



COMPETITION COMMISSION OF INDIA
Case No. 31 of 2015

In Re

Shri Aayush Garg

Present address:

C-194-Madhuban, Delhi

Permanent address:

30, Sohan Lal Street,

Delhi Gate, Ghaziabad (U.P.)

Informant

And

K.D.P. Infrastructure Private Ltd.

A-213, Shanti Gopal Chambers,

2nd Floor, Vikas Marg,

Laxmi Nagar, Delhi

Opposite Party No. 1

Shri K.K. Goel

Chairman

K.D.P. Infrastructure Private Ltd.

A-213, Shanti Gopal Chambers,

2nd Floor, Vikas Marg,

Laxmi Nagar, Delhi

Opposite Party No. 2

Shri Anuj Goel

Executive Director

K.D.P. Infrastructure Private Ltd.

A-213, Shanti Gopal Chambers,



सत्यमेव जयते



**2nd Floor, Vikas Marg,
Laxmi Nagar, Delhi**

Opposite Party No. 3

**Shri Tanuj Goel
Executive Director
(Commercial & Financial Activity)
K.D.P. Infrastructure Private Ltd.
A-213, Shanti Gopal Chambers,
2nd Floor, Vikas Marg,
Laxmi Nagar, Delhi**

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**

Present: Shri Chatanya Siddharth, Advocate for the Informant.



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

1. The present information has been filed by Shri Aayush Garg (hereinafter referred to as the '**Informant**') against KDP Infrastructure Pvt. Ltd. (hereinafter referred to as "**OP-1**"), Shri K. K. Goel, Chairman, KDP Infrastructure Pvt. Ltd. (hereinafter referred to as "**OP-2**"), Shri Anuj Goel, Executive Director, KDP Infrastructure Pvt. Ltd. (hereinafter referred to as "**OP-3**") and Shri Tanuj Goel, Executive Director, KDP Infrastructure Pvt. Ltd. (hereinafter referred to as "**OP-4**") under section 19(1)(a) of the Competition Act, 2002 (the "**Act**") alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
2. Facts of the case may be briefly noted:
 - 2.1 As per the information, the Informant has purchased a 3 BHK flat of 1550 sq. ft. area in the project '*KDP Grand Savanna*' being developed by OP-1 at Raj Nagar Extension on 14.10.2011 and paid a total sum of Rs.34,66,540/- out of the total cost of the flat *i.e.* Rs.36,48,800/- in 2011 itself.
 - 2.2 The Informant alleged that OP-1 accepted the initial payment from the Informant without providing terms & conditions in writing and only oral assurance was given regarding the date of possession of the flat. On 14.10.2011, OP-1 provided allotment letter to the Informant whereupon the Informant found that it was contrary to oral assurance, one sided, unilateral, arbitrary and unfair.
 - 2.3 It is further alleged that the flat was supposed to be handed over by December 2012, but OP-1 has not provided it till the date of filing of the information. OP-1 conveyed *vide* letter dated 25.06.2013 that the possession of the said flat would be given to the Informant by March 2014. Thereafter, the Informant visited the site of the project and found that the construction work has been stopped on the site since long.



Hence, it has been alleged that OP-1 has cheated the Informant by accepting the amount of the flat without completing the construction. Due to non-delivery of possession of the flat, the Informant is compelled to stay in rented accommodation and facing financial losses because of rent and extra interest payment against the loan, which has been availed from Axis Bank for payment of the flat. A legal notice dated 11.02.2015 is stated to have been served by the counsel of the Informant to OP-1, but no response was sent by OP-1.

2.4 Based on the above information and allegations, the Informant has prayed, *inter alia*, for initiating action against OP-1 for abuse of its dominant position and indulging in unfair trade practices. In support of his case, the Informant has cited DLF case, decided by the Commission.

3. The Commission perused the material available on record including the information and heard the counsel for the Informant on 26.05.2015.

4. The Informant seems to be primarily aggrieved by the conduct of OP-1. Therefore, considering the issues in the present matter, it appears that the relevant product market would be the “*services of development and sale of residential flats*”. With regard to the geographic market, it may be noted that the consumers, looking for a residential apartment in Ghaziabad, may not prefer other areas. Various factors like distance to locations frequently commuted, 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 Commission is of the view that geographic market would be “*Ghaziabad*”. Thus, the relevant market appears to be “*services of development and sale of residential flats in Ghaziabad*”.



5. The definition of “dominant position” as provided in section 4 of the Act, essentially links the same with the concept of market power which allows an enterprise to act independently of competitive constraints. Such independence allows an enterprise to affect the relevant market in its favour and results in the economic detriment to its competitors and consumers. In the present case, based on the information available in public domain (Source: <http://www.rajnagarextn.com/> and individual websites of real estate developers), the Commission observes that apart from OP-1, there are many other large real estate developers operating in the relevant market such as Amarpali Group, Anjara, Value Infra, Techman Buildwell Pvt. Ltd, Shree Energy Group, SCC Builders, Quantum, Krishna Assets Developers Pvt. Ltd., Vidur Developwell, A R Buildtech Private Limited, Dwarikaraj, SVP Group, Himalaya Pvt. Ltd etc. The presence of other builders in the relevant market indicates that OP-1 may not be enjoying dominant position in the relevant market.
6. Another factor for determination of dominance is the dependence of consumers on the enterprise. All the real estate developers are competing with each other in the relevant market with projects of varying magnitudes and having comparable size and resources. Presence of other players with comparable projects in the relevant market indicates that the buyers have options to buy flats from other developers in the relevant geographic market. The buyer does not seem to be completely dependent on OP-1.
7. Further, it is observed that no information is available on record or in the public domain indicating the position of strength of OP-1, which enables it to operate independently of competitive forces prevailing in the relevant market. Further, the Informant has also not produced any cogent material to show the dominance of OP-1. *Prima facie*, OP-1 does not appear to be dominant in the relevant market. In the absence of dominance of OP-1 in the relevant market, its conduct need not to be examined under the provisions of the section 4 of the Act.



8. In light of the above analysis, the Commission finds that no, *prima facie*, case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.
9. The Secretary is directed to inform all 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**

**New Delhi
Date: 04.06.2015**