

COMPETITION COMMISSION OF INDIA

Case No. 26/2012

Dated : 26/7/2012

In re:

Lt. Col (Retd.) Dr. Mohinder Kumar Yadav

... Informant

V.

Universal Buildwell Pvt Ltd. & Ors.

... Opposite Parties

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The information has been filed under section 19(1) of the Competition Act, 2002 ('the Act') by Dr. Mohinder Kumar Yadav (informant), a retired Lt. Col. against Universal Buildwell Pvt. Ltd. (OP.1), a real estate developer; M/s. Vishal Batra Investments (OP.2), the sole authorized broker for 'Universal Unimart' project of OP.1; M/s. Shiv Ganesh Buildcon (OP.3) and Department of Town and Country Planning, Haryana (OP.4).

2. The informant states that he booked two shops bearing no. 19 and 20, measuring 352.2 sq.ft. (super area) in 'Unimart' project of OP.1 located at Sector 82, Gurgaon, Haryana in September, 2011. The informant paid Rs. 3,00,000/- (rupees three lakh only) per shop to the OP.1 by way of cheques as booking amount on 20.09.2011. The informant further states that the OP.2 informed him that a sum of Rs. 2,000/- per sq.ft. was to be paid as preferential location charges (PLC) in cash in advance before signing the builder buyer agreement. Accordingly, informant made the payment of Rs. 17,53,908/- in cash which included the PLC to the OP.2 in his office. Thereafter, the informant received the builder buyer agreement but it showed the PLC amount to be outstanding and



alleged that the OP.1 and OP.2 acted in connivance. Till date, the informant has paid Rs. 42,28,618/- in cash and cheque for both the shops.

3. The informant alleges *inter alia* that the OP.1 is following the time linked payment plan and is taking 82% of the cost of the shops ante carrying out any construction work. As per the information, OP.1 is charging a PLC of Rs. 2,000/- per sq.ft. against the basic sale price (BSP) which is about 25% of BSP, whereas the industry practice is to charge between 5% to 10% of BSP. The informant lists other commercial projects in Gurgaon which are forty nine in number and all are multi-storied projects. The informant submits that the OP.1 is in dominant position in Gurgaon as the project in question is the sole project with single floor shops and all other commercial projects are multi-storied.

4. The informant alleges contravention of sections 3 and 4 of the Act by the OP.1 who imposed unfair purchase terms in charging PLC and inflated sale price, issued builder buyer agreement without approvals contrary to the License issued by OP.4, no opportunity of negotiation was given to informant while signing the builder buyer agreement which contains one-sided clauses, exempted himself from any liability in case of non-performance or delay whereas onerous liability against the informant have been provided for in the agreement, no date of completion of project has been provided, the discretion with builder to cancel and forfeit 15% of the amount paid as per the earnest money clause (para 1.2 (f) of the agreement), the discretion to retain/sell/transfer any interest in the common areas and facilities to any one or maintenance agency and provided for cancelation of allotment and sale deed in case any objections are raised (para 20 and 22 of the agreement) and clause 36 of the agreement providing for appointment of arbitrator. Further, it has been alleged that OP.1 and OP.4 are working in connivance as OP.4 is taking no action qua OP.1 even though complaints have been made. The transfer of license from OP.3 to OP.1, according to the informant, is wholly wrong and illegal.



5. In order to attract provisions of the section 3 and/or section 4 of the Act, the relevant market needs to be defined in clear and unequivocal terms. This includes identifying relevant product market and the relevant geographical market. The informant has given details of the other commercial projects being developed by various developers in Gurgaon and distinguished the project in question on basis of unique feature of it being a single storied commercial complex. According to the informant, the relevant product market is shops in single storied commercial shopping complex, as it is distinguishable and non-substitutable with other commercial shops available in the market. However, it is difficult to accept that a shop in single storied commercial complex is non-substitutable or non-interchangeable with shops in multi-storied commercial complex. A unique selling feature does not make a product non-substitutable or non-interchangeable but it is the utility and function of the product which decides the substitutability of a product. Therefore, the relevant market as understood by the informant is incorrect, and the commercial shop in question is substitutable and interchangeable with other various commercial shops available in Gurgaon. Since, admittedly a large number of commercial projects are available where a prospective investor can purchase a shop the OP.1, cannot be said to be in a dominant position in the relevant market of shops in a commercial complex.

6. The main gravamen of the informant is that the OP.1 is not working towards completion of the project and demanding payments and that he cannot opt out of the project since the OP.1 has discretion to forfeit the payment made in case of cancellation. The scope of the Act is primarily aimed to curb the anti-competitive practices having adverse effect on competition and to promote and sustain competition in the relevant markets in India. The grievance of the informant a does not fall within the aegis of the Act.

7. Section 4 of the Act provides for abuse of dominant position and in the present case no dominant position is made out even *prima facie*, as per explanation (a) to section 4 of the Act which needs to be there before



looking into an abuse of the dominant position. No case of contravention is made out under section 3 of the Act nor is specifically alleged by the informant.

8. In view of the above discussion, the Commission finds that no prima facie case was made out against the opposite party for referring the matter to DG for investigation. It is a fit case for closure under section 26(2) of the Act and is hereby closed.

The Secretary is directed to inform all concerned, accordingly.

Sd/-
Member (G)

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



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29/08/12
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Assistant Director
Competition Commission of India
New Delhi