



COMPETITION COMMISSION OF INDIA

Case No. 100 of 2015

In Re:

Mr. Vineet Arya and Mrs. Pratibha Arya & Ors.

**Prestige Shantiniketan, Near ITPL, Whitefield Main Road,
Mahadevapura Post, Bangalore**

Informants

And

- 1. Prestige Estates Projects Ltd.**
The Falcon House, No 1,
Main Guard Cross Road, Bangalore **Opposite Party No. 1**
- 2. M/s Chaitanya Properties Pvt. Ltd.**
No. 17, Sankey Road, Bangalore **Opposite Party No. 2**
- 3. Bangalore Development Authority**
(Through its Chairman)
T. Chowdaih Road, Kumarapark West, Bangalore **Opposite Party No. 3**
- 4. Town Planner Member,**
Department of Town & Country Planning, Government of Karnataka
T. Chowdaih Road,
Kumarapark West, Bangalore **Opposite Party No. 4**

CORAM

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member



Mr. Sudhir Mital
Member



Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Justice G. P. Mittal
Member

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

1. The information in the instant case has been filed by Mr. Vineet Arya and Mrs Pratibha Arya and 47 others (hereinafter, the '**Informants**') against Prestige Estates Projects Ltd. (hereinafter, '**OP 1**'), M/s Chaitanya Properties Pvt. Ltd. (hereinafter, '**OP 2**'), Bangalore Development Authority (hereinafter, '**OP 3**'/'**BDA**') and Town Planner Member, Department of Town & Country Planning, State of Karnataka (hereinafter, '**OP 4**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
2. Briefly, the Informants are residents of 'Prestige Shantiniketan', a residential complex developed by OP 1 near Whitefield Main Road, Mahadevapura Post, Bangalore (hereinafter, the '**Project**'). OP 1 is stated to be a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of development and sale of real estate projects in south India. OP 2 is a registered company under the provisions of the Companies Act, 1956 and is stated to be the owner of the land on which the 'Project' is being constructed by OP 1; through a Joint Development Agreement (hereinafter, '**JDA**') entered into between OP 1 and OP 2.



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3. It is stated that each Informant had executed an agreement to sell and an agreement for construction with OPs. According to the agreement to sell, OP 1 had agreed to deliver a constructed flat along with an undivided right, title and interest in the land earmarked for development of the 'Project'.
4. It is alleged that OP 1, at the time of booking, had represented that the aforementioned project was being constructed on a property admeasuring 105 acres and 26 guntas of land. But, in the agreement to sell executed by each of the Informants with OP 1, the land earmarked for the residential development was reduced to 56 acres and 39 guntas. Subsequently, OP 1 had unilaterally reduced the undivided area while executing the sale deed in favour of the Informants. It is alleged that because of reduction in the undivided area, the Informants were left with lesser car parking space, but OP 1 has charged excessive amount for allocating the car parking space to the Informants. It is alleged that the above mentioned conducts of OP 1 amounts to abuse of its dominant position under section 4 of the Act.
5. Aggrieved by the alleged abusive conduct of the OPs, the Informants have, *inter alia*, prayed the Commission for issuance of an order directing the Director General (hereinafter, 'DG') to cause an investigation of the unfair and abusive conduct of the OP's in accordance with the provisions of the Act.
6. The Commission has perused the information filed by the Informant as well as the material available on record. The Commission observes that it is the case of the Informant that OP's have abused their dominant position by relinquishing the land earmarked for residential purposes by transferring part of the same to BDA. The Informant appears to be aggrieved by the conduct of OP 1 for breach of the terms and conditions as mentioned in the agreement to sell in contravention of the provisions of section 4 of the Act.
7. For examination of the alleged contravention of the provisions of section 4 of the Act, the relevant market is to be delineated first to assess the position of dominance of OP 1 and then to examine the alleged conduct of OP 1 in case it is found to be in a dominant position in the relevant market as defined.



8. The dispute in question in the instant case relates to imposition of unfair conditions by OP 1 on the Informants, allottees of residential apartments in a 'Project' developed by OP 1, through the agreement to sell and breach of the terms and conditions of the agreement to sell. Thus, the relevant product market is the market of '*provision of services for development and sale of residential apartments*'. The Commission is of the view that 'the provision of services for development and sale of residential apartments' is a distinct product and it is distinguishable from the market of provision of services of development and sale of residential plot in terms of the nature of product, consumer preference, prices, *etc.* With regard to the relevant geographic market, buyers looking for residential properties in Bengaluru may not prefer other areas. Various factors like proximity to workplace, regional or personal preference, transport connectivity *etc.* play a decisive role in a potential buyer's decision making process while choosing a residential property in a particular area. Hence, the relevant geographic market would be 'Bengaluru'. Based on the foregoing, it appears that the relevant market in the present case would be the market of '*the provision of services for development and sale of residential apartments in Bengaluru*'.
9. In regards to dominance of OP 1, the Commission notes that the Informant has not provided any material which shows that OP 1 is dominant in the relevant market defined *supra*. It is observed that apart from OP there are many bigger and established players such as Century Builders, Sobha Developers, Brigade Group, Adarsh Developers, Puravankara Group, Mantri Group, RMZ Corp, Gopalan Enterprises (India) Pvt. Ltd., HM Group *etc.* operating and competing with each other in the relevant market. Thus, the Commission concludes that owing to the presence of other players coupled with the fact that OP 1 has a relatively smaller share in the relevant market, the argument that consumers do not have significant choices apart from OP 1 does not hold. Presence of these players in the relevant market indicates that buyers have options to choose in the relevant market and buyers do not seem to be dependent on OP 1 for purchase of residential apartments. Thus, the Commission is of the view that OP 1 is not in a dominant position in the relevant market. Since OP 1, does not appear to be in a dominant position in the relevant market, there



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arises no question of examination of its conduct for abuse of its dominant position within the meaning of the provisions of section 4 of the Act.

10. In light of the above analysis, the Commission finds that no case of contravention of the provisions of section 4 of the Act is made out against OP's in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

11. The Secretary is directed to inform the parties, accordingly.

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(S. L. Bunker)
Member

Sd/-

(Sudhir Mital)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U. C. Nahta)
Member

Sd/-

(M. S. Sahoo)
Member

Sd/-

(Justice G. P. Mittal)
Member

New Delhi

Date: 15.12.2015

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