



**COMPETITION COMMISSION OF INDIA**

**Case No. 14 of 2016**

**In Re:**

**Yashpal Raghubir Mertia  
Flat No. 406/A Block,  
Maurishka Palace  
Kadrikambla Road, Mangalore**

**Informant**

**And**

**M/s Aura Real Estate Pvt. Ltd.  
101, Kalpataru Synergy  
Opp. Grand Hyatt,  
Santacruz (East), Mumbai**

**Opposite Party No. 1**

**M/s Waghere Promoters  
109/1, 110/1, Pimpri  
Opp. Anna Saheb Magar Stadium  
Nehru Nagar, Pimpri, Pune**

**Opposite Party No. 2**

**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 was filed by Mr. Yashpal Raghubir Mertia (**'Informant'**) under Section 19(1)(a) of the Competition Act, 2002 (the **'Act'**) against M/s Aura Real Estate Pvt. Ltd. (**'OP 1'**) & M/s Waghere Promoters (**'OP 2'**) (collectively, **'OPs'**) alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. Briefly stated, on payment of Rs. 300,000/- as earnest money on 28.08.2012, Informant had booked a 2-BHK flat along with a car parking space in 'Kalpataru Harmony', a residential housing project developed by OP 1 and promoted by OP 2 at Wakad in Pune. Accordingly, a letter of allotment (**'LOA'**) was issued to the Informant. Subsequently, Rs. 8,35,160/- and Rs. 14,51,111/- was paid by the Informant and an 'Agreement for Sale' (**'Agreement'**) was executed between the Informant and OPs on 26.09.2012 wherein it was promised that possession of the flat will be given by 30.06.2014. However, *vide* letter dated 17.4.2014, the Informant was informed by OPs that due to '*unforeseen force majeure circumstances*' the possession of the flat will likely be given by the end of December, 2014.



3. It is averred that ordinarily 40-50% of the total cost is incurred during the Reinforced Cement Concrete (RCC) structure stage however 85% of the total payment was taken from the Informant. The Informant *vide* letters dated 04.08.14, 02.09.14 and 03.11.14 had asked the OPs to pay interest @ 18% per annum on the excess amount collected from him till completion of RCC structure and also pay interest @ 18% per annum on the total amount paid for the delayed period of giving possession of the said flat. The OPs *vide* their letter dated 19.12.2014 had replied that they regretted the delay in giving possession of the flat and it is not their policy to pay interest for the delayed period of giving possession.
4. It is further averred that *vide* letter dated 27.05.2015 the OPs had asked the Informant to pay the remaining amount and assured that the possession of the flat will be given within twenty days of the receipt of the amount. After payment of the remaining amount when the Informant inspected the flat, it was found that a lot of work was pending. It is alleged that after much follow up, the flat was made ready and the possession was given on 01.08.2015 with a promise that shortfall and pending jobs will be completed shortly.
5. It is stated that, in the LOA and Agreement, it is mentioned that 'the purchaser has read, understood and agreed to the terms and conditions', which is not correct. It is averred that the Informant was neither given any advance copy of LOA or Agreement nor anything was explained to him in this regard. It is stated that at the time of payment of earnest money, the total area of the flat discussed was 1146 sq. ft. and the total purchase price of the flat was calculated at the rate of Rs. 4975/- per sq. ft. However, in the Agreement the area was changed to carpet area of 882 sq. ft. and the total purchase price was changed from rate per sq. ft. to a lump sum amount of Rs. 57,22,150/- plus Rs. 2, 50,000/- for car parking space. Accordingly, the price per sq. ft. of the flat was increased.



6. Further, it is alleged that the OPs have dishonored the promise to update their website showing progress of construction work. That no information was provided to the Informant about the actual progress of work even over the telephone. It is also the case of the Informant that the OPs made him agree to fulfill the various terms and conditions which were allegedly designed in favour of them.
7. Based on the above, Informant prayed that the Commission direct OP 1 to pay an interest @ 21% on the excess amount collected *vis-à-vis* the actual amount spent to carry out the construction upto RCC structure level; to refund excess amount collected on account of society deposits and charges for 1146 sq. ft. instead of 882 sq. ft.; to disclose the details of amount collected towards corpus fund, club house, apex body, development charges *etc.*; to refund maintenance and outgoing charges collected for three years; to refund Rs. 10,000 collected on account of interior work; and to grant other suitable relief as the Commission may deem appropriate.
8. The Commission has perused the material available on record. It is observed that the Informant is primarily aggrieved by the conduct of the OPs in not delivering the possession of the aforementioned flat in a timely manner and not addressing any of his grievances. Also, the Informant seems to be aggrieved by the alleged unfair, discriminatory and one sided terms and conditions of the Agreement.
9. It is noted that the facts and allegations of the instant matter is similar to Case No. 103 of 2015 which was also against the same OPs *i.e.*, M/s Aura Real Estate Pvt. Ltd. & M/s Waghere Promoters with respect to the same real estate project 'Kalpataru Harmony' at Wakad in Pune. The matter was closed under Section 26(2) of the Act since, OP 1 was not found to be dominant in the relevant market for 'the provision of services for development and sale of residential apartments/ flats in Pune'.



10. Since, the present case is similar to the above case the Commission is of the view that no case of contravention of the provisions of Section 4 of the Act is made out against OPs herein too. Accordingly, the present matter is closed under Section 26(2) of the Act.
11. The Secretary is directed to inform all concerned accordingly.

**(Devender Kumar Sikri)**  
**Chairperson**

**(S. L. Bunker)**  
**Member**

**(Sudhir Mital)**  
**Member**

**(Augustine Peter)**  
**Member**

**(U. C. Nahta)**  
**Member**

**(M. S. Sahoo)**  
**Member**

**(Justice G. P. Mittal)**  
**Member**

**New Delhi**

**Dated:**

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