



COMPETITION COMMISSION OF INDIA

Case No. 15 of 2016

In Re

Mr. Gajinder Singh Kohli

Informant

And

Genius Propbuild Private Limited

Opposite Party

CORAM:

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Dr. M. S. Sahoo
Member**

**Mr. Justice G. P. Mittal
Member**

Appearances:

For the Informant

: Mr. Dalip Singh, Advocate
Mr. Gajinder Singh Kohli

For the Opposite Party

: Ms. Mansha Anand, Advocate
Mr. Nikhil Mathur, Advocate



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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the 'Act') by Mr. Gajinder Singh Kohli (hereinafter referred to as the 'Informant') against Genius Propbuild Private Limited (hereinafter referred to as 'OP') alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. As per information, the Informant had booked a residential apartment in a group housing residential complex, known as, "Avalon Rangoli" developed by OP in Karampur village, tehsil Tijara, district Alwar, Rajasthan.
3. The Informant has stated that as per the Apartment Buyer's Agreement dated 22nd September, 2011, OP had promised to deliver the possession of the said apartment within 36 months with grace period of 6 months from the date of booking. But, OP has not yet offered possession even after a substantial delay.
4. The Informant has further asserted that as per clause 4(e)(i) of the Apartment Buyer's Agreement, in case of failure to offer possession, OP shall offer the allottees an alternative property or has to refund the full amount along with interest at the rate of 10 per cent per annum whereas, as per clause 2 (c), in case of delay in the payment on the buyer's part, allottees are liable to pay at the rate of 24 per cent per annum.
5. Based on above, the Informant has alleged that OP has abused its dominant position by imposing unfair or discriminatory condition in the Apartment Buyer's Agreement.
6. The Informant has prayed to the Commission to direct OP, *inter alia*, to delete clause 4(e) from the Apartment Buyer's Agreement, to pay penalty of Rs.50 lakh



and to pay interest at the rate of 24 per cent per annum for delay in offering possession.

7. On 16th March, 2016, the Commission considered the information filed by the Informant and decided to have preliminary conference with the parties. Accordingly, both the parties were heard on 26th April, 2016. During the preliminary conference, the Informant reiterated his submissions regarding the abuse of dominance by OP. On the other hand, OP, in its oral submissions made during the preliminary conference, submitted that the relevant market would be Bhiwadi, and as there are a number of real estate developers in Bhiwadi, OP is not dominant.
8. Subsequently, OP filed a written submission dated 3rd May, 2016, wherein it is submitted that:
 - (i) all contentions, statements, allegations and submissions made by the Informant are completely baseless and untenable in the eyes of law.
 - (ii) the Commission does not have jurisdiction to look into the present matter, as unfair trade practices fall within the jurisdiction of the Consumer Protection Act, 1986.
 - (iii) the relevant market in the present case would be development and sale of residential apartments in Bhiwadi, Alwar, Rajasthan.
 - (iv) there are several real estate developers operating in the relevant market, hence, OP does not enjoy a dominant position in the relevant market. In the absence of dominance, the question of abuse of dominance does not arise.
 - (v) the present information filed by the Informant be dismissed.
9. The Commission has considered the material available on record and the submissions of the parties made during the preliminary conference. The allegations in the present matter relate to abuse of dominant position by OP.



10. Although, OP has raised objection regarding the jurisdiction of the Commission to enquire into the unfair trade practice, the Informant has alleged abuse of dominant position, which is covered under the Act. Accordingly, the Commission will examine the merits of the information from the perspective of Section 4 of the Act which deals with abuse of dominance.
11. To examine the allegations of abuse of dominance as per the provisions of Section 4 of the Act, it is essential to first determine the relevant market and then examine the dominance of OP in the relevant market.
12. The relevant product market as defined under Section 2(t) of the Act means a market comprising of all those products or services which are interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. The allegations in the instant case relate to a residential apartment booked by the Informant in a project developed by OP. It is noted that real estate property can be broadly classified into two main categories: residential and commercial. Residential properties can be further categorized into residential apartments/ flats and plots. The Commission has been of the view that residential apartments form a separate relevant product market because the intention and factors considered by a buyer while buying a residential flat are different from those when buying a residential plot. Further, the requirements and prospects of a consumer buying a residential apartment are different from a consumer buying a residential plot. Unlike residential apartments where the real estate developer completes the construction of the apartment before handing over the possession to the allottees, buyer of a plot has the freedom to decide about the floor plan, structure, design and other specifications, subject to applicable regulations at their own discretion. From the perspective of the buyer, the decision to buy a flat in a project can be distinguished from buying a plot/independent house, in terms of number of factors such as price, access to common facilities,



security *etc.* Generally, when a consumer buys a flat in an apartment developed by a real estate developer, he may get some amenities such as gym, swimming pool, car parking, party lawn, playground clubhouse *etc.* which may not be available in case of a plot. Thus, both the aforementioned choices are not found to be substitutable. Taking into account factors, such as, the characteristics of service offered, price and intended use “*provision of services for development and sale of residential apartments/ flats*” is considered as the relevant product market in the present case.

13. Section 2(s) of the Act defines relevant geographic market as a market comprising of the area in which the conditions of competition, for supply of goods or provision of services or demand of goods or services, are distinctly homogeneous and distinguishable from the conditions prevailing in the neighbouring areas. In the present case, the Commission observes that as per the information, “Avalon Rangoli” project is developed by OP in Karampur village, tehsil Tijara, district Alwar, Rajasthan. It is observed that Karampur Village is adjacent to Bhiwadi. The nearby areas such as Karampur Village and Dharuhera are developing because of the level of development in Bhiwadi. Further, as per the Report published by ICICI Property Services, titled, ‘Delhi-NCR Residential Real Estate Overview – May, 2015’, Bhiwadi located in Alwar district of Rajasthan is an emerging industrial destination in NCR. Bhiwadi lies between Gurgaon and Jaipur and is located on the border of Rajasthan and Haryana and lies adjacent to Dharuhera and Rewari. This town is spread over nearly 5,300 acres, comprising of around 2,500 large, medium and small-scale industries, such as, electronics, engineering, textiles, pharmaceuticals, printing, cables, rolling mills, food processing, herbal care units, *etc.* The conditions of competition for supply and demand for development and sale of residential flats within Bhiwadi and its nearby area can be considered as homogenous and can be distinguished from other neighbouring region, where conditions of competition are altogether different and distinct in



terms of factors like price, land availability, distance and commuting facilities, proximity and connectivity, presence of Multi-National Companies, state of infrastructure and regional or personal preferences *etc.* Thus, considering the factors enumerated under Section 2(s) of the Act and the aspects discussed above, the Commission opines that the relevant geographic market in this case is “*Bhiwadi and nearby areas*”. Accordingly, the relevant market in terms of the provisions of Section 2(r) of the Act, in the instant case, is defined as “*provision of services for development and sale of residential apartments/ flats in Bhiwadi and its nearby areas*”.

14. It is pertinent to mention that in Case Nos. 28 of 2013, 57 of 2014 & 42 of 2015 relating to real estate developers in Bhiwadi and nearby Bhiwadi, the relevant market was delineated as “*provision of services for development and sale of residential apartments/ flats in Bhiwadi and its nearby places*”.
15. With respect to dominance, it is noted that the underlying principle for assessing dominance of an enterprise is linked to the market power enjoyed by the enterprise. An enterprise could be regarded as dominant if it enjoys/possesses a position of strength in the relevant market, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour. In this regard, the Commission observes that while OP has 7 projects, there are many other real estate developers such as Krish Group with 6 projects, Genesis with 4 projects, Trehan Home Developers with 4 projects, Kalka Home Developers with 2 projects, R-Tech with 1 project, Adarsh Build estate Limited with 1 project, Nimai Developers Pvt. Ltd. with 1 project, Piyush Developers Pvt. Ltd. with 1 project, BDI Group with 1 project *etc.*, which are rendering their services in the relevant market. The competitors of OP, in the relevant market, are developing similar and comparable projects to that of OP, in terms of size and resources. The presence of a number of



other players indicates that the buyers have options to choose from similar projects of other developers in the relevant market.

16. In view of above, the Commission opines that OP does not enjoy dominant position in the relevant market. In the absence of dominance, the question of examination of abuse of dominance does not arise.

17. The Secretary is directed to inform the parties, accordingly.

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

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Augustine Peter)
Member**

**Sd/-
(U. C. Nahta)
Member**

**Sd/-
(Dr. M. S. Sahoo)
Member**

**Sd/-
(Justice G. P. Mittal)
Member**

**New Delhi
Date: 26.07.2016**