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Fair Competition  
For Greater Good

## COMPETITION COMMISSION OF INDIA

Case No. 38 of 2017

### **In Re:**

**R. Ramkumar,**  
R/o 121-A, 2<sup>nd</sup> Main Road, South Jagannadha Nagar,  
Villivakkam, Chennai-600049, Tamil Nadu

**Informant**

**And**

**Akshaya Private Ltd.**  
Through Mr. T. Chitty Babu, Chairman and CEO,  
G-Square, No. 46, Rajiv Gandhi Salai (OMR),  
Kandanchavadi, Chennai-600096, Tamil Nadu

**Opposite Party**

### **CORAM**

**Mr. Devender Kumar Sikri**  
**Chairperson**

**Mr. S.L. Bunker**  
**Member**

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

**Mr. U.C. Nahta**  
**Member**

**Justice G.P. Mittal**  
**Member**



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

1. The information in this case has been filed under Section 19(1)(a) of the Competition Act, 2002 (the “Act”) by Mr. R. Ramkumar (hereinafter, the “**Informant**”) against Akshaya Private Ltd. through Mr. T. Chitty Babu, Chairman and CEO (hereinafter, the “**Opposite Party**” / “**OP**”) alleging, *inter-alia*, contravention under Section 4 of the Act.
2. As per the Informant, he and his wife, Mrs. M.R. Pushpaalatha, had booked a 2 BHK residential apartment in a project, namely, “Today”, developed by the OP with an area of 1041 sq. ft. It has been stated by the Informant that the OP is a real estate private limited company incorporated under the provisions of the erstwhile Companies Act, 1956. It has been further stated by the Informant that the OP has been in existence for more than two decades and claims to have built more than 7.5 million sq. ft. area covering 155 large commercial and residential projects in South India. The OP is also stated to be a member of the CREDAI (Confederation of Real Estate Developers Associations of India).
3. It is averred by the Informant that he had paid INR 6,78,370/- as advance for the apartment in December, 2012. Thereafter, the Informant and the OP had entered into a Construction Agreement (hereinafter, “**Agreement**”) dated 25.01.2013 wherein the OP had allotted the said apartment in aforesaid project to the Informant for a total consideration of INR 33, 91,850/-.
4. Further, it has been alleged by the Informant that as per Clause 5.1 of the Agreement, in case of any delay in payment of the instalment by the Informant, the OP can charge interest at the rate of 12% per annum from the date of default till the date of payment. However, as per Clause 11.1 of the Agreement, the OP has to pay only Rs.5,000/- per month as rental compensation to the



Informant for any delay in completing the construction of apartment and giving valid possession which is very low compared to interest rate charged by the banks and financial institutions.

5. The Informant further alleged that in case the Informant wants to terminate the agreement, Clause 7.1 of the Agreement gives a discretionary power to the OP to refund the amounts paid by the Informant without interest. Further, the OP may refund the said amount after deducting 10% of the cost of construction and that too only after identifying an alternative purchaser.
6. It has been stated by the Informant that it was a three year project and the OP has stopped the construction of said project for more than one and half years at different stages without a valid reason in spite of collecting payments from the flat buyers regularly. The project was to be delivered by July, 2016 (including the grace period), but the OP pushed the delivery date to March, 2017 and subsequently revised it to July, 2018. As the OP deliberately failed to honour its commitment, in spite of the Informant meeting its obligation under the Agreement, the Informant opted to terminate the contract and to get the money back along with interest at the rate of 12%. p.a. However, the OP did not allow the Informant to rescind the contract and invoked the compensation clause to pay INR 5,000/- per month till handing over of the possession of the apartment which is unfair and unreasonable.
7. In view of above facts and circumstances, it has been alleged by the Informant that the OP, using its position of strength in the market, has imposed unfair conditions in the Agreement which are detrimental to the interest of the flat buyers. Hence, the conduct of the OP is alleged to be in violation of Section 4 of the Act.



8. Based on the above facts and allegations, the Informant has prayed before the Commission, *inter alia*, to direct the OP to refund to him of the payments made along with 12% interest; to restrain the OP from continuing with Clause 7.1 of the Agreement; to direct the OP to introduce a new clause in the Agreement which will give buyers the right to terminate the Agreement and get full refund of payments made along with 12%, p.a. interest in case of default by the OP; modify Clause 11.1 of the Agreement whereby the OP should pay interest to the buyer @12% p.a. as rental compensation for delay in handing over of possession and; direct CREDAI to ensure enough protection in the agreements entered between its member builders and their respective buyers.
  
9. The Commission has perused the information and the material available on record. The Informant is primarily aggrieved by the delay in delivery of possession of the apartment booked by him with the OP and unfair clauses in the Agreement entered into between them which are alleged to be in contravention of the provisions of Section 4 of the Act. In order to deal with the allegations of abuse of dominance under Section 4 of the Act, the first step is to determine the relevant market. It is noted that the allegations in the instant case relate to purchase of a flat by the Informant in 'Today' project of the OP. Thus, the relevant product market in the present case would be a residential apartment/ flat which is different from a plot of land or a commercial space. It is observed that plot of land or a commercial space cannot be considered as substitutable with a residential apartment by the consumers because of difference in price, characteristics and intended use. The Commission is, therefore, of the opinion that the relevant product market in the present case would be "*provision of services for development and sale of residential apartments/flats*".



10. In relation to relevant geographic market, the Commission notes that as per the information available in the public domain, the said project “Today” is located at Old Mahabalipuram Road (“**OMR**”) which is popularly known as the IT Corridor in the State of Tamil Nadu. The Commission observes that the conditions of competition for supply and demand for development and sale of residential flats along OMR can be considered as homogenous and distinguishable from other neighbouring regions, where conditions of competition are altogether different and distinct in terms of factors like price, land availability, distance and commuting facilities, proximity and connectivity, presence of Multi-National Companies, state of infrastructure and regional or personal preferences *etc.* The Commission therefore, is of the opinion that the relevant geographic market in present case is “*OMR in the district of Kanchipuram in Tamil Nadu*”. Accordingly, the relevant market in instant case would be the market for “*provision of services for development and sale of residential apartments/ flats along Old Mahabalipuram Road in the district of Kanchipuram in Tamil Nadu*”.
11. Having delineated the relevant market, the next issue is to determine whether OP is dominant in the said relevant market. In this regard, based on information available in public domain, the Commission observed that there are several real estate developers operating and competing with the OP in the defined relevant market, such as L&T Realty Limited, Emami Group, Godrej Properties Limited, PBEL Property Development India Private Limited, Vijay Shanthi Builders Limited, Yuga Builders, Bashyam Constructions Pvt. Ltd, Sri Sai Foundations Private Limited, Greenpeace Luxury Homes LLP, AM Lands and Property Developers, Alliance Residential Company, *etc.* The presence of such large number of players acts as a competitive constraint upon the OP from acting independently of the market forces in the relevant market. Thus, the Commission is of *prima-facie* opinion that the OP is not dominant in the relevant market. Since the OP does not appear to be in a dominant position in



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the relevant market, there seems to be no question of abuse of dominant position under Section 4 of the Act.

12. In view of above, the case deserves to be closed under Section 26(2) of the Act. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(S.L. Bunker)**  
**Member**

**Sd/-**  
**(SudhirMital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U.C.Nahta)**  
**Member**

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

**New Delhi**  
**Dated: 14.11.2017**