

Competition Commission of India
Case No. 25 of 2012

June 29, 2012

In re:

1. M/s Vindato Investment Pvt. Ltd. ...Informant No.1

2. Shri Ashok Vijhay Jain ...Informant No.2

v.

M/s Vaidehi-Akash Housing Private Limited ...Opposite Party

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

The present information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s Vindato Investment Pvt. Ltd. ('the informant No.1') and Shri Ashok Vijhay Jain ('the informant No.2') against M/s Vaidehi-Akash Housing Private Limited ('the opposite party'). At the outset, it would be appropriate to note the prayers made by the informants whereby the following directions have been sought against the opposite party:

(a) *to pay compensation to the informant No.1 for conspiracy, economic offences, fraud, cheating, unfair trade practices and intentional misrepresentation with interest.*

(b) *to pay compensation to the informant No.1 for conspiracy, economic offences, fraud, cheating, unfair trade practices and intentional misrepresentation with interest.*

(c) *To conduct investigation against the opposite party for acts of conspiracy, economic offences, fraud, cheating, unfair trade practices and intentional misrepresentations etc.*

2. Briefly stated, the informant Nos. 1 and 2 appear to have 'purchased' eight (8) and four (4) flats respectively from the opposite party in a project 'Sagar Sahawas Colony' located at Andheri (West), Mumbai. It is averred that the informant No.1 purchased the flats *vide* Agreements to Sale dated 05.09.2008 and 31.09.2009. The informant No.2 purchased the flats *vide* allotment letter dated 27.06.2008. The informant No.2 is an individual and is stated to look after the day to day business activity of the informant No.1 company.

3. The gravamen of the information is the alleged inordinate delay in executing the said project by the opposite party. The informants assert that they were entitled to have the afore-mentioned agreements specifically performed by the opposite party and the informants, at all material times, have been and are ready and willing to perform their part of the agreements.

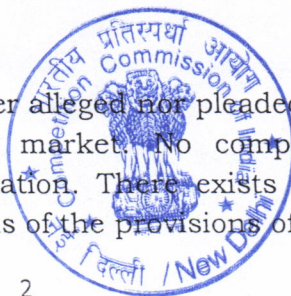
4. Further, grievance has been made by the informants about abuse of dominant position. It is averred that the opposite party had imposed highly arbitrary, unfair and unreasonable conditions on the informants which had '*serious adverse effects and ramification on the rights*' of the informants being in contravention of '*various statutes*'.

5. Grievance is also made of the fact that the opposite party fraudulently concealed essential information which led the informants to enter into the agreements. The informants had no option but to accept *in toto* and give assent to the agreements even though the clauses therein were onerous, arbitrary and one-sided. The agreements vested in the opposite party an absolute right to reject or refuse to execute agreement without assigning any reason, cause or explanation. Objection is also taken on the opposite party's decisions to advertise and announce the scheme; issue allotment letters; collect substantial amounts from buyers, execute agreements; carry out construction without approval of layout plan as per the CRZ Regulations *etc.* which had serious fallouts and for which the entire liability was shifted on the allottees.

6. It is further alleged that the practice followed by the opposite party in issuing advertisements for launching projects without even purchasing the land and not disclosing the total area of the property, date of delivery of possession and the information relating to the progress of work to the buyers *etc.* were detrimental to the interests of consumers. The opposite party did not deposit the money collected from the buyers in an escrow account. The entire process was non-transparent, particularly regarding escalation of prices and approvals from competent authorities.

7. The present information appears to be an attempt in forum shopping and forum hunting. The informants admittedly have previously moved the National Consumer Disputes Redressal Commission and the High Court of Bombay seeking redressal of the grievances arising out of the agreements which are subject matter of the present information. It is not clear from the information about the fate of such actions.

8. The informants have neither alleged nor pleaded the dominant position of the opposite party in any relevant market. No competition issues are raised or otherwise arise from the information. There exists no *prima facie* case and the matter is closed forthwith in terms of the provisions of section 26(2) of the Act.



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

Sd/-
Member (G)

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi