



COMPETITION COMMISSION OF INDIA

Case No. 23 of 2015

In Re:

**Shri Rambir Singh
House No. 693-P
Sector-21, Pocket-E
Gurgaon, Haryana-122016**

Informant

And

**M/s Puri Constructions Pvt. Ltd.
Regd. Office at
11-12a, Ground Floor
Tolstoy House
15 & 17, Tolstoy Marg
New Delhi-110001**

Opposite Party

CORAM

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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

**Mr. M. S. Sahoo
Member**

Appearances: Informant-in-Person.



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

1. The present information has been filed by Shri Rambir Singh ('the Informant') under section 19(1)(a) of the Competition Act, 2002 ('the Act') against M/s Puri Constructions Pvt. Ltd. ('the Opposite Party') alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.
2. Facts, as gathered from the information, may be briefly noted:
3. The Informant had booked a unit in a project named *Emerald Bay* developed by the Opposite Party in Sector-104, Gurgaon, Haryana on 19.01.2013 and in pursuance thereto a provisional unit No. B 2-2202 was allotted to the Informant *vide* letter dated 20.02.2013 of the Opposite Party. Earlier, a payment of Rs. 7.5 lacs was made by the Informant to the Opposite Party.
4. It is averred that *vide* the aforesaid letter the Informant was requested to sign a copy thereof and send the same back to the Opposite Party within 15 days. The Informant was further requested to pay the balance of booking amount, if any, further instalments of sale price; and all other dues as stipulated in the payment plan which was annexed with the said letter. Furthermore, the Informant was also requested to confirm that he has agreed to abide by all the terms of the Buyer's Agreement to be executed later between the Informant and the Opposite Party. Subsequently, the Informant made further payment of Rs. 19,94,102/- to the Opposite Party and, thus, making an aggregate payment of Rs. 27,44,102/- to the Opposite Party.
5. It is alleged that the payment plan/ schedule reflected extra charges under different heads such as club membership charges, development charges, car parking charges *etc.* which the Informant claims that he had not



consented to at the time of booking the unit and was not disclosed by the Opposite Party. Aggrieved thereby, the Informant stopped making further payments and sought refund from the Opposite Party of the amount already paid to it. However, the Opposite Party cancelled the allotment *vide* its letter dated 30.10.2014 after forfeiting earnest money and other non-refundable amounts.

6. It is further alleged that there is an understanding amongst the real estate developers to charge extra amount from the buyers under different heads and that such conduct amounts to violation of section 3 of the Act.
7. It is stated that the Informant, under *bonafide* impression, signed the Application Form on the dotted lines under an impression that the same was a “mere request for provisional allotment” and not to constitute or create any right, title or interest in the unit applied for. It is alleged that the copy of the said Application Form was never supplied to the Informant.
8. After about 8 months from the date of booking of the unit, the Informant is stated to have received a letter dated 17.09.2013 from the Opposite Party requesting him to sign the Apartment Buyer’s Agreement and to return the same to the Opposite Party. It is, however, alleged by the Informant that no such agreement was enclosed with the said letter.
9. As such, the Informant claims to have downloaded a blank proforma of the Provisional Application Form from the website of the Opposite Party which is purported to be the same as signed by the Informant.
10. The Informant alleged that the terms of the said Form are unilateral, one-sided, arbitrary, unfair, loaded in favour of the Opposite Party. It is also alleged that on seeking withdrawal by the Informant from the project, the Opposite Party refunded Rs. 3,96,637/- after forfeiting the earnest deposit



and other amounts on the ground that the Informant was bound by the terms of the provisional agreement which was stated to be a composite part of the Buyer's Agreement.

11. Based on the above averments and allegations, the Informant filed the instant information before the Commission seeking, *inter alia*, refund of the deposited amount of Rs. 27,44,102/- with interest @ 18% *per annum*; compensation @ Rs. 25/- per sq. ft. per month alongwith interest; and an inquiry into the licence granted for carrying out the said project.
12. The Commission has perused the material available on record besides hearing the Informant who appeared in person before the Commission.
13. It appears that the Informant who booked a unit in a project named *Emerald Bay* developed by the Opposite Party in Gurgaon, is aggrieved by the alleged unfair terms and conditions of the Provisional Application Form. It is alleged that the terms and conditions are unfair, arbitrary and loaded in favour of the Opposite Party which amount to contravention of the provisions of section 4(2)(a)(i) of the Act. Further, it is alleged that there exists an understanding amongst the real estate developers to make it mandatory for the buyers to purchase parking space and charge extra amount from the buyers under different heads. This is stated to be in violation of the provisions of section 3 of the Act.
14. As the allegations made by the Informant pertain to a residential flat booked in a project developed by the Opposite Party in Gurgaon, the relevant product market may be taken as the market of services for development and sale of residential units.
15. Further, the Commission notes that Gurgaon exhibits distinct characteristics from a buyer's point of view and conditions of competition



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in Gurgaon appear to be distinct from the neighbouring areas such as Delhi, Noida and Ghaziabad in the National Capital Region and accordingly, the relevant geographic market would be Gurgaon.

16. In view of the above, the relevant market in the instant case would be the market of '*services for development and sale of residential units in Gurgaon*'.
17. By virtue of explanation (a) to section 4 of the Act, 'dominant position' means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or to affect its competitors or consumers or the relevant market in its favour. In the present case, based on the information available in public domain, it appears that there are many other real estate developers such as DLF, Emaar MGF, Central Park, Supertech, Vatika Group *etc.* which are operating in the relevant market and competing with each other. Presence of such players with comparable projects in the relevant market indicates that the buyers have options to choose from other developers in the relevant market. Available information does not indicate that OP is in a position to operate independently of competitive forces prevailing in the relevant market. In view of the above, *prima facie* the Opposite Party does not appear to enjoy a dominant position in the relevant market.
18. As the dominance of the Opposite Party in the relevant market is not established, the question of abuse thereof does not arise.
19. So far as the allegations of contravention of the provisions of section 3 of the Act are concerned, it may be noted that nothing has been filed alongwith the information which is suggestive of any agreement amongst the real estate developers in contravention of the provisions thereof. As such, the allegations do not merit any further examination.



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20. In view of the above, the Commission is of the view that no case is made out against the Opposite Party for contravention of the provisions of sections 3 and 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.
21. 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/-
(M. S. Sahoo)
Member

New Delhi
Date: 24/06/2015