



In Re:

Vikrant Bhagi
S/o Sh. P. N. Bhagi,
R/o 129, First Floor, Navjivan Vihar,
New Delhi - 110017

Informant

And

- 1) M/s Media Video Limited
Regd Office : B-86/1,
Okhla Industrial Area,
Phase II,
New Delhi - 110020.
- 2) Smart Buildwell Pvt. Limited
Regd Office : B-86/1,
Okhla Industrial Area,
Phase II,
New Delhi - 110020.

Opposite Parties

CORAM:

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice S. N. Dhingra (Retd.)
Member

Mr. S. L. Bunker
Member

Present: Sh. P. K. Mullick and Mrs. Soma Mullick, Advocates for the Informant.

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

The Informant alleged abuse of dominant position by M/s Media Video Limited and Smart Buildwell Private Limited, (collectively referred as the '**Opposite Parties**') and individually as



OP1/OP2 respectively), in contravention of the provisions of section 4 of the Competition Act,2002, (the 'Act') with respect to sale of residential units by OP1 in their residential project, Arcadia on Bhiwadi - Alwar Bypass, Village Sadipur, Tehsil Tizara, District Alwar, Rajasthan, (the '**Project**').

1. The informant stated that he booked a 3BHK Apartment measuring 1650 sq. feet super area, ('**Residential Unit**') vide a Buyer-Builder Agreement dated 23.07.2007 with OP1. The land of the Project was owned by OP2 and the Project was being developed by OP1. It was agreed that the possession of the Residential Unit would be handed over to the informant within 36 months but till date i.e. even after expiry of 69 months, possession was not handed over to the Informant. The Informant had made payment of 95% consideration i.e. Rs. 33,61,500, as and when demanded and the remaining 5% would be paid when possession is handed over to the Informant.
2. The Informant wanted to transfer/sell the Apartment in question and executed a Buyer-Seller Agreement with a third party/buyer, with the condition that the transfer formalities by OP1 shall be completed by 30.07.2012. The Informant had also received earnest money of Rs. 5 lakhs from the buyer. Since, the Informant failed to secure permission of OP1 to transfer the Apartment in favour of the Buyer, the date of completion of formalities was extended till 31.03.2013. Informant served a notice dated 16.02.2013 on OP1 for transfer of the Apartment to third party in terms of article 8(e) of the Buyer-Builder Agreement. OP1, through letter dated 22.02.2013, refused to permit the Informant to transfer the Residential Unit to any other party. Informant was, therefore, compelled to return the earnest money of 5 lakhs as well as a penalty of Rs. 5 lakhs to the Buyer.
- 3- The informant further alleged that as per clause 4(e) of the Builder Buyer Agreement, if OP1 was not able to offer the Apartment to the buyer, it would offer an alternative property or refund the amount with



interest @ 10% per annum, without any further liability to pay damages or compensation, but which were not being followed in practice. Further, in contradiction, the demands for delayed payments were being raised by the OP1 against allottees of flats.

4. The Informant also alleged that the failure of OP1 to deliver possession even after 69 months and the unjustified refusal of OP1 to grant permission to Informant to transfer the Apartment after payment of 95% consideration amounts to abuse of its dominant position by the OP1. The informant further contended that the Buyer-Builder Agreement between OP1 and the informant did not clearly mention any conditions which might be imposed on transfers to third party and also did not allow OP1 to impose any such condition as it might deem fit.
5. To emphasize the abuse of dominance of OP1, Informant stated that since he had paid almost the entire consideration for the Apartment, it was not possible for him to walk out of the Agreement and OP1 was abusing its dominant position by neither giving possession of Apartment to Informant nor permitting the Informant to transfer the Apartment to a third party.
6. The Commission considered all relevant records including information and oral submissions made by the Advocates for the informant.
7. For looking into the contravention of Section 4 of the Act, first, it is necessary to consider as to what will be the relevant market in this case. Section 2(r) read with section 19(5) of the Act requires determination of relevant market with due regard to the relevant geographic market and relevant product market. Section 2(t) defines relevant product market as 'a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use'. Further section 2(s) defines relevant



geographic market as ‘a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas’. The informant in the present case was a buyer of residential apartment developed by OP 1 on the Bhiwadi Alwar Bypass. Keeping in view the above aspects, relevant market would be ‘the provision of services of development and sale of residential apartments in Bhiwadi and its nearby places in District Alwar, Rajasthan.’

8. As regards the question of dominance under section 4 of the Act, the information on record is insufficient to establish dominance of OP1 in the relevant market. Section 19(4) of the Act states that the Commission needs to consider various factors stated under that section while assessing whether an enterprise enjoyed a dominant position or not. The residential units are easily substitutable with residential units of equivalent or proximate size in other similar residential projects. As per the information in public domain, there are numerous upcoming residential projects in the relevant geographical market, a few of which are on verge of completion and some residential projects are in different stages of completion. Further, many other Real Estate developers namely Avalon, Nimai Developers Pvt. Ltd., Terra Realcon Group, Krish City, Genesis, are offering residential units of same as well as similar specifications and area. further, presence of many other real estate developers indicate that informant was not solely dependent upon the OP 1 for purchasing of residential flat. None of the factors stated under section 19(4) of the Act seem to support dominance of opposite party in the relevant market. Therefore, the OP 1 does not *prima facie* appear to be dominant in the relevant market. In the absence of dominance of OP1 in the relevant market, there is no *prima facie* reason for abuse of the same in that market.
9. In view of the above discussion, the Commission found that there does not appear to exist a *prima facie* case for causing an investigation to be



made by the Director General under section 26(1) of the Act. The allegations related to unfair trade practices, deficiency in services, recovery/ damages etc. may be pleaded at other appropriate fora, if the informant so desires. It is thus a fit case for closure under section 26(2) of the Act and the same is hereby closed.

10. The Secretary is directed to inform the parties accordingly.

New Delhi
Date 03/09/2013

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
Anurag Goel
(Member)

Sd/-
(M. L. Tayal)
Member

Sd/-
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