

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 cancelled 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 cancelling 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. even though 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 instalments, 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. The opposite party is one of the real estate developer in Noida and Greater Noida, each one being capable of catering to the requirements of the customers like the informant in this case. There



is nothing on record which gives any evidence of dominance of the OP. Therefore, the dominant position of the opposite party in the relevant market is not made out under Section 4 of the Act. The question of abuse of dominance, therefore, does not arise.

8. In the light of the above facts and situation, the Commission finds that no prima facie case has been made out against the opposite party for violation of the provisions of the Act and 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 to inform all concerned accordingly.

Sd/-
Member (G)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Chairperson

Certified True Copy


S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi