



COMPETITION COMMISSION OF INDIA

Case No. 48 of 2016

In re:

**Smt. Usha Roy
4/28, Vishal Khand, Gomti Nagar,
Lucknow – 226 010**

Informant

And

**M/s ANS Developers Pvt. Ltd.
Titanium Shalimar Corp. Park, Vibhuti Khand,
Gomti Nagar, Lucknow – 226 010**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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

Case No. 48 of 2016

Page 1 of 6



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 matter was filed by Smt. Usha Roy (**'Informant'**) under Section 19(1)(a) of the Competition Act, 2002 (the **'Act'**) against M/s ANS Developers Pvt. Ltd. (**'OP'**) alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. As per the information, OP is a company incorporated under the Companies Act, 1956 and has been engaged in the business of real estate development. It is stated that based on a license granted by the Lucknow Development Authority (**'LDA'**) *vide* License Certificate dated 16.02.2010, OP is developing an integrated township at Baghamau village in Lucknow District of Uttar Pradesh (**'Project'**). The Informant is an allottee of a plot of land, bearing Plot No. HC-1/A measuring 50,000 sq. ft., in the said project of OP. The Informant purchased the said plot to establish a hospital.
3. In this regard, an agreement to sell (**'Agreement'**) was executed between the Informant and OP on 23.07.2012. The total sale consideration of the said plot was agreed as Rs.2, 09, 50,000/- , out of which Rs. 23, 75,000/- was paid on 23.07.2012 and the balance amount was agreed to be paid in two instalments, first at the time of execution of the sale deed and the second six months after execution of the sale deed. It was agreed that the sale deed will be executed after twenty five months from the date of sanction of the detailed project report (DPR) or earlier.



4. The Informant has alleged that even though the layout plan/ map of the project, as annexed with the Agreement, marked the said plot as the site for a hospital, OP had concealed this information from LDA while submitting the DPR together with the layout plan/ map to LDA for approval in July, 2013. It is averred that, as objected by the Informant, OP made certain changes in the original layout plan/ map which was submitted to LDA on 13th December 2013 marking the said plot as the site for a hospital, without informing the same to the Informant. Further, it is averred that OP concealed the information regarding approval of DPR by LDA on January, 2014 from the Informant and OP also denied receipt of Rs 62, 45,400/- from the Informant even though the stamped receipt of OP was duly signed/ acknowledged by its employee.
5. It is alleged that OP holds a dominant position as it is acting as a leader to the consortium of business entities for development of the said project and it has been abusing its dominant position by imposing unfair conditions, restricting the provision of medical services by indulging in practices resulting in a denial of market access and agreeing to fulfil the terms of the contract subject to acceptance of supplementary obligations.
6. It is also averred that OP terminated the Agreement unilaterally *vide* its legal notice dated 15.07.2015 citing the reason of misunderstanding and loss of trust between them. Accordingly, the Informant *inter alia* has requested the Commission to intervene appropriately in the matter and award compensation against the losses incurred by the Informant on account of OP's conduct.
7. The Commission has perused the information, additional information and information available in the public domain. It is seen that the Informant appears to be aggrieved by the conduct of OP in imposing alleged unfair terms and conditions in the allocation of a plot of land to the Informant for developing a hospital in the said project of OP in contravention of the provisions of Section 4 of the Act.



8. The Commission observes that the allegations raised in the information relate to purchase of a plot of land by the Informant for developing a hospital in the integrated township developed by OP. Since, the said plot of land was transacted for the purpose of establishment of a hospital and the same was earmarked for hospital in DPR and layout plan/ map approved by LDA, it cannot be considered as substitutable with the plots of land meant for residential use or for other commercial use. Further, it is observed that for developing a hospital, the potential developer does not necessarily require to develop the same within a residential colony or integrated township. Buying plots from the area earmarked for developing hospital as per approved layout plan/ map within a residential colony or integrated township is one of the many alternatives available for the developer of a hospital. Apart from that, there are other alternatives where a potential purchaser can develop hospital. Thus, the Commission is of the view that the market for *“the provision of services for development and sale of plots of land for providing medical facilities”* may be considered as the relevant product market in this case. With regard to the relevant geographic market, the Commission is of the view that the geographic region of Lucknow District of Uttar Pradesh exhibits homogeneous and distinct market conditions. The buyer of a plot of land for establishing a hospital may not prefer other adjacent areas of Lucknow because of the factors such as level of urban development and infrastructure facilities, commutation facilities, consumer preferences for the medical services, differences in the price of land *etc.* Therefore, the relevant geographic market in this case may be considered as Lucknow District of Uttar Pradesh.
9. In view of the relevant product market and the relevant geographic market delineated above, *“the provision of services for development and sale of plots of land for providing medical facilities in Lucknow District of Uttar Pradesh”* may be considered as the relevant market in this case.



10. Having delineated the relevant market, the next issue is to determine whether OP is dominant in the said relevant market. In this regard, based on the information available in the public the domain, the Commission observes that there are several real estate developers such as Ansal, Eldeco, Sahara, Omaxe, Unitech, *etc.* are operating and offering similar kind of services in Lucknow. It is noted that all the above said developers are competing with each other in the relevant market with projects of varying magnitudes and have comparable size and resources as that of OP. The presence of a number of players in the relevant market indicates that the buyers have options to choose plots for developing hospital from other developers. With such renowned builders in the relevant market, it does not appear that OP enjoys a position of strength which enables it to operate independently of competitive forces prevailing in the relevant market or to affect its competitors or consumers or the relevant market in its favour.

11. Even if, 'the provision of services for development and sale of plots of land for providing medical facilities in an integrated township in Lucknow' is considered as the relevant market, the OP cannot be considered as dominant. From the information available in public domain, it is observed that Ansal API has launched an integrated township project in the name of 'Sushant Golf City' sprawling across 6465 acres in Amar Shaheed Path & Lucknow-Sultanpur Highway which appears to be the largest integrated township project in Lucknow whereas, the size of the integrated township project being developed by the OP is only 210 acres, indicating absence of market power of OP in the relevant market. Further, the Informant in its additional information dated 15th July, 2016 has admitted that OP is the fourth largest builder amongst 11 companies which have been granted license to develop intergrated township in Lucknow. Thus, the Commission holds that OP is not in a dominant position in the relevant market as defined in para 9 above.

12. In the absence of dominance, the Commission is of the view that, no case of contravention of the provisions of Section 4 of the Act is made out against the



OP in the present case and the information is ordered to be closed forthwith in terms of the provisions contained in 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/-

(U. C. Nahta)
Member

Sd/-

(Dr. M. S. Sahoo)
Member

Sd/-

(Justice G. P. Mittal)
Member

New Delhi

Date: 31.08.2016

Case No. 48 of 2016

Page 6 of 6