



**COMPETITION COMMISSION OF INDIA**

**Case Nos. 25 of 2014**

**In Re:**

Shri Narender Khandelwal

....Informant

**And**

M/s BPTP Limited

....Opposite Party 1

M/s Countrywide Promoters (P) Ltd

....Opposite Party 2

**CORAM**

**Mr. Ashok Chawla**

**Chairperson**

**Mr. Anurag Goel**

**Member**

**Mr. S.L. Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

Present: Shri Narender Khandelwal (Informant in person)



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

The present information is filed by Shri Narender Khandelwal, residing at D-131, South City – 1, 2<sup>nd</sup> Floor, Gurgaon, Haryana (hereinafter referred to as the “Informant”) under section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as “the Act”) against M/s BPTP Limited (hereinafter referred to as Opposite Party 1/ OP 1) and M/s Countrywide Promoters (P) Ltd (hereinafter referred to as Opposite Party 2/ OP 2 and jointly as the OPs) alleging contravention of the provision of Section 4 of the Act by the Opposite Parties. OP 1 is a renowned real estate company which operates through its subsidiaries including OP 2.

2. As per the information, in August 2011, Informant booked a residential unit with OP 1 in their project known as “*Astaire Garden*” in Sector 70A, Gurgaon, Haryana, having a plot area of 250 sq. yards, by making an initial down payment of Rs. 7.00 lakhs. Through an allotment letter dated 24.8.2011, issued by OP 1, Informant was allotted a unit having a tentative area of 1390 Sq. Ft. @ Rs. 5,530.94 per sq. ft. totalling to Rs. 76,88,086/-. Thereafter, OP 1 sent two sets of the Builder-Buyer Agreement (“the Agreement”) to the Informant for execution by letter dated 15.12.2011 and advised him to send both sets of the Agreements duly signed to OP 1 so that OP 1 would send back a signed copy to the Informant immediately. Informant claimed that the Agreements have not been received despite acknowledgment of receipt by OP 1 of the copies and an email dated 08.02.2012 that they have been sent through courier to Informant on 08.02.2012. Despite non-receipt of the Agreement, the Informant made various payments to OP 1 from time to time towards the said unit as per the demand letters issued by them and paid an amount Rs. 36,45,486/- till January, 2012 which was equivalent to 47% (approx) of the total price.



3. The Informant has stated that in March 2012, OP 1 issued a demand letter dated 08.03.12 for payment of Rs. 7,60,988.64 much before the scheduled date decided between the parties i.e. 23.8.2012. In addition to the said amount, OP 1 also demanded a sum of Rs. 7, 64,817.64 which was stated to be due since 21.4.2012, i.e. the date of letter in question. The OP 1 further set up a claim of interest on the said amount @ 18 % p.a.
4. Informant submitted that no response was received from OP1 when confronted as to how the said payment was due since 23.3.2012 and instead notice dated 9.9.2012 was received indicating that arrears amounting to Rs. 23,26,364.76 have become due. This was followed by another letter dated 21.9.2012 advising the Informant to clear all the arrears amounting to Rs. 23,26,364.76 within five days failing which the unit would be cancelled. Informant submitted that the unilateral decision to cancel the unit amounts to abuse of dominant position.
5. It was further stated that the Informant remitted a sum of Rs. 7,60,989/- on 6.10.2012. This payment was towards casting of the ground floor slab as per letter dated 8.3.12 and was overdue by only 45 days. As in terms of the letter dated 8.3.2012, the said payment was required to be made on or before 23.8.2012 i.e. is the final demand letter date. However, instead of acknowledging the payment of Rs. 7,60,989/-, OP 1 informed that no further payments would be accepted by him with regard to the booking of the unit in question.
6. Informant submitted that several attempts were made through phone and emails to contact OP 1 with regard to this issue; however, he was informed that the unit was cancelled on 21.05.2013. The Informant stated that on enquiry about the Builder-Buyer Agreement, OP 1 confirmed that both the sets were with them and the Informant copy was never sent to him since the same



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was not executed by 21.04.2012. Informant pointed that OP 1 earlier confirmed that the same had been sent vide mail dated 08.03.2012.

7. Informant alleged that in response to its inquiry, OP 1 vide its replies dated 02.01.2014 and 08.02.2014 expressed their inability to refund the entire money and further stated that the refund was governed by the terms and conditions of the Builder Buyer Agreement which is heavily loaded in favour of OP 1. It was also stated that OP 1 vide its email dated 21.02.2014 informed the Informant that a sum of Rs. 5, 59,896/- would be refunded to him which was around Rs. 30 lacs lesser than the amount paid by the Informant. Informant stated that the so called deduction is an unfair trade practice being adopted by the OP 1 and cannot escape judicial scrutiny.
8. Besides the above, the Informant also highlighted the following clauses imposed by OP 1 in the Buyer Builder Agreement which were contended to be arbitrary. The clauses include violation of license terms, earnest money being specified as 25% amount of total sale consideration as against the common practice of 10 % of the Basic Sale Price, unreasonable forfeiture policy, punitive penalties in case of delay in payment by the Informant, absence of an exit option for the informant except when OP 1 fails to give possession within the agreed time, right to make unilateral changes in the agreement by OP 1 etc.
9. Aggrieved by the abusive clauses imposed by the OPs, the informant prayed to the Commission to direct termination/modification of the Builder Buyer Agreement.
10. The Commission considered all the material on record and heard the informant at length. Since the grievance of the informant relates to abuse of dominant position by OPs, relevant market needs to be defined. During arguments the informant argued that the OPs hold a dominant position in the residential projects in Gurgaon and Faridabad. Having regard to the facts of the case, the



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relevant product market in the present case appears to be market for 'development and sale of residential apartments'. However, the geographic market definition provided by informant i.e. Gurgaon and Faridabad cannot be accepted. The consumers looking for a residential plot in Gurgaon may not prefer Faridabad or any other neighbouring areas. Therefore, on the basis of the relevant geographic market by the Commission in earlier cases, the relevant geographic market in the present case would be Gurgaon. Therefore, the relevant geographical market in the present case appears to be the market for 'development and sale of residential apartments in Gurgaon'.

11. The Informant alleged that OPs were dominant in the relevant market. However, having regard to the factors stated under section 19(4) of the Act, it does not appear so. Apparently, there are several other real estate developers such as DLF, Ramprastha Group, Anantraj Group, Earth Infrastructure Group etc. which are operating in the relevant market. As per informant's own submissions, the land bank of OPs in the relevant market in Gurgaon is around 778 acres. As per the information available in public domain the land bank of other players e.g. DLF (over 3000 acres), Ramprastha Group (over 1000 acres), Anantraj Group (around 100 acres) is also enormous. Accordingly, it seems unlikely that with such land bank, the OPs had huge size or resources or any other advantage that could have capacitated them to work independently of their competitors.
12. Since the case under section 4 of the Act depends primarily on the position of the Opposite Parties i.e. whether they held a dominant position or not, in the absence of OPs holding a dominant position the Commission need not go into the question of abuse.
13. Based on the foregoing, no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the opposite parties. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.



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

Sd/-  
**(Ashok Chawla)**  
**Chairperson**

Sd/-  
**(Anurag Goel)**  
**Member**

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

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

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

New Delhi

Dated: 02/07/2014