

COMPETITION COMMISSION OF INDIA

Case No. 28/2012

Dated: 4/10/2012

In re:

Shivang Agarwal & Anr.

... Informants

V.

Supertech Ltd. Noida

... Opposite Party

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

The present information was filed under section 19(1) of the Competition Act, 2002 ('the Act') by Shivang Agarwal and Shubham Agarwal (together referred to as 'the informants') against Supertech Ltd., Noida (opposite party). The informants submit that they booked one flat each measuring 930 sq. ft. @ Rs. 2890/- per sq.ft., in Supertech Cape Town project in Sector 74, Noida on payment of Rs. 51,000/- through cheques dated 22.11.2010, respectively. The informants were allotted flat no. RO26CV21604 and RO26CV21605 respectively.

2. The informants further submitted that they were informed that no preferential location charges would be levied on flats on the 12th floor and above. The informants accordingly opted for the same. The informants had booked the flats on the 16th floor of the project. The opposite party raised demand letters on various dates for payment which included preferential location charges @ Rs. 50/- per sq.ft. in case of flat no. RO26CV21604 and Rs. 150/- per sq. ft. in case of flat no. RO26CV21605, contrary to the stipulated terms and conditions and canceled their bookings vide separate letter dated 20.10.2011 for non-payment.



3. The informants further submit that the demand letter sent by the opposite party was for Rs. 14,13,747/- for flat no. RO26CV21604 which is 50% of the total sale price (Rs. 14,00,947/- after deducting the amount already paid). According to the informants, cost of the flat comes to Rs. 28,27,494/- and the price per sq.ft. would be Rs. 3040/- on the basis of the demand raised. Similarly, the demand letter for flat no. RO26CV21605 was sent for an amount of Rs. 13,67,249/- (Rs. 13,53,252/- after deducting the amount already paid) which is also 50% of the total sale price. The rate per sq.ft. of the flat comes out to Rs. 2940/- whereas the agreed rate was Rs. 2890/- per sq. ft in case of both the flats. Therefore, the opposite party is arbitrarily deciding the price and raising demand contrary to the agreed terms.
4. The informants further submitted that they wrote letters and brought the discrepancies to the notice of the opposite party on various dates. However, the opposite party instead of correcting the error went to raise fresh demand letters without incorporating the necessary changes. The informants allege *inter alia* contravention of section 4 of the Act by the opposite party for the charging PLC when the terms clearly provide the reverse, charging whimsical price and arbitrarily canceling the booking of the informants.
5. The informants submitted additional information to substantiate their allegation of discrimination and unfair pricing policy of the opposite party. The informants submitted some more documents to support their case of discriminatory practices adopted by OP. The informant gave the instance of one Abhishek Agarwal who booked a flat in the same project and was not charged any PLC even though his flat was on the 8th Floor. The instance of one Veerbala Gupta and Madhuleema Gupta was also been cited who had been charged Rs. 2800/- per sq.ft. (on 17.02.2011) and Rs. 2825/- per sq. ft. (on 05.01.2011) respectively, whereas the informants were charged Rs. 2890/- per sq. ft. eventhough they booked flats much before them.



6. The grievance of the informants apparently shows infringement of contractual terms *ad idem*. The informants allege contravention of section 4 of the Act without explaining whether the opposite party holds a dominant position in the relevant market. The informants were called on 10.07.2012 by the Commission to present his case. The informants submitted that the opposite party has conducted in an unbecoming manner and discriminated against them. It seems that the opposite party cancelled the booking for non-payment of the installments, whereas according to the informant, the opposite party did not correct the demand letter (excluding PLC charges), and brought the informant before the Commission.
7. In order to attract provisions of the section 4 of the Act, the dominant position of the enterprise needs to be seen under explanation (a) to section 4 of the Act. Dominant position in explanation (a) to section 4 of the Act *inter alia* means enjoying position of strength in the relevant market in India enabling the enterprise to operate independent of the competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. Eventhough the opposite party is a leading real estate developer in Noida and Greater Noida, it does not hold dominance. The market is fragmented and many other players are present who can cater to the requirements of the customers like the informant in the present case. Therefore, the dominant position of the opposite party in the relevant market is not made out under section 4 of the Act. This Commission in Case No. 4/2012 and Case No. 5/2012 had considered the situation in respect of Noida and found that there were many builders constructing flats and shops/commercial space and the market was quite fragmented.
8. Unfair trade practices are adopted by many enterprises whether dominant or not. Every unfair trade practices or abuse done by an enterprise is not covered under Competition Act. Several aspects of the unfairness on part of service provider/goods provider are covered by the Consumer Protection Act. The two



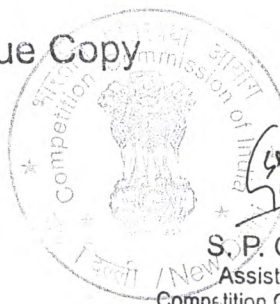
aspects covered by the Consumer Protection Act are unfair trade practice as well as charging of price in excess of the price agreed upon between the parties. The complaint of the informant about discriminatory conduct shown by opposite party may be true but it shall not be a matter under Competition Act, although it may be a good cause for consumer protection.

9. In the light of the above facts and situation, 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. It is ordered accordingly.

Secretary is directed inform all concerned to accordingly.

Certified True Copy

Sd/-
Member (D)



S.P. Gahlaut
08/X/2012
S.P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi