



**COMPETITION COMMISSION OF INDIA**

**Case No. 28 of 2016**

**In Re**

**Mr. A. S. Sharma,  
E-1106, Plot No. GH-1,  
Sector-120, Prateek Laurel, Noida, U. P.**

**Informant**

**And**

- 1. M/s Prateek Realtors India Pvt. Ltd.,  
E-11, Sector - 61, Noida, U.P. Opposite Party No. 1**
  
- 2. Chief Administrative Officer,  
New Okhla Industrial Development Authority,  
Sector – 6, Noida, U. P. Opposite Party No. 2**
  
- 3. Chief Architect Planner,  
New Okhla Industrial Development Authority,  
Sector - 6, Noida, U. P. Opposite Party No. 3**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

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

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**



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



**Dr. M. S. Sahoo**  
**Member**

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

1. The information in the present matter was filed by Mr. A. S. Sharma (the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against M/s Prateek Realtors India Pvt. Ltd. ('**OP 1**'), Chief Administrative Officer, New Okhla Industrial Development Authority (**OP 2**) and Chief Architect Planner, New Okhla Industrial Development Authority ('**OP 3**') alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. As per the information, OP 1 is a promoter of various housing projects in and around National Capital Region (NCR) and due to its vast presence in the housing construction business in Noida and other cities, the Informant has alleged that OP 1 is a dominant enterprise.
3. It is stated that the New Okhla Industrial Development Authority (the '**Authority**') has allotted a group housing plot having No. GH-01, admeasuring 51067 square meters, to OP 1 at Sector-120, Noida on 07.01.2010 for development of group housing project/ flats as per the building plan approved by the '**Authority**'. Accordingly, OP 1 developed a residential housing complex, namely, 'Prateek Laurel' (the '**Project**') on the said plot and offered residential apartments of various sizes and dimensions to the general public through advertisement. In pursuance to the said offer of OP 1, the Informant booked a finished residential apartment in the said project, after payment of the booking amount and accordingly, both OP 1 and the Informant have signed a residential apartment 'allotment letter' on 10.03.2010.
4. It is averred that the terms and conditions of the allotment letter were prepared by OP 1 unilaterally without consulting the Informant and also these



terms and conditions were not shown to the Informant at the time of booking. It is alleged that OP 1 has inserted such terms and conditions in the allotment letter which made exit impossible for the Informant. It is stated that since OP 1 had already received a considerable amount, it imposed highly abusive conditions through the allotment letter on the Informant. As per the Informant, OP 1 had also compelled him to sign one-sided agreements relating to maintenance, car parking and electricity supply.

5. The Informant has stated that UP Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 ('**UP Apartment Act**') along with UP Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011 govern the development of group housing project in the State of Uttar Pradesh. It is alleged that OP 1 has violated the UP Apartment Act, the provisions of which are mandatorily required to be followed by OP 1 as well as the Informant. But, the recitals in the allotment letter have been framed in such a manner as if OP 1 was not bound by the Act and bye-laws concerning group housing projects and only the Informant was bound by it.
6. The Informant has alleged that certain clauses in the allotment letter are abusive in nature. For instance, clause 2 provides that in case of delay on the part of the Informant the rate of interest to be paid to OP 1 is 18% per annum on the delayed payment for the period of delay whereas, in case of delay in giving possession of apartment, OP 1 is to pay compensation of only Rs. 5/- per sq. ft. per month which is equivalent to about 1.5% per annum. Similarly, OP 1 has the right to forfeit the amounts paid by Informant in case of non-fulfilment of the conditions in the allotment letter whereas, there is no corresponding clause for OP 1 under similar circumstances. Further, clause 3 provides OP 1 the liberty to abandon the project without any liability with regard to interest, damages or compensation while there was no exit option for the Informant.
7. It is stated that the ownership right and possession of the common areas and facilities including club are governed by clauses 6, 7 and 13 under the head



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'Possession' in the allotment letter are highly abusive. These clauses give the ownership rights of the common area and facilities to OP 1 which is in contravention of the UP Apartment Act. It is alleged that OP 1 has unlawfully provided for itself the right to carry out further construction in case of any change in the Floor Area Ratio (FAR). Further, it is alleged that the covenant in clause 7 gives the right to OP 1 of having full and absolute ownership in the club, swimming pool, building, land underneath *etc.* which is abusive. Similarly, clause 1 and clause 2 under the head 'construction/ facilities of flats' provides OP 1 the authority to make addition in specifications of the unit due to technical reasons or due to popular demand or for reasons of overall betterment of the complex with all benefits flowing to OP 1 and the Informant having no say in the matter. It is further alleged OP 1 has arbitrarily altered the original building plan twice without seeking the prior consent of the Informant. OP 1 had utilized 145674 square metres of FAR instead of maximum permissible FAR of 140434 square metres without any common benefits to the Informant.

8. Furthermore, clause 1 of the maintenance agreement provides that OP 1 shall be responsible for maintenance of the flat for a maximum period of 6 months from the notice of possession or physical possession whichever is later, if any deficiency is observed in the fixtures and fittings provided in the apartment OP 1 shall rectify the same. According to the Informant, this provision is not in accordance with Section 4(8) of the UP Apartment Act.
9. It is also alleged that clause 4 of the maintenance agreement is abusive as OP 1 had arbitrarily fixed the maintenance charges at the rate of Rs. 2.10/- per sq. ft. per month subject to an enhancement of 10% every year and also reserved the right to enhance the charges further without any justification and consultation with the Informant. Also, clause 6 provides that the term of agreement was for two years or until the Association of the apartment owners is formed and duly registered and the common area and facilities provided in the complex are handed over to it, whichever is earlier subject to the other terms and conditions contained therein. The said clause 6 is not in accordance



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with the UP Apartment Act as OP 1 cannot make the Association to wait for taking handover of common areas and facilities after the Association is registered. Further, clause 7 of the agreement provides that in case the service provider observes that the allottees/ owners of the flat are not in a position and/or interested in taking over the maintenance of the common area and facilities on the expiry of two years from the commencement of this agreement, in that event the service provider at its sole discretion but with approval of OP 1, may continue with the maintenance and shall reserve the right to extend the term of this agreement for a further period as it may deem fit and necessary. Such a clause is abusive, one sided and shows blatant abuse of dominance by OP 1.

10. Based on above, the Informant has prayed the Commission to take appropriate action against the OPs in accordance with the provisions of the Act.
11. The Commission has perused the available information on record. It is observed that the Informant appears to be aggrieved by the abusive conduct of OP 1 in imposing discriminatory terms and conditions in the allotment letter and other agreements for allocation of a residential apartment to the Informant in the group housing residential complex 'Prateek Laurel' developed by OP 1 in Sector-120, Noida which is in contravention of the provisions of Section 4 of the Act. No specific allegations have been raised against OP 2 and OP 3.
12. To examine the allegations of abuse of dominance in terms of the provisions of Section 4 of the Act, as per the scheme of the Act, it is essential to first determine the relevant market and then to examine whether OP 1 is dominant in that relevant market or not.
13. The Commission observes that the allegations raised by the Informant relate to purchase of a residential apartment/ unit in OP 1's residential housing project 'Prateek Laurel' in Sector-120, Noida. Thus, the relevant product in question here is a residential apartment/ unit. In this regard, it may be noted that the requirement, scope and prospect of buying a residential unit is different from



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that of a commercial unit. Further, a buyer wishing to purchase a residential unit may not prefer to substitute it with a commercial unit and *vice versa* because of product characteristics and intended use. Also, a residential plot may not be considered as a substitute of residential unit/ apartment. A residential unit forms a separate relevant market because the motive of buying and factors considered for buying by the consumers are different from that of a residential plot. In case of a residential unit, unlike a residential plot, the builder completes the construction before giving the possession to the allottee whereas, the buyer of a plot has the freedom to decide the floor plan, the structure, and the other specifics subject to applicable regulations. Thus, a residential unit forms a separate relevant product market. Accordingly, the relevant product market in this case may be defined as the market for “*the provision of services for the development and sale of residential unit*”.

14. With regard to the relevant geographic market, the Commission is of the view that the geographic region of Noida and Greater Noida exhibits homogeneous and distinct market conditions. Further, the buyers of a residential unit in Noida and Greater Noida may not prefer other areas of Uttar Pradesh and NCR because of factors such as differences in price of land, commutation facilities, quality of essential services *etc.* Therefore, the relevant geographic market in the present case may be considered as ‘*the geographical areas of Noida and Greater Noida*’. As such the relevant market in the instant case may be delineated as the market for ‘*the provision of services for the development and sale of residential unit in Noida and Greater Noida*’.
15. Having delineated the relevant market, now the issue is whether the OP is a dominant player in the relevant market. In this regard, the Commission observes that as per the information available in the public domain there are many other major developers like Amrapali, Supertech, Unitech, 3C Company, Lotus Greens, Saha Infratech, ATS Greens, Jaypee Infratech, Eldeco *etc.* which are competing with OP 1 in the relevant market with projects of varying magnitudes and having comparable sizes and resources. The presence of so many players in the relevant market acts as a competitive



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constraint for OP 1 in enjoying a position of strength which would enable it to operate independently of market forces in the relevant market. Further, the residential units being developed by other major players can be considered as substitutes and hence, provides multiple options to the consumers in the relevant market. Therefore, in view of the Commission, OP 1 cannot be considered as a dominant player in the relevant market.

16. In view of the absence of dominance of OP 1 in the relevant market, the Commission is of the opinion that no case of contravention of the provisions of Section 4 of the Act is made out against OP 1. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

17. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

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

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**(Sudhir Mital)**  
**Member**

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**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

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**(Dr. M. S. Sahoo)**  
**Member**

**New Delhi**  
**Dated: 01.06.2016**