



In Re:

Mr. Achyut P. Rao,
R/o - L-004,
Designarch e-Homes,
GH-06, Sector - 5,
Vaishali,
Ghaziabad - 201014 (UP)

Informant

And

M/s. Designarch Infrastructure Pvt. Ltd.
Represented by: Sh. M. K. Jain, Chairman
Office: 31, Shankar Vihar, Near V3S Mall,
Vikash Marg, New Delhi - 110092

Opposite Party

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. S. K. Pal, Advocate for the Informant.

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

The information was filed by Achyut P. Rao ('**Informant**') under section 4 of the Competition Act, 2002 (hereinafter referred to as the '**Act**') alleging abuse of dominance by Designarch Infrastructure Pvt. Limited ('**OppositeParty/OP**') for adopting anti-competitive practices for the allotment of their designer homes branded as e-homes i.e. electronic/eco-friendly homes (hereinafter referred to as '**e-**



homes'). The informant is the allottee of two such e-homes, one each in Vaishali and Greater Noida.

- 1) The Informant alleged that the e-homes developed by OP were to attract buyers who wanted to buy homes pre-fitted with hi-tech gadgets like wifi, finger print security system, parkings etc. and that such pre-fitted gadgets would save the buyer of the home from incurring the cost and inconvenience of getting such gadgets installed later.
- 2) The informant also contended that the OP created the special category of e-homes and had acquired a 100% dominant status/market share for being the only real estate developer to design and develop such e-homes in Delhi. The Informant further alleged that as a result of the dominance enjoyed by OP, OP started demanding high premiums and forced allottees to sign an Allotment Agreement, after collecting booking amounts from allottees. Allottees who refused to sign the Allotment Agreement were threatened with cancellation of allotment. The informant further alleged that contrary to the provisions of UP Act, OP took advantage of Allotment Agreement, and changed the layout plan in 2010, against the previous plan sanctioned by UPSIDC in 2008. The Informant contended that the Allotment agreement was in violation of section 3 of the Act as well as provisions of Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Act, 2010 (hereinafter referred to as the 'UP Act') which imposes obligations upon the builder/promoter/developer to make true disclosure of all details before allotment, but the OP failed to provide all such information to the allottee.
- 3) The Informant has further stated that as per provisions of the UP Act, the OP is required to make disclosure about rights and title to land, details of building in which apartments are proposed to be constructed, encumbrances on land, building, title, interest, nature of fixtures, fittings, amenities, designs and specifications, materials proposed to be used in construction including structural, architectural drawings, layout



plans, no objection certificates from Fire Department, details of outgoings including ground rent, municipal and other taxes, water and electricity charges etc. to the buyers/allotees but the OP failed to do so. The OP also failed to specify the date by which possession shall be transferred to allotees, contrary to section 4(2)(a) of the UP Act which obligates the developer to specify the date by which construction is to be completed, subject to force majeure. Lastly, it has been contended by the Informant that the conditions imposed by OP to cancel bookings/flats are arbitrary and leave with no exit option to the allotees, contrary to the mandate of section 4(2) (b) and 4(2) (c) of the UP Act.

- 4) The Commission considered all relevant records including information and oral submissions made by the Advocate for the informant.
- 5) For looking into the contravention of Section 4 of the Act, it is necessary to delineate the relevant market in a particular 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 the OP in the Delhi NCR area. Informant has stated that ‘the provision for services of e-home’ is a distinct product having separate market for itself. This argument does not seem to be convincing because the facilities being provided by the OP like pre-fitted hi-tech gadgets i.e. wifi, finger print security system, parking etc.



can easily be installed in any house without much structural modifications and alterations. That ways, e-homes in question cannot be said to be different product from other residential apartments/flats. As such, keeping in view the facts of this case, the *relevant market* would be the provisions of services of ‘development and sale/purchase of residential units’ in Delhi NCR.

- 6) As regards the question of dominance under section 4 of the Act, there has been no information in the public domain to prove that the OP is a dominant real estate developer in the relevant market and has been abusing its position of dominance. 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 several upcoming residential projects in Delhi NCR and OP is not the only real estate developer in the relevant geographical market. 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 does not *prima facie* appear to be a dominant player in the relevant market. In absence of dominance of OP in the relevant market, there is *prima facie* no reason for abuse of the same in that market.
- 7) As regards the allegation of contraventions of provisions of the UP Act, it is stated that remedy for these issues does not lie before the Commission and the informant may approach the appropriate forum for that purpose.
- 8) In view of the above discussion, *prima facie* there does not exist any case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.



9) 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/-
(S. N. Dhingra)
Member

Sd/-
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