



COMPETITION COMMISSION OF INDIA

Case No. 22 of 2016

In Re:

**Actuate Business Consulting Pvt. Ltd.
5th floor, Vatika Triangle, Sushant Lok-I
Block 'A', Mehrauli Gurgaon Road
Gurgaon, Haryana - 122002**

Informant No. 1

**Abha Kathuria Kohli
Flat No. C-398, Sheikh Sarai
Phase-I, New Delhi - 110017**

Informant No. 2

And

**Ambika Trading & Construction Co. Pvt. Ltd.
208/A-3, Savitri Nagar
Malviya Nagar, New Delhi - 110017**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**



Dr. M. S. Sahoo

Member



Justice G. P. Mittal

Member

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

1. The information in the present was filed by Actuate Business Consulting Pvt. Ltd. (**‘Informant No. 1’**) and Abha Kathuria Kohli (**‘Informant No. 2’**) [collectively, **‘Informants’**] under Section 19(1)(a) of the Competition Act, 2002 (the **‘Act’**) against Ambika Trading & Construction Co. Pvt. Ltd. (**‘Opposite Party’**) alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. Briefly stated, the Informants have booked two cottages *i.e.*, A1 & A2, admeasuring 2500 sq. ft. each, in ‘Deodar Cottages’; a residential project developed by the Opposite Party at Saattaal in Nainital, Uttarakhand (**‘Project’**) for a total sale consideration of Rs. 1 crore. The Informants have paid 95% of the total sale consideration to the Opposite Party and remaining 5% was agreed to be paid at the time of handing over of the possession of the cottages and execution of sale deed. It is stated that initially Informant No. 1 and Ambika Construction Pvt. Ltd. (sister concern of the Opposite Party) signed a Memorandum of Understanding (**‘MOU’**) on 13.03.2008 and subsequently, they entered into an allotment agreement on 20.08.2008 (**‘Agreement’**) in this regard.
3. As per the said **‘Agreement’**, in the event of any delay in giving possession of the cottages beyond the committed period of two years from the date execution of **‘Agreement’** *i.e.* by 20.08.2010, Ambika Construction Pvt. Ltd. would be liable to pay a penalty of Rs. 10/- per sq. ft. per month. It is averred



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that even after a lapse of more than five years from the committed date, the Opposite Party has not handed over the cottages.

4. Informant No. 1 has alleged that no construction activity was carried out at the site between August, 2008 and October, 2009; when inquired regarding the same it was told that the delay was due to some internal differences between the Opposite Party and its sister concern. It has been further stated that it was orally agreed by the Opposite Party that it will pay interest @ 12% per annum on all the payments received from Informant No. 1 till the date of handing over of the possession of the cottages. Thereafter, *vide* letter dated 15.10.2009, Informant No. 1 was informed that henceforth the project will be handled by the Opposite Party and not by its sister concern.
5. As per Informant No. 1, in spite of the slow progress of construction, 95% of the total sale consideration was paid because of its past relationship with the Opposite Party and the promise of the Opposite Party to give the extra land adjacent to cottage A1 for an extra charge along with some furniture to it. It is averred that the Opposite Party has retracted from its promise to allot extra land adjacent to the cottage A1 and also demanded Rs. 2 Lakh from Informant No. 1 towards extra wood purchased for the furniture and carpentry work as a loan.
6. Since the construction of the project was getting delayed, Informant No. 1 decided to get the sale deed registered for the said cottages in its 'as it is' condition. It is stated that during the process of registration of sale deed it was revealed that as per the land laws of Uttarakhand, a non-resident of Uttarakhand cannot register a sale deed for any property exceeding 2500 sq. ft. Since Informant No. 1 was not a resident of Uttarakhand, it was agreed that one of the two cottages will be registered in the name of Informant No. 2, the daughter of Sh. Narinder Nath Kathuria, MD of Informant No. 1. Accordingly, the value of one cottage amounting Rs. 45,00,000/- (Rupees Forty Five Lakh) was refunded by the Opposite Party to Informant No. 1 while Informant No. 2 paid the same amount to the Opposite Party.



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7. The Informants have alleged that since after lots of deliberations, discussions and communications the Opposite Party was not willing to execute the sale deed, they had served a legal notice dated 29.10.2013 to the Opposite Party which was replied to on 14.11.2013. Subsequently, the Informants filed a Civil Suit (Original Side) No. 331 of 2014 on 10.01.2014 before the Hon'ble High Court of Delhi for Specific Performance of Contract which was returned back on 04.02.2014 for the want of Jurisdiction by the Hon'ble High Court of Delhi along with a liberty to file the said suit before the court of proper jurisdiction. Thereafter, the Informants filed a Civil Suit before the Court of Learned Civil Judge, District Nainital, Uttarakhand *vide* Civil Case No. 10 of 2014 on 03.04.2014. It is further stated that the Informants have also filed a consumer complaint (578 of 2015) before the National Consumer Disputes Redressal Commission, New Delhi seeking refund of the amount paid to the Opposite Party along with interest, compensation and damages.
8. Based on above, the Informants, *inter alia*, have prayed the Commission to appropriately punish the Opposite Party for abuse of its dominant position, direct the Opposite Party to refund the amount of Rs. 1,45,75,000/- and pay interest @ 24% per annum on the principal amount, and pass any other and/ or further order(s) as the Commission may deem fit and proper. The Informants have also prayed the Commission for interim relief under Section 33 of the Act.
9. The Commission has perused the available information on record. From the information available on record it is revealed that the dispute in the present matter relates to the alleged abuse of dominant position by the Opposite Party in not handing over the possession of the cottages to the Informants as per the agreed time and in not executing the sale deed.
10. The Commission observes that the allegations in the present case pertain to booking of two cottages by Informants in 'Deodar Cottages' a residential project developed by the Opposite Party in Nainital, Uttarakhand. Thus, the product in question here is 'cottage', a constructed house on a piece of land



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that is, a residential unit. A residential unit constitutes a separate relevant product market and it is not substitutable with the market for commercial space or the market for a plot of land. The requirement, scope and prospect of buying a cottage or a residential unit are different from that of a commercial space or a plot of land. Further, the motive of the consumers and factors considered by the consumers for buying a residential unit are different from buying a commercial space or a piece of land. Thus, the market for “*provision of services for development and sale of residential units*” is considered as the relevant product market in this case. With regard to the relevant geographic market it may be noted that the geographic region of Nainital district of Uttarakhand exhibits homogeneous and distinct market conditions. It may not be feasible on the part of the buyers of residential unit of Nainital to prefer other adjacent geographic areas of Nainital for purchase of residential unit because of factors such as distance, commuting facilities, differences in the price of land, availability of essential services *etc.* Therefore, the relevant geographic market in the present case is considered as the geographic area of Nainital district of Uttarakhand. Accordingly, for the purpose of analysis of present case, the market for “*provision of services for development and sale of residential units in Nainital*” is considered as the relevant market.

11. Having delineated the relevant market, now it is to be determined whether the Opposite Party is in a dominant position in the said relevant market. It may be noted that, other than the allegation of abuse of dominance, the Informants have not submitted any material on record indicating dominance of the Opposite Party in the relevant market. However, from the information available in the public domain, it is observed that in the relevant market, other than the Opposite Party, there are many other players such as Shree Keshav Buildtech Pvt. Ltd., Shikhar Group, Mridul Buildtech Pvt. Ltd., Shubham Group, Central Himalayan Land Development Company *etc.* operating and providing similar products to the consumers. Presence of such players indicates that the buyers have option to choose from other developers in the relevant market. So, the Commission is of the view that the Opposite Party does not possess market power to act independently of competitive forces in



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the relevant market or to affect its competitors or consumers or the relevant market in its favour. Thus, the Opposite Party is not found to be dominant in the relevant market.

12. In the absence of dominance of the Opposite Party in the relevant market, the assessment of its alleged abusive conduct does not arise. Accordingly, the Commission finds that no case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Party. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
13. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(Dr. M. S. Sahoo)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Dated: 03.05.2016