



COMPETITION COMMISSION OF INDIA

Case No. 31 of 2018

In Re:

**Mr. Milind Madhavrao Bhadane
603, Suvastu DGP Nagar No.- 2
Gulmohor Colony
Near Mauli Lawns, Ambad
Nashik-422010**

Informant

And

**Mr. Viraj Lomate, Director
Shree Yashashree Construction Pvt. Ltd.
13, Shradhdha Sankul Old Gangapur Naka,
Nasik-422005**

Opposite Party

CORAM

**Mr. Sudhir Mital
Chairperson**

**Mr. Augustine Peter
Member**

**Mr. U.C. Nahta
Member**

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

1. The present information has been filed by Mr. Milind Madhavrao Bhadane ('the Informant') under Section 19(1)(a) of the Competition Act ('the Act') against Mr. Viraj Lomate, Director, Shree Yashashree Construction Pvt.



Ltd. ('the Opposite Party'/OP) alleging *inter alia* contravention of the provisions of Sections 3 and 4 of the Act.

2. The Informant is stated to be a purchaser of a residential flat bearing No. A-603 on 6th Floor of Suvaastu Building, developed by the OP in City of Nashik. The OP is engaged in the business of providing real estate services including works in the fields of architecture, consultancy, landscape designing and construction and development of various residential and commercial complexes.
3. The Informant has alleged that despite opposition from the flat owners, the OP is planning to construct additional floor on the said building for creating more floor space. Further, it is alleged that the OP is not issuing the sale deed, occupancy certificate and conveyance deed to the flat owners as agreed under the registered Flat Purchase Agreement dated 04.07.2012 ('agreement').
4. The Informant has further alleged that the OP has declared himself as the President of the Building Committee without being so elected by the flat owners. It has also been stated that the OP is abusing its dominant position by forcing the flat owners to give consent for construction of additional floor and made it as a prerequisite for handing over sale deed, occupancy certificate *etc.* Further, it has been alleged that that the OP is illegally occupying and using part of building premises as his office.
5. Based on the above averments and allegations, the present information has been filed by the Informant against the OP, alleging contravention of the provisions of Sections 3 and 4 of the Act.
6. The Commission has perused the information and the documents filed along with the information and also considered the material available in the public domain.



7. At the outset, the Commission notes that though the Informant has alleged contravention of the provisions of both Sections 3 and 4 of the Act, yet looking at the nature of the allegations, the provisions of Section 3 of the Act have no application to the present case as the Informant and the OP are neither operating at the same level in the market nor are they part of same production/supply chain.
8. It is also observed that, while the Informant has alleged contravention of the provisions of Sections 3 and 4 of the Act against Mr. Viraj Lomate, Director of Shree Yashashree Construction Pvt. Ltd., but looking at the nature of the allegations made in the information the Commission deems it appropriate to analyse the present case in reference to the said Company. Accordingly, the allegations will be analysed *qua* the OP/Company.
9. As noted earlier, the OP is engaged in the business of providing real estate services including works in the field of architecture, consultancy, landscape designing and construction and development of various residential and commercial complexes. The activities performed by the OP are economic activities and are being carried on for commercial consideration. Thus, the Commission is of the view that by virtue of the above activities performed by the OP, it falls within the definition of the term 'enterprise' as defined in Section 2(h) of the Act.
10. For the purpose of examining the allegations under the provisions of Section 4 of the Act, it is necessary to first determine the relevant market. Thereafter, the Commission is required to assess whether the OP enjoys a position of strength required to operate independently of the market forces in such relevant market. Only when such a position is established, the Commission has to assess whether the impugned conduct amounts to abuse of dominance.



11. The Commission notes that the present matter pertains to real estate sector, wherein a residential unit is different from commercial unit. Further, the Commission is of the view that the provision of services for development and sale of standalone house, villa *etc.* is also distinct product compared to services for development and sale of residential flats/apartments. While standalone house, villa *etc.* allow buyers to decide on their own discretion the floor plan, structure and other specifics of dwelling units subject to applicable regulations, no such discretion is available to a buyer of a residential flat. Hence, residential flat forms a separate relevant product market. Accordingly, the relevant product market in the instant case is delineated as the '*market for provision of services of development and sale of residential flats*'.
12. In respect of the relevant geographical market, the Commission notes that a person intending to buy a residential flat in Nashik may not prefer to purchase the same in other areas because of factors such as price, distance to locations frequently commuted, locational preferences, availability of transport facilities *etc.* However, the conditions of competition for demand and supply of development and sale of residential flats within the City of Nashik may be considered as homogeneous and the same can be distinguished from other areas. Thus, the relevant geographic market in this case may be considered as '*City of Nashik*'.
13. Thus, the relevant market in the present case is the '*market for provision of services of development and sale of residential flats in City of Nashik*'.
14. On the issue of the dominance of the OP in the aforesaid relevant market, the Commission observes from the information available in the public domain that Karda Constructions, Nirman Group, Roongta Group *etc.* are the top builders having the maximum number of completed and ongoing projects in the above mentioned relevant market. In contrast, the OP has 5



completed and 9 ongoing projects in the defined relevant market. The number of completed and ongoing projects by prominent builders in the City of Nashik is provided below:

The number of completed and ongoing projects by prominent builders in the City of Nashik

S. No.	Name of the Developer	Completed Projects	Ongoing Projects	Total
1.	Karda Constructions	35	17	52
2.	Roongta Group	33	15	48
3.	Nirman Group	20	04	24
4.	Anmol Nayantara	02	12	14
5.	Shree Yashashree Construction Pvt. Ltd. (OP)	05	09	14
	Total			152

Source: See <https://www.makaan.com/nashik/top-builders> (accessed on August 30, 2018, 02:22 PM)

15. From the above, the Commission notes that the OP has less than 10% of the total ongoing and completed real estate projects in the City of Nashik. Further, it is observed that there are other prominent/significant private real estate service providers developing residential flats in Nashik, indicating that consumers are not dependent on the OP alone for provision of real estate services. Thus, the Commission observes that the OP cannot be said to be dominant in the above defined relevant market.
16. In view of the above assessment, the Commission is of the view that the OP is not dominant in the defined relevant market in terms of the provision of Section 4 of the Act.
17. Accordingly, the Commission is of the view that no case of contravention of the provisions of Sections 3 or Section 4 of the Act is made out against the OP and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



18. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-
(Sudhir Mital)
Chairperson**

**Sd/-
(Augustine Peter)
Member**

**Sd/-
(U.C. Nahta)
Member**

**New Delhi
Date: 18/09/2018**