot be said to be engaged in similar trade of goods or provision of services. Similarly the Agreement does not fall within the purview of Section 3(4) of the Act as the end users cannot be said to be forming a part of supply chain. Hence Section 3 does not have any applicability in the matter.

10. For looking into the contravention of Section 4 of the Act, it is necessary to consider as to what will be the relevant market in this case. Section 2(r) read with section 19(5) of the Act requires determination of relevant market with due regard to the relevant geographic market and relevant product market. Section 2(t) defines relevant product market as 'a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use'. Further section 2(s) defines relevant geographic market as 'a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly

homogenous and can be distinguished from the conditions prevailing in the neighbouring areas'. The informant in the present case was desirous of booking a flat, in Faridabad area of Haryana therefore, the relevant market in the present case can be considered as 'development of residential space/ flats in the region of Faridabad, Haryana'.

11. 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. It is pertinent to note that the informant in the information merely averred that the OP abused its dominant position, without alleging that 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 space/ flats in Faridabad. Many other real estate developers like Modern Buildtech Pvt. Ltd., BPTP Builder and Developers, Hindustan Realtors etc were offering residential flats in Faridabad. Presence of other real estate developers offering residential flats also indicates that the informant was 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 opposite party in the relevant market. Therefore, the OP does not *prima facie* appear to be dominant in the relevant market of 'development of residential space/ flats in the region of Faridabad'.

13. In view of the above discussion, there does not exist a *prima facie* case for causing an investigation to be made by the Director General under section 26(1) of the Act. The allegations related to unfair trade practices, deficiency in services, recovery/ damages etc. may be pleaded at other appropriate foras, if

the informant so desires. It is thus a fit case for closure under section 26(2) of the Act and the same is hereby closed.

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

**Sd/-**  
**(H.C. Gupta)**  
Member

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

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

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

**Sd/-**  
**(Justice (Retd.) S.N. Dhingra)**  
Member

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