



COMPETITION COMMISSION OF INDIA

Case No. 33 of 2016

In Re:

M/s Rex Propbuild Pvt. Ltd.

Through its Authorized Representative

Shri S. C. Jain

A-23, New Office Complex,

Defence Colony,

New Delhi-110024

....Informant

And

M/s Parsynath Developers Ltd.

6th Floor, Arunachal Building,

19, Barakhamba Road,

New Delhi-110001

....Opposite Party

CORAM

Mr. Devender Kumar Sikri

Chairperson

Mr. S. L. Bunker

Member



Mr. Sudhir Mital

Member

Mr. U. C. Nahta

Member

Dr. M. S. Sahoo

Member

Mr. Justice G. P. Mittal

Member

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

1. The information in the present case has been filed by M/s Rex Propbuild Pvt. Limited (hereinafter, the '**Informant**') through its authorized representative Mr. S.C. Jain under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s Parsvnath Developers Limited (hereinafter, the '**Opposite Party**'/ '**OP**') alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. The Informant is stated to be a company incorporated and registered under the Indian Companies Act, 1956. The Opposite Party is a real estate company engaged in providing services of development and sale of commercial and residential real estate projects in major parts of India.
3. As per the information, the Informant had booked a residential flat bearing No. D-6/401, 4th Floor having approximately 3400 sq. ft. area including car parking,



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in the project known as “Parsvnath Exotica” located at Sector 53, Gurgaon, Haryana (hereinafter, the ‘**Project**’) on down payment basis.

4. The Informant has submitted that a Flat Buyer Agreement (hereinafter, the ‘**Agreement**’) was executed between the parties on 29th December, 2007 for a total consideration of Rs.1,36,00,000/- (Rupees One Crore and Thirty Six Lakh only) (hereinafter, the ‘**total consideration**’). At the time of entering into the agreement, the Informant had paid a sum of Rs.98,56,000/- (Rupees Ninety Eight Lakh Fifty Six Thousand only), *vide* cheque bearing no.734001 dated 20th December, 2007 drawn on State Bank of India, New Delhi, to the Opposite Party. Clause 4 of the agreement provided that the Informant agreed to pay the remaining price on down payment basis as indicated in the payment plan GH of Annexure-I to the said agreement . The Informant had also made payments to the Opposite Party against the total consideration from time to time *i.e.*, on 24th January, 15th March, 13th June and 16th June of 2008. As per the Informant, it had made payments of up to 95% of the total consideration, *i.e.*, Rs.1,31,20,000/- (Rupees One Crore Thirty One Lakh and Twenty Thousand Only) to the Opposite Party except the amount of Rs.4,80,000/- (Rupees Four Lakh and Eighty Thousand only) as per the terms of the payment plan, with a hope that possession of the flat would be delivered on time, as per schedule mentioned in the said agreement.
5. It has been averred by the Informant that the agreement stipulated 36 month time limit for the construction of the project however, the Opposite Party failed to provide the flat to the Informant within the said period, *i.e.*, 29th December, 2010.
6. The Informant has contended that the Opposite Party is liable to pay compensation of Rs.20,40,000/- (Rupees Twenty Lakhs and Forty Thousands only) calculated @ Rs. 10 Sq. ft per month for the period of delay, as per clause



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10 (c) of the said agreement. Clause 10 (C) of the said agreement deals with grant of compensation to the buyer in case of delay by the Opposite Party in handing over possession and reads as *“In case of delay in construction of the flat beyond the period mentioned above, opposite party is liable to pay compensation of Rs.107.60 per sq. mtr. or @ Rs.10/- per sq. ft. of the super area of the flat per month for the period of delay”*.

7. It has been submitted by the Informant that the compensation amount payable by the Opposite Party for delay in completing the project and handing over the possession of the flat stands more than the balance amount payable by the Informant. After making adjustment of the balance amount of Rs.4,80,000/- (Rupees Four Lakh and Eighty Thousand only) payable by the Informant towards remaining sale consideration, the Opposite Party is liable to pay to the Informant Rs.15,60,000/- (Rupees Fifteen Lakh and Sixty Thousand only) in terms of clause 10 (c) of the agreement.
8. Clause 15(a) of the agreement provides that in case of delay in making payment of maintenance charges by the buyer to the Opposite Party/maintenance agencies, 24% interest per annum would be charged. The Informant has alleged that the compensation/damages paid for the period of delay in the construction of the flat as per clause 10 (c) of the agreement is very nominal in comparison to the interest charged for delay in making payment as per clause 15(a) of the agreement, which amounts to adoption of unfair trade practices and abuse of the position of dominance.
9. It has been submitted by the Informant that it had contacted at the Opposite Party's office several times and enquired about the stage of construction and completion of the project, but every time the officials of the Opposite Party did not give any proper response and also failed to update the status of the project and possible date for handing over the possession of the flat.



10. Thereafter, various correspondence were exchanged between the parties on the issue. The Opposite Party, *vide* letter dated 19th December, 2009 assured that the construction would be completed in September, 2010. Thereafter, the Informant had sent a legal notice to the Opposite Party on 20th June, 2013 and received a reply dated 25th July, 2013 from the Opposite Party intimating that possession was likely to be handed over by October 2013. Subsequently, the Opposite Party informed the Informant, *vide* letter dated 28th August, 2014, that the complex will be ready for living in almost three-four months but did not disclose the actual date of delivery and possession.

11. The Informant had sent another legal notice dated 23rd September, 2014 to the Opposite Party enquiring about the delivery and possession of the flat and received a reply from the Opposite Party on 18th October, 2014 where allegedly illusive reasons were cited for delay. The Informant finally sent one more legal notice dated 31st October, 2014 to the Opposite Party asking for possession of the flat and compensation on account of delay in handing over the possession.

12. The Informant has referred a case in the information titled as, *Subhash Chander Mahajan vs. Parsvnath Developer Limited*, involving similar issues against the same Opposite Party, where the National Consumer Dispute Redressal Commission, *vide*, order dated 05th May, 2014, directed the Opposite Party to pay back the amount deposited with interest at the rate of 18% per annum from the date of deposit till its realization for making delay in handing over the possession for seven years and also to pay compensation for harassment and mental agony, *etc.* along with costs of the case. The Informant has submitted copy of the judgement along with the information as Annexure-13.

13. It has been alleged by the Informant that the Opposite Party has diverted the money received from the buyers to other projects and grossly failed to complete the project and provide delivery within the scheduled time frame, which has



resulted into deficiency in service and an unfair/restrictive trade practice. The Informant has further alleged that the Opposite Party exercised its dominant position while getting the agreement signed from individual buyers and abused the same in an unfair or discriminatory manner by putting grossly unilateral, unfair and unreasonable terms/conditions in the agreement for sale of flats and thus, has violated the provisions of Section 4 of the Act. As per the Informant, these unfair trade practices of the Opposite Party has also directly or indirectly caused or likely to cause an appreciable adverse effect on competition in India, affecting the prospective buyers.

14. On the basis of above, the Informant has prayed, *inter alia*, to direct the Opposite Party to handover the possession of the flat and adjust the remaining balance payment payable by the Informant against the compensation amount payable by the Opposite Party and award Rs.15,60,000/- (Rupees Fifteen Lakhs and Sixty Thousand only) as compensation for delay caused by the Opposite Party in handing over the possession of the flat. The Informant has also prayed to declare the clauses of the agreement void, being unreasonable and arbitrary, and to pass any other order as the Commission deems fit. The Informant has prayed that, in the alternative, the Commission may direct the Opposite Party to return the total amount deposited with interest at 24% per annum and award compensation for delay, harassment and mental agony, and pass any other order as it deems fit.

15. The Commission has considered the information and materials available on record.

16. The Informant has alleged violation of the provisions of Section 4 of the Act. Section 4 of the Act provides that no enterprise or group shall abuse its dominant position and the term dominant position has been defined as a position of strength, enjoyed by an enterprise, in the relevant market, in India, which



enables it to operate independently of competitive forces prevailing in the relevant market; or affects its competitor or consumers or the relevant market in its favour.

17. Assessment of dominance requires determination of the relevant market which can be defined either in terms of relevant product market or relevant geographic market or both as per Section 2 (r) of the Act. As per the facts stated in the information, the Informant had booked a residential flat in Sector-53 of Gurgaon, which is situated in the State of Haryana.

18. The relevant product market as defined under Section 2(t) of the Act means a market comprising of 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. From the buyer's perspective, the Commission observes that residential flat is a distinct product which may not be substitutable or interchangeable with a residential plot or other residential units. While a residential plot allows buyers to decide the floor plan, number of floors, structure and other specifics at their own discretion; design and construction of a residential flat is formulated and completed by the builder without providing much opportunity to the buyers. Generally, when a consumer buys a flat in an apartment developed by a real estate developer, the buyer gets some amenities such as gym, swimming pool, car parking, party lawn, playground and clubhouse *etc.*, which may not be available in case of a plot or independent house. Therefore, considering the factors discussed above, the relevant product market in the instant matter is "*provision of services relating to development and sale of residential flats*".

19. Section 2(s) of the Act defines relevant geographic market which means 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



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homogeneous and distinguishable from the conditions prevailing in the neighboring areas. As seen from the information, the Informant has booked a residential flat in Gurgaon, which is a district in the State of Haryana and part of the National Capital region (hereinafter, “NCR”). The conditions of competition for supply and demand for development and sale of residential flats within Gurgaon can be considered as homogenous and can be distinguished from other areas of NCR, such as, Noida, Ghaziabad, Delhi, Faridabad, Sonapat *etc.*, in terms of factors such as price, land availability, distance and commuting facilities to the offices of Multi-National Companies, proximity and connectivity to airport, regional or personal preferences *etc.* Thus, considering the factors discussed above, the relevant geographic market in this case would be “Gurgaon”. Accordingly, the relevant market in terms of the provisions of Section 2(r) of the Act, in the instant case, is defined as “*provision of services relating to development and sale of residential flats in Gurgaon*”.

20. With respect to the position of dominance of the Opposite Party, it is noted that the Opposite Party is one of the real estate developers engaged in the provision of services relating to the development and sale of residential flats in the relevant market. The data/information available from the public domain brings out that several major real estate developers like DLF, Unitech Ltd., Godrej Properties, M3M India Pvt. Ltd., Sobha Limited, Eldeco, the 3C company, Indiabulls Real Estate Ltd., Mahindra Lifespaces, Earth Infrastructure, Vatika Group, Ansal Housing, Paras Buildtech, Emaar-MGF, Tata Housing *etc.*, have been operating in the aforesaid relevant market and are engaged in the provision of services relating to the development and sale of residential flats, apart from many other small real estate developers. Presence of such players with comparable projects in the relevant market indicates that buyers have the option to choose from various developers in the relevant market. These developers, thus, pose competitive constraints to the Opposite Party in the relevant market.



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21. Further, it is noted that no information is available on record or in the public domain indicating a position of strength enjoyed by the Opposite Party, which enables it to operate independently of competitive forces prevailing in the relevant market. The Informant has also not produced any material(s) that indicates the dominance of the Opposite Party in the relevant market. Thus, the Opposite Party does not appear to be dominant in the relevant market. In the absence of dominance of the Opposite Party, examination of abuse of dominance does not arise.
22. Though the Informant has not specifically alleged violation of the provisions of Section 3 of the Act, in order to have holistic examination of the case, the Commission deems it appropriate to analyse the Information from the perspective of Section 3 also. Section 3 of the Act deals with anti-competitive agreements. Analysis of the information has not revealed any anti-competitive agreement, be it at horizontal or vertical level, therefore the Commission observes that no case has been made out against the Opposite Party either under Section 3(3) or 3(4) read with Section 3(1) of the Act.
23. It is noted that the Commission had dealt with similar issues against the Opposite Party, in case no. 69 of 2014. The Commission had identified relevant market in that case as “*services of development and sale of residential apartments in Gurgaon*”. The Commission had passed an order under Section 26(2) of the Act on 29th January, 2015 and closed the matter by observing that the Opposite Party did not appear to be dominant in the relevant market and thus, its conduct was not required to be examined under the provisions of Section 4 of the Act.
24. In light of the above analysis, the Commission is of the opinion that no case has been made out against the Opposite Party for violation of either Section 3 or 4



of the Act. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

25. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S .L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Dr. M. S. Sahoo)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Dated: 26.07.2016