



IN THE MATTER OF:

Casa Paradiso Owner's Welfare Association ... Informant

And

M/s Sanathnagar Enterprises Ltd. ...Opposite Party (OP)

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

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

Mr. S.L.Bunker
Member

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

Project styled Casa Paradiso (Hyderabad) was launched by Lodha Group through its Associate Company – Sanathnagar Enterprises Ltd (OP) in October 2010 for which bookings were made (after paying the booking amount) on the basis of a brochure depicting the broad layout, floor plans of various sizes of the apartments. Agreement for Sale ('Agreement') was executed between the individual Purchasers and OP after a lapse of considerable time and was allegedly different on many counts from the promises made at the time of booking of the apartments. The informant is primarily aggrieved because of such inconsistencies and unilateral alteration in



the oral assurances made by the OP which vitiated the mutual trust and confidence.

2. Briefly, the informant submitted that the executed Agreement was one-sided and highly in favour of the seller containing wrong facts e.g. buyers (like informant) verified and satisfied themselves regarding the approval plan, necessary approvals etc., whereas in reality nothing was shown or discussed with the said buyers. The brochure which was circulated did not contain any information on the vital issue like the quality and quantity of potable water. Club House, which was, originally, planned to be located within the campus, was shifted to premises across the road. Handing of the flats was delayed progressively – thereby resulting in significant financial losses to purchasers. There was huge difference between the penalty clauses applicable on the purchasers (@18%) and the OP (@9%). Also, the buyers were prohibited from visiting the construction site under the pretext of safety. All this, the informant argued, amounted to abuse of dominant position by the OP which is prohibited by the Act.

3. The relevant product market indicated by the informant was market for ‘provision of services towards development of residential apartments’. The ‘relevant geographic market’ in the extant case was stated to be Hyderabad. In this relevant market, the OP allegedly held a dominant position pursuant to its market share and economic strength. The informant substantiated this argument by highlighting the claims of OP in its draft red herring prospectus where the OP had stated that it is the major real estate developer in Mumbai region having almost 38 projects in Mumbai and 1 project each in Hyderabad, Pune and Lonavala etc. Informant also pointed at some newspaper reports where Lodha group was mentioned as one of the top real estate companies. On the basis of the submitted information, the informant prayed the Commission to investigate the conduct of OP under section 4 of the Act.

4. The Commission has perused the information and heard the informant at length. The allegation in the present case pertains to section 4 of the Act which proscribes abuse of dominant position by an enterprise. Relevant market indicated by the informant is market for ‘provision of services towards



development of residential apartments in Hyderabad'. On the basis of information on record, the determination of relevant Market by the informant seems correct.

5. OP was a Lodha Group Entity and a Special Purpose Vehicle incorporated by the Lodha Group to implement the project named "Casa Paradiso" a brand promoted by the Group to cater to mid luxury market buyers. The Group was stated to have a large number of group companies spread across various geographies to implement various projects and all these companies together constituted the Lodha Group. The informant highlighted presence of the group in the Market, its market share and strengths through OP's red herring prospectus and various newspaper report. One of the reports submitted by the informant stated that it is the major real estate developer in Mumbai region having almost 38 projects in Mumbai and 1 project each in Hyderabad, Pune and Lonavala. This shows that OP had a miniscule market share in terms of number of projects in Hyderabad where the informant was willing to buy a residential apartment. Moreover, self acclaims by enterprises in their own documents like red herring prospectus cannot be taken as evidence of dominance per se. Though the Opposite Party was one of the known builders in the relevant market, that fact in itself is not decisive for establishing dominance. Further, the presence of other well known builders in the relevant market negates the contention that informant or any other consumer was dependent to a great extent on the opposite party to purchase an apartment. As such the material on record is not sufficient to conclude that OP is dominant in the relevant market. Since OP, *prima facie*, does not appear to be in a dominant position in the relevant market, the Commission does not consider it appropriate to deal with the issue of abuse by OP of its dominant position within the meaning of the provisions of Section 4 of the Act.

6. For the reasons stated above, the case deserves to be closed down under section 26(2) of the Act.



7. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

New Delhi

Dated: 02/09/2013

Sd/-
(Ashok Chawla)
Chairperson

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(Dr. Geeta Gouri)
Member

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(Anurag Goel)
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