



Case No. 33 of 2013

**In re:**

Mr. Rajiv Kumar Chauhan .....Informant  
Flat No: S-1, Plot No.54-55, Pocket-1,  
Sector-7, Vaishali Extension, Ghaziabad

And

M/s BPTP Ltd., BPTP Crest, Plot No.15, .....Opposite Party (OP)  
Udyod Vihar, Phase-IV, NH—8, Gurgaon

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

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

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

Informant booked a residential unit in a project called “Park Elite Floors, Parkland, Faridabad” being developed by OP in Faridabad. The initial cost of the said unit was declared to public at large Rs. 25.56 lacs + EDC & IDC (external and internal development charges). OP launched the units with payment plan for the potential buyers who were supposed to make 35% payment before the Floor Buyers’ Agreement (‘the Agreement’) could be entered into. The informant and OP entered into the Agreement after 35% of purchase price was paid by the informant. The Agreement laid down the terms and conditions required to be complied by both the parties. The informant alleged several malpractices on the part of OP and alleged that OP abused its dominant position in the market of residential flats in the area of Faridabad.



The informant prayed the Commission to initiate investigation on the abusive conduct of OP in the relevant market.

2. The Commission perused the information on record and heard the informant. Dealing with section 4 of the Act, the facts and circumstances of the matter suggests that the relevant market in the present case is the market of 'development and sale of residential apartments in Faridabad'. The informant alleged that the opposite party, being a dominant player in the relevant market, abused its dominant position by unilaterally changing terms of the agreement, increasing super built up area, illegitimately demanding cost escalation charges, delaying possession etc. Before considering alleged abuses, the dominance of opposite party needs to be established. The documents submitted by the informant to establish dominance of OP are draft red herring prospectus, some newspaper articles etc. None of these substantiates informant's case. The draft red herring prospectus gives an overview of the booming real estate industry to attract investors for OP's public issue of equity shares. Self claim of being the 'biggest' or 'No. 1' by companies do not amount to establishment of dominance as required under the Act. The Explanation to section 4 categorically states

*(a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—*

*(i) operate independently of competitive forces prevailing in the relevant market; or*

*(ii) affect its competitors or consumers or the relevant market in its favour.*

3. Applying the above stated test on the relevant market determined in the present case, OP does not appear to be a dominant player. The information available in public domain indicated that in the relevant market of 'development and sale of residential apartments in Faridabad' there were many real estate developers such as SRS Group, Omaxe, Rise Developers, Ansal Buildwell Ltd., Puris Constructions Pvt. Ltd., RPS Infrastructure Ltd., ORS Infrastructure etc.; operating and competing with each other. Though the Opposite Party was one of the known builders in the relevant market, that fact in itself is not decisive for establishing dominance. The Commission in 'Ajit



*Mishra and Supertech Ltd'* (Case No. 03/2013) observed that, the presence of other well known builders in the relevant market negates the contention that informant or any other consumer was dependent on the opposite party to purchase an apartment. In Case no. 42/2010 the Commission had occasion to consider the dominance of OP in the year 2010. The Commission, vide its order dated 16.12.2010 passed under Section 26 (2) of the Act, held that M/s BPTP Ltd. (OP) was not in a dominant position in the relevant market as defined above. No change in circumstances has come to the notice of Commission warranting a different view now. The information available in public domain also does not suggest any material change in the real estate industry in the relevant market of 'development and sale of residential apartments in Faridabad' so as to change the prima facie view with regard to dominance of the OP. Presence of other builders of repute also shows prevalence of competition. It is not a case where OP could operate independent of competitive forces.

4. Since OP, *prima facie*, does not appear to be in a dominant position in the relevant market, there seems to be no question of abuse of its dominant position within the meaning of the provisions of Section 4 of the Act.

5. For the reasons stated above, the case deserves to be closed down under section 26(2) of the Act. The Secretary is directed to inform the parties accordingly.

New Delhi

Dated: 31/07/2013

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Dr. Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(S. N. Dhingra)  
Member