



COMPETITION COMMISSION OF INDIA

Case No. 33 of 2015

In Re:

**Shri Hardev Singh,
S/o Shri Parmal Singh,
R/o 8/33, Chiranjeevi Vihar,
Ghaziabad, U.P.**

Informant

And

**S.M.V. Agencies Pvt. Ltd.,
Jaipuria Group,
Jaipuria Sunrise Plaza, 12-A,
Ahinsa Khand, Indirapuram,
Ghaziabad, U.P.**

Opposite Party No. 1

**Shri Surya Kanth Jaipuria,
R/o 8, Prithavi Raj Road,
New Delhi**

Opposite Party No. 2

**Smt. Manju Jaipuria,
R/o 8, Prithavi Raj Road,
New Delhi**

Opposite Party No. 3

**Shri Vaibhav Jaipuria,
R/o 8, Prithavi Raj Road,
New Delhi**

Opposite Party No. 4

**Ms. Sripriya Jaipuria,
R/o 8, Prithavi Raj Road,
New Delhi**

Opposite Party No. 5



**Shri Pratha Sarathi Kumar,
12, Prime Rose Lane, Ashiana Garden,
Sonari, Jamshedpur,
Jharkhand**

Opposite Party No. 6

**Shri Arun Kumar Agarwal,
R/o B-267, East Loni Road,
Delhi**

Opposite Party No. 7

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**



Appearance: Shri Harsh Ahuja, Advocate for the Informant.

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

1. The present information has been filed under section 19(1) (a) of the Competition Act, 2002 (the 'Act') by Shri Hardev Singh (hereinafter referred to as the '**Informant**') against S.M.V. Agencies Pvt. Ltd., (**OP 1**), Shri Surya Kanth Jaipuria (**OP 2**), Smt. Manju Jaipuria (**OP 3**), Shri Vaibhav Jaipuria (**OP 4**), Ms. Sripriya Jaipuria (**OP 5**), Shri Pratha Sarathi Kumar (**OP 6**) and Shri Arun Kumar Agarwal (**OP 7**) alleging, *inter-alia*, contravention of the provisions of section 4 of the Act.
2. Facts of the case may be briefly noted:
3. As per the Information, OP 1 is a division of the 'Jaipuria Group' and is engaged in the business of real estate development. OP 2 to OP 7 are stated to be the Directors of OP 1.
4. It is submitted that the Informant had booked a plot admeasuring 200 square yards on 19.08.2006 @ Rs.7200/- per square yard for a total cost of Rs.14,40,000/- in a housing project being developed by OP 1 by the name of 'Jaipuria Sunrise Greens' (hereinafter referred to as the "Project") in Ghaziabad, U.P.
5. It is stated that OP provisionally allotted a unit no. D-151 on 27.11.2006 in the said project and had assured that the final allotment and possession would be made by December 2008. It is submitted that the Informant had deposited nearly 94% of the amount towards the total cost of the said plot till 16.11.2011.



6. It is alleged that OP 1 subsequently changed the provisional allotment of plot no. D-151 to D-176 and then again to C-286. Further, the area of plot is also alleged to have been reduced from 200 square yards to 180 square yards despite objections raised by the Informant in this regard.
7. The Informant has averred that no construction work was started by OP 1 in the Project till 20.01.2010 i.e., even after four years from the date of booking of the said plot. OP 1 and its officials did not give any satisfactory response. The Informant has further alleged that OP 1, deviating from its commitment given at the time of booking, did not provide 45 meter wide link connectivity road from National Highway 24 to the Project.
8. It is submitted that an FIR was lodged on 18.11.2010 by the Informant with the Economic Offences Wing (E.O.W.) under different sections of Indian Penal Code (IPC) against OPs for not commencing the construction work in the Project. OP 1 is stated to have given assurance for the commencement of the construction work at the site and also to resolve the dispute amicably. It is alleged that the requisite approvals from the concerned authorities were obtained by OP 1 in 2011, which indicates that it had no intentions to complete the Project.
9. It is further alleged that OPs levied extra charges like Preferential Location Charge (PLC)/EDC/ADC *etc.*, which were never agreed at the time of booking. OPs allegedly increased the rate from Rs.7,200/- per square yard to Rs.13,462/- per square yard which was strongly objected to by the Informant *vide* his letter dated 13.08.2011.
10. It is averred that the agreement to sell/ allotment letter and other documents were in favour of OPs and had defeated the rights of the buyers to raise any objections or to take recourse of legal remedy against any unfair demand/change in the plot area or construction/against any



deliberate or inordinate delay/damages/ right to complaint *etc.* The Informant has pointed out, *inter alia*, following clauses of the agreement which are unfair and abusive:

- a) That clause 6 of the agreement does not specify the amount or percentage to be paid by the buyer towards PLC/ EDC;
- b) That clause 7 of the agreement imposes penalty of 24% per annum on delayed payment whereas OP 1 is liable to pay only simple interest @ 9% per annum to the Informant for the delayed possession beyond 6 months on the amount up to the date the said possession is made.
- c) That clause 10 of the said agreement, in terms of which the buyer is required to pay necessary charges including security for maintaining and up keeping of the town and providing various other services, is alleged to be an abuse of its dominant position by OP 1.

11. The Informant has placed reliance on earlier Case No. 84 of 2012 in the matter of *Shri Vijay Kapoor Vs. DLF Universal Limited* which was decided by the Commission. The Informant, in order to substantiate his allegations, has also cited the case of *Brig. (Retd.) Kamal Sood Vs. M/s. DLF Universal Ltd.*, which was decided in the year 2007 by the National Consumer Disputes Redressal Commission (NCDRC). The Informant has submitted that another case was also filed by him before the Consumer Dispute Redressal Forum against the conduct of OPs.

12. Based on above allegations and the information, the Informant has alleged that the conduct of OPs is in contravention of the provisions of section 4(2)(a)(i) of the Act. Thus, the Informant has prayed, *inter alia*, for initiation of an inquiry under section 19 of the Act.



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13. The Commission has perused the material available on record including the information and had heard the counsel on behalf of the Informant on 24.06.2015.
14. The Commission notes that the present case relates to residential plots in a housing project being developed by OP 1 by the name of 'Jaipuria Sunrise Greens' in Ghaziabad. The Informant appears to be aggrieved primarily by the imposition of unfair terms and conditions in the Agreement/ provisional allotment letter by OP 1 for which the conduct of OP 1 needs to be analysed under section 4 of the Act.
15. Having regard to the facts of the case, the Commission is of the opinion that the relevant product market in the present case would be the market of "*services of development and sale of residential plot*".
16. It is noted that the Informant had booked a residential plot in the project which was situated in Ghaziabad. It is observed that the consumers, looking for a residential plot in Ghaziabad, may not prefer other neighbouring areas due to various factors such as proximity to workplace, regional or personal preference, transport connectivity *etc.* These factors seem to play a decisive role in a potential buyers's decision making process while choosing any residential property in a particular area. Based on the foregoing, the Commission is of the firm view that the relevant market in the present case would be the market of "*services of development and sale of residential plots in Ghaziabad*".
17. After demarcation of the relevant market, the Commission will examine the dominance of OP 1 in the relevant market. The underlying principle of the definition of a dominant position is linked to the concept of market power which allows an enterprise to act independently of competitive constraints.



18. In order to examine the dominance of OP 1 in the relevant market, the Commission will consider the details of real estate developers who are engaged in services of development and sale of residential plots in Ghaziabad. As per the information available in the public domain, there are many other real estate developers who are engaged in services of development and sale of residential plots in Ghaziabad such as GolfLinks, SKR Group, S K Realinfra, Aarvanss Infrastructure Pvt. Ltd., Wave Infratech, and Earthempire Realcon Pvt. Ltd., having one project each which are being developed by them. Further, Anshika Infratech & ARK Group both have two projects each while Golden Wave Infratech which has four projects in the relevant market. As per the information available in the public domain, OP 1 has only one project in the relevant market. The presence of other builders in the relevant market with projects of varying magnitudes and having comparable size and resources shows that OP 1 is not enjoying dominant position in the relevant market.

19. With the presence of so many players in the relevant market and consumers having varied options to choose from, the Commission is of the considered view that OP 1 neither has a position of strength, which gives it the power to act/operate independently of its competitors nor has the ability to affect its competitors/consumers in the relevant market. Further, the Informant has also not produced any cogent material to show the dominance of OP 1 in the relevant market. Thus, *prima facie*, OP 1 does not appear to be in a dominant position in the relevant market. In the absence of dominance of OP 1, its conduct need not be examined under the provisions of section 4 of the Act.



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20. 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 OPs in the present case. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

21. The Secretary is directed to inform 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: 09/09/2015