



1. Mr. Sumit Sahni  
S/o Sh. Suresh Sahni,  
9/A, W.E.A., Pusa Lane,  
Karol Bagh, New Delhi - 110005
  2. Mrs. Anumita Sahni,  
W/o Mr. Sumit Sahni  
9/A, W.E.A., Pusa Lane,  
Karol Bagh, New Delhi - 110005
- ...Informants

And

1. Sumel Heights Pvt. Limited,  
Through its Director,  
Regd. Office - 21A, Janpath,  
New Delhi - 110001
  2. Vatika Limited,  
Through its Director,  
4<sup>th</sup> Floor, Vatika Triangle,  
Sushant Lok Phase -I,  
Gurgaon, Haryana.
- .....Opposite Parties

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

Mr. Justice S. N. Dhingra (Retd.)  
Member

Mr. S. L. Bunker  
Member

Present: Mr. Abhishek Malhotra, Advocate for the Informant.



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

The informants alleged abuse of dominant position by the OPs with respect to sale of residential units in their low rise housing project, Arcadia in sectors 83 and 84, Gurgaon, (the 'Project') Haryana, abutting Gurgaon - Dwarka expressway. The informants contended that the OPs failed to commence construction as well as complete the project within the schedule time.

2. The Informants alleged that the OPs were engaged in business of development and sale of housing projects and sale of residential flats. OP 1 had offered residential units on land for which License had been issued in name of the OP2, a dominant player in the relevant market since OP2 had about 45 projects in different categories in and around Gurgaon - Dwarka expressway. The OPs had entered into an agreement inter se under which OP2 granted rights over the land, on which Project was to be developed by OP1, with the condition that OP1 would pay certain share of its profits to OP2. The informants alleged that they had seen the above said agreement between the OPs but a copy of the agreement was not filed with the information as they did not have access to the agreement.

3. The OP1 invited offers for booking apartments/floors for project in 2008 on basis of representations that License had been issued by District Town and Country Planner, Government of Haryana to the OP2. Representations were also made that there was heavy demand for the Project and residential units were available only on re-sale and OP1's group entity SAS Group was co-promoter of Medanta Medicity Hospital. The informants had applied and were allotted a residential floor in the Project.

4. The informants made payment of 20% of sale price within 2 months from date of booking. At the time of further demand of 15% of sale price, assurance was given by OP1 to Informants that construction of project would start by January 2011 and be completed within scheduled time. The Informants, sought documents of the project from the OPs to enable them to



obtain home loan, but despite repeated requests of Informants, no documents were provided by the OPs.

5. The Informants further contended that OPs had imposed on informant and other allottees, a one sided agreement, which was anti-competitive and violative of the provisions of the Act. Informants stressed upon certain clauses of the agreement, which allowed OP1 to allot residential units at its sole discretion and if at any time OP1 was unable to deliver the residential units due to non-grant of government approvals, force majeure etc., OP1 was free to cancel allotment and liable to refund only the amounts received from the Informant without any interest. OP1 also reserved to itself the right to put the project in abeyance and the allottees could not raise any dispute. Informants also came to know that to create false demand for their project, OP1 had made bogus allotments to its employees.

6. it is alleged that the director of OP1 for the first time on 17.11.2011, disclosed to the Informant that delay in construction was due to non-acquisition of land for 24 m wide road by the Office of Town and Country Planning, Haryana and HUDA and that the sole responsibility of construction of internal roads was on the OP2. By letter dated 14.12.2011, OP1 offered the allottees to take refund of money paid with interest @ 12% p.a.

7. A legal notice was sent by the welfare association of allottees on 19.09.2012, calling upon the OP1 to commence construction and to pay damages for delay in commencement of construction. A reminder notice was also sent on 01.12.2012. Reply was sent by the OP1 on 14.12.2012.

8. The Informants had also placed reliance upon an order of the Commission in *Belair Owner's Association vs. DLF Limited and Others*, case no. 19/2010.

9. The Commission considered the information and the written arguments of the Informants besides hearing their Advocate.



10. The main grievance of the informants is that OPs were not commencing construction of the residential project and citing false excuses for their inability to commence the construction, while actually, the OPs wanted to cancel the allotments and relaunch the projects at escalated prices. Informant alleged contravention of sections 3 and 4 of the Act, for anti-competitive terms in the agreement and abuse of dominant position, and also sought directions for the OPs to deliver possession of contracted residential floor, besides giving adjustment for delayed period, interest and damages.

11. In order to attract the provisions of section 4 of the Act, first the relevant market needs to be defined. The product transacted in this case is 'development and sale of residential units.' The relevant product market therefore would be 'the services for development and sale of residential units.' Relevant Geographic market would be the geographic area of Gurgaon as the conditions of competition for supply of provision of services or demand of services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas like Delhi, Noida, Ghaziabad, Faridabad and Sonapat. As such the relevant market would be 'development and sale of residential units in Gurgaon'. As per the information available in public domain, there are several upcoming residential projects in the relevant geographic market and more particularly on Dwarka Expressway. Ramaprastha Group has projects like *The Edge Towers*, *The Atrium*, *The View*, *Skyz*, Raheja Builders have commenced their projects *The Vedas* and *Shilas/Srishti/Atharva*, Mahindra Life Space has started *Aura*. Earth Infrastructures and Ansal Siddhartha have also started their respective projects. EMAAR MGF has proposed a comprehensive township. Many of these are on verge of completion and a large number of real estate developers have started bookings for their new projects as well.

12. In view of above, it is found that the OP 1 is prima facie not a dominant player in the relevant market defined above. Since OP1 does not appear to be in a dominant position in the relevant market, the question of abuse of dominant position in that market by them does not arise. The issue of dominance of OP2 as contended by the Informants has no force



as the Commission in Case No. 65/2012 held that OP2 was not a dominant enterprise in the relevant geographic region of Gurgaon.

13. Further, prima facie there does not appear to be any contravention of section 3 for want of any concrete allegations or evidence. There appears to be no prima facie case made out to refer the matter to the DG for investigation.

15. In view of the above discussion, there does not exist any prima facie case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.

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

New Delhi  
Date 01.07.2013

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Dr. Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M. L. Tayal)  
Member

Sd/-  
(S. N. Dhingra)  
Member

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