



COMPETITION COMMISSION OF INDIA

Case No. 22 of 2020

In Re:

**Devinder Sharma
T-71, Portofino Street,
Ashiana Utsav Complex
Lavasa (DASVE)
PUNE- 412112**

Informant

And

**Ashiana Housing Ltd.
304, Southern Park
Saket District Centre, Saket
New Delhi- 110017**

Opposite Party No. 1

**Ashiana Maintenance Service LLP
304, Southern Park
Saket District Centre, Saket
New Delhi- 110017**

Opposite Party No. 2

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The present Information has been filed by Mr. Devinder Sharma ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Ashiana Housing Ltd. ('Opposite Party No. 1'/'OP-1') and Ashiana



Maintenance Service LLP ('Opposite Party No. 2'/ 'OP-2') (collectively referred to as 'OPs') alleging *inter alia* contravention of the provisions of Section 4 of the Act.

2. It is stated that the Informant is a resident of Ashiana Utsav, which is a retirement home resort built in Lavasa Hill City ('Lavasa') in Pune District of Maharashtra. OP-1 is an Indian real estate development company incorporated under the provisions of the erstwhile Companies Act, 1956. OP-2 is the subsidiary of OP-1 and is one of the maintenance services providers for water, electrical, security, safety *etc.*
3. The Informant has stated that the Urban Development Department, Government of Maharashtra issued a Notification No. TPS.1800/1004/CR-106/2000/UD13 dated 01.06.2001 under Section 20(4) of Maharashtra Regional and Town Planning Act, 1966 by which the government declared an area of 18 villages of Velhe taluka of Pune District (excluding the areas of Government of forest lands) as Hill Station. Further, *vide* Notification No. TPS-1800/1004/CaseNo.106-1/2000/UD-13 dated 27.06.2001, the Urban Development Department granted in principle approval to Lavasa Corporation Limited ('Lavasa Corporation') for development of the said Hill Station. Pursuant to the Order No. DI/Land/Permission/255/C-16983/2002 dated 5.12.2002 read with the Corrigendum No. DL/Land Permission/255/C-17386/2002 dated 11.12.2002 issued by Development Commissioner (Industries), Government of Maharashtra, Lavasa Corporation acquired lands in the villages designated for development as Hill Station. Similarly, *vide* Order F. No. 21-9/2011-IA.III, the Ministry of Environment and Forest also granted environmental clearance for the development of Hill Station Township at Village Mulshi and Velhe Talukas in Pune District.
4. As per the Informant, *vide* lease deed dated 14.09.2008, Lavasa Corporation leased 31.2 acres land to OP-1 for a period of 999 years commencing from 14.09.2008 for development of retirement homes. Pursuant to the said lease,



OP-1 prepared a scheme for construction and development of a project named 'Ashiana Utsav', wherein OP-1 was to construct villas on independent plots and apartments in four phases viz. Phase I, II, III and IV.

5. Elaborating further, the Informant has stated that at the time of taking possession of the residential unit, the allottee who booked a residential unit had to sign a separate sub-lease deed with OP-1 (original lease was between Lavasa Corporation and OP-1) for right to use the common areas and common facilities in the resort. Accordingly, the Informant executed a sub-lease agreement ('the Agreement') dated 11.04.2012 with OP-1 and occupied a unit in March 2013 for a sum of Rs. 80,07,900/-. The Informant has also specified that it also signed a separate Tripartite Maintenance Agreement ('TMA') dated 19.01.2013 with OP-1 and Vatika Marketing Limited ('VML'), which was later renamed as Ashiana Maintenance Service LLP/ OP-2.
6. The Informant has alleged violation of the provisions of Section 4 of the Act and for the same has delineated the relevant market as the '*market for provision of services for development and sale of retirement homes including independent residential units and apartments in Lavasa*'. Further, the Informant has stated that there is no retirement homes in Lavasa apart from Ashiana Utsav and OP-1 alongwith OP-2 as a group are dominant enterprise in the relevant market. The Informant has also alleged that OPs have abused their dominant position in the relevant market for providing services for development and sale of retirement homes in Lavasa.
7. To substantiate the allegations as to the abuse of dominant position by OPs, the Informant has alleged that OP-1 has imposed unfair terms and conditions in the agreement dated 11.04.2012 by holding exclusive ownership of the common area in the resort and by indulging in unauthorized use of the common area. Further, the Informant has alleged that under Clause 15.2 of the agreement dated 11.04.2012, OPs hold a discretionary right to make alterations or carry out additional construction anywhere in Ashiana Utsav. The Informant has also



assailed the various clauses of the agreement dated 11.04.2012 such as clause 15.1, 15.15 *etc.* that vest the exclusive control and ownership of the common area with OPs or their nominee. Thus, as per the Informant, impugned clauses are in violation of the provisions of Section 4(2)(a)(i) read with Section 4(1) of the Act.

8. The Informant has also averred that OPs are using common area below the stilts of the apartments for housing their employees or their contractors. Such employees along with their children are residing in the common rooms of the apartment blocks. Such unauthorized use, as per the Informant, is creating unhygienic conditions in the vicinity and adversely affecting the privacy and security of the senior residents and is also a cause for concern during the COVID-19 pandemic.
9. Further, the Informant has averred that OPs use the activity centre (which houses common facilities for sports, entertainment, health care, social functions *etc.*) of the society for their marketing office and for the same OPs do not make any contribution towards the maintenance charge. The Informant has also alleged that clauses 9.1 and 9.2 of the Agreement dated 19.01.2013 between the parties, obligated OPs to form a residents' association wherein all the residents would be its members. However, till date, OPs have not taken any step to register such association and when the residents on their own initiative formed an association named Ashiana Utsav Residents Association ('AURA') under the Societies Registration Act, 1960, OPs failed to recognize the same.
10. The Informant has also alleged that by charging high maintenance fee under the Tripartite Agreement dated 19.01.2013, OPs are abusing their dominant position in violation of the provisions of Section 4(2)(a)(i) read with Section 4(1) of the Act. Moreover, as per the Informant, there is lack of transparency in billing system as the agreement entered between the parties obligated OPs to provide audited accounts, however, residents have not received any such accounts since 2013. Similarly, as per the Informant, Interest Free Management



Deposit ('IFMD') which was charged alongwith service tax initially for the period of 10 years under the Agreement has already been paid as part of the managerial/ employee salaries charged upon the unit owners. However, the Informant has alleged that it came to its notice that still the salaries of the managers posted in the society is added to fixed maintenance charge. Moreover, the Informant has alleged that OPs also take input tax credit on the maintenance service it provides to the residents.

11. The other allegations in respect of maintenance charges are non-adjustment of the maintenance charges, charging interest @ 2% on delayed payment, continuous unilateral increase (compounded annual increase of 7.1%) in the maintenance charges every year since 2015-16 without making complete disclosures *etc.*
12. Additionally, the Informant has alleged irregularities in the form of OPs charging the residents on the basis of proportion of chargeable area of their unit, irrespective of the fact whether they use it or not; evasion of the payment of service tax on water consumption for common areas since 2017 as the common areas is now being treated as water supplied to the residents. The Informant has claimed that said acts on part of OPs are violative of the provisions of Section 4(2)(a)(i) of the Act.
13. The Informant has stated that when seen in context of various real estate sector cases such as *Belaire Owner's Association v. DLF Limited and others* (Case No. 19 of 2010); *Naveen Kataria v. Jaiprakash Associates Limited* (Case No. 99 of 2014) *etc.*, the Commission has the jurisdiction in respect of allegations, as raised *supra*. Moreover, the Informant states that services related to maintenance of residential societies fall within the definition of 'service' as defined under the provisions of Section 2(u) of the Act.



14. Based on the above averments and allegations, the present information has been filed by the Informant against the OP, alleging contravention of provisions of Section 4 of the Act and has prayed that the Commission may:
- (i) Pass an order under Section 26(1) of the Act, for abuse of dominant position by OPs;
 - (ii) Direct OPs to cease and desist from indulging in anti-competitive activities;
 - (iii) Pass an order for penalty against OPs under the provisions of Section 27 of the Act; or,
 - (iv) Pass any other order as it may deem fit and proper in the interest of justice.
15. The Commission has examined the Information and other material available on record and based on the allegations levelled in the Information, it is observed that the Informant is primarily aggrieved of the fact that OPs have imposed unfair terms and conditions in the sub-lease agreement dated 11.04.2012 and tripartite agreement dated 19.01.2013. It is observed that the allegations in the Information relate to violation of provisions of Section 4 of the Act by OPs.
16. For examining the allegations under the provisions of Section 4 of the Act, it is necessary to first determine the relevant market. Thereafter, it is required to be assessed as to whether OPs enjoy a position of strength required to operate independently of the market forces in such relevant market. Only when such a position is established, it is necessary to assess whether the impugned conduct amounts to abuse of dominance.
17. In respect of the relevant market, the Commission notes that the present matter pertains to real estate sector, wherein 'retirement homes' may be taken as a separate category of residential units which are equipped with certain features which are designed especially for senior citizens. These features may include unique doorknobs, special furniture, handrails in bathrooms and staircases on both sides, anti-skid tiles in bathroom, infrastructure with easy access of



wheelchair, special security systems for events, all time emergency medical facility and trained staff to handle first aid *etc.* Further, only people within certain age groups are allowed to possess such units. Moreover, Ministry of Housing and Urban Affairs ('MoHUA') also considers 'retirement homes' as a separate category and has released 'Model Guidelines for Development and Regulation of Retirement Homes'. Furthermore, within the larger category of retirement homes, provision of services for development and sale of standalone houses, villas *etc.* is a distinct product compared to services for development and sale of residential flats/ apartments. While standalone houses, villas *etc.* allow buyers to decide on their own discretion the floor plan, structure and other specifics of dwelling units subject to applicable regulations, no such discretion is available to a buyer of a residential flat. Hence, residential flat forms a separate relevant product market within the category of retirement homes. Accordingly, the relevant product market in the instant case is delineated as the '*market for provision of services of development and sale of retirement homes in the form of residential flats*'.

18. In respect of the relevant geographical market, the Commission notes that a person intending to buy a retirement home in the form of residential flat in Pune may not prefer to purchase the same in other areas because of factors such as price, distance to locations frequently commuted, locational preferences, availability of transport facilities *etc.* Moreover, the conditions of competition for demand and supply of development and sale of retirement homes (residential flats) within the Pune may be considered as homogeneous and the same can be distinguished from other areas. Thus, the relevant geographic market in this case may be considered as '*Pune District*'.
19. Thus, the relevant market in the present case appears to be the '*market for provision of services of development and sale of retirement homes in the form of residential flats in Pune District*'.



20. On the issue of the dominance of OPs in the aforesaid relevant market, the Commission observes that though the Informant has not provided any data in this regard, from the information available in the public domain, it appears that besides OPs, there are various other competitors/ players operating in the said relevant market such as Paranjape Schemes Ltd. (Athashri Project); Vascon Engineers Pvt. Ltd. & Manisha Constructions (Golden Nest Project); Gagan Properties (Nulife Project) *etc.* Thus, there are other private real estate service providers for developing and sale of retirement homes in the form of residential flats in Pune District, indicating that consumers are not dependent on the OPs alone for provision of real estate services under consideration. Accordingly, the Commission observes that OPs cannot be said to be dominant in the relevant market delineated *supra*.
21. Hence, it does not appear that OPs enjoy a position of strength, which enable them to operate independently of competitive forces prevailing in the relevant market or to affect their competitors or consumers or the market in their favour. Since, OPs do not enjoy dominant position in this market, question of abuse of dominant position within the meaning of the provisions of Section 4 of the Act does not arise.
22. Accordingly, the Commission is of the view that no case of contravention of the provisions of Section 4 of the Act is made out against the OPs.
23. Before concluding, it is made clear that the Commission has not examined the impugned conduct of the OPs on merits due to absence of market power and the observations made in this order are not any reflection on such alleged abusive behavior and the Informant shall be at the liberty to take up the issue before the appropriate forum, if so desired.
24. With the aforesaid observations, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against OPs and the



Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

25. The Secretary is directed to communicate to the Parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 26/08/2020