



**COMPETITION COMMISSION OF INDIA**

**Case No. 38 of 2014**

**In re:**

**Shri Manoj Kumar Gupta &  
Smt. Abhilasha Gupta  
H. No. 781, Manobhilasha,  
Sector – 15, Gurgaon, Haryana**

**Informants**

**And**

**Haryana State Industrial & Infrastructure  
Development Corporation Limited (HSIIDC)  
Sector – 6, Panchkula, Haryana**

**Opposite Party**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Mr. M. L. Tayal  
Member**

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

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

**Case No. 38 of 2014**

**Page 1 of 8**



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

**Present:** Shri Ravindra Bana, Advocate for the Informants and the Informants  
in person.

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

1. The information in the present matter relates to the alleged abuse of dominant position by Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter to be referred as the '**HSI IDC**'/'**Opposite Party**') in allotment of residential plots at Industrial Model Township (IMT), Manesar, Gurgaon in the state of Haryana.
2. Shri Manoj Kumar Gupta & Smt. Abhilasha Gupta (hereinafter referred to as the '**Informants**') have filed the information under the provisions of section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against the Opposite Party alleging contravention of section 4 of the Act.
3. The facts of the case as detailed in the information may be briefly noted:
  - 3.1 The Opposite Party is stated to be a registered company under the Companies Act, 1956 and is fully owned by the Government of Haryana. It is the nodal agency of the Government of Haryana to develop industrial plots and its supporting infrastructure in the State. It has been developing a township in the name of Chaudhary Devi Lal Industrial Model Township (IMT) at Manesar, Gurgaon, Haryana spreading over an area measuring about 5000 acres. The Informants are the allottees of a plot in the said township project of the Opposite Party.



3.2 As per the information, in response to an advertisement of the Opposite Party in newspaper for inviting application for allotment of some freehold residential plots in the said project, the Informants had applied for allotment of a residential plot. On payment of earnest money of Rs. 1, 18,800/- (10% of the cost of the plot), the Opposite Party allotted them a plot measuring 450 sq. mt. for a total consideration of Rs. 11,88,000/- and accordingly a Letter of Allotment ('LOA') was issued in favour of the Informants on 16.08.2004. It is submitted that though HSIIDC did not made any commitment for the date of handing over possession of the said plot, but it is understood from the terms of 'LOA' that the possession of the plot was to be given after payment of 25% of the cost of the plot.

3.3 The Informants alleged that even after payment of 25% of the total cost of the plot on 16.12.2004, the Opposite Party did not offer to handover the possession of the plot and it handed over the plot on 27.08.2007 only after payment of full amount towards the cost of the plot. The Informants alleged that the Opposite Party not only delayed in giving possession of the plot contrary to the terms of 'LOA' but also handed over the plot without properly completing the development work of the project.

3.4 As per clause 10 of 'LOA', on payment of 100% of the cost of the plot, a 'Deed of Conveyance' was to be executed. It is alleged that even after full payment towards the cost of the plot in August 2007, the Opposite Party did not execute the 'Deed of Conveyance' in favour of the Informants.

3.5 As per the terms of 'LOA', the Informants were required to complete the construction of building on the allotted plot within two years of handing over of possession. It is alleged that since the Opposite Party did not execute the 'Conveyance Deed', the Informants could not get bank loan for construction of the building. It was only in August, 2010 i.e., two years after taking possession of the plot that they were able to arrange funds for construction of the house.



3.6 The Informants also alleged that the Opposite Party had arbitrarily raised a demand of Rs. 7147/- for maintenance charges. When the construction of house was nearing completion, the Opposite Party raised another demand on 27.01.2012 for payment of fee for extension of time period of construction of building from 30.09.2010 to 30.09.2012. The Informants were compelled to make additional payments against the said alleged illegal demand of the Opposite Party.

3.7 It is further alleged that the Opposite Party issued threats to the Informants to take action under clause 14 of 'LOA' *i.e.*, to resume the plot and to demolish the house constructed thereon unless the Informants agreed to execute an undertaking/supplementary agreement to subscribe to the Estate Management Policy (EMP-2011) of the Opposite Party, which apparently has no statutory backing and is not binding upon the Informants. It is alleged that the Informants were compelled to execute the said undertaking even when the same was not applicable in respect of residential plot allotted to the Informants.

3.8 It submitted that only after the execution of the aforesaid undertakings and payment of fee for extension of time, the Opposite Party accepted the documents for execution of 'Conveyance Deed'. Thereafter, the Opposite Party issued a notice to the Informants demanding additional payment of Rs.15,98,400/- towards the cost of the plot which is over and above the agreed total cost of Rs. 11,88,000/-. The said additional amount was claimed to be on account of enhancement in the rate of compensation to the original landowners for acquisition of land by HSIIDC as directed by the courts.

3.9 The Informants received a show cause notice on 12.06.2013 from the Opposite Party seeking to resume the said plot and the house constructed thereon and to immediately disconnect the water and sewerage facilities unless the above said payment was paid. After having refused to pay the said



demand of the Opposite Party, the Informants were yet again served two show case notices to make the payments.

3.10 The Informants alleged that the Opposite Party abused its dominant position by imposing arbitrary conditions, changing the nature of transaction from free hold to conditional transfer, holding title and control of the property in its hand, *etc.* which is in contradiction to the terms and conditions agreed between them.

3.11 Aggrieved by the above said abusive conduct of the Opposite Party, the Informants prayed before the Commission to institute an inquiry against the Opposite Party for abuse of its dominant position and also prayed for interim relief under section 33 of the Act to restrain the Opposite Party from resuming the allotted plot.

4. The Commission has perused the information and the materials available on record and considered the written submission of the Opposite Party and rejoinder filed by the Informants.

5. The Opposite Party vide its submission dated 04.09.2014 submitted that the Residents' Welfare Association, Manesar has filed a Writ Petition (No. 7501/2013) before the Punjab & Haryana High Court raising the same issues as alleged by the Informants in this case. Thus, the matter is *sub-judice*. As per the Opposite Party, the allegations of unfair terms and conditions in 'LOA' are contractual issues and the Commission has no jurisdiction on the same. The Opposite Party has denied that it holds a dominant position and submitted that there are large numbers of real estate companies operating in IMT, Manesar. The Opposite Party also submitted that it is primarily a Nodal Agency of the Government of Haryana for industrial and infrastructure development in the state of and has very limited share in the residential sector.



6. From the facts of the case it appears that the Informants are mainly aggrieved by the alleged abusive conduct of the Opposite Party in imposing unfair and arbitrary conditions with respect to allotment of residential plots at IMT Manesar, Gurgaon, Haryana. Since, the matter relates to the alleged abuse of dominant position by the Opposite Party in contravention of the provisions of section 4 of the Act, before assessing the its position of dominance and alleged abusive conduct, the relevant market, both relevant product and geographic market, needs to be defined first where the Opposite Party is operating.
7. Based on the facts of the case, the market of “*the services for the development and sale of residential plots*” may be considered as the relevant product market in this matter. The services for the development and sale of residential plots is considered as a separate relevant product *vis-à-vis* residential apartments because in case of residential plot the buyer is at liberty to construct the residential unit as per his/her own wish. Unlike residential apartments, the plot buyer has the freedom to decide the building plan, number of floors, design *etc.*, subject to applicable regulations. The buyers wishing to purchase residential plots may not prefer residential apartments and *vice versa*.
8. The geographical area of the Gurgaon district of Haryana may be considered as the relevant geographic market in this case. It is so because the conditions of competition for development and sale of residential plots in Gurgaon are homogenous and are distinct from the conditions of competition prevailing in adjacent areas. The consumers looking for a residential plot in Gurgaon may not prefer other neighbouring areas because of the locational advantage, fast developing township, proximity and connectivity to airport *etc.* The relevant geographic market cannot be restricted to ‘IMT-Manesar’ as contended by the Informants just because of the fact that it is a part of Gurgaon and is popularly known as ‘New Gurgaon’ and it is hardly 15 to 20 Kms or so away from Gurgaon where different builders have their projects. Moreover, the conditions of competition in ‘IMT-Manesar’ are not distinct from other parts of Gurgaon.



Therefore, 'IMT-Manesar' cannot be considered as a separate relevant geographic market.

9. Accordingly, "the market of the services for the development of residential plots in the Gurgaon district of Haryana" is considered as the relevant market in the instant case.
10. On the basis of the information available in public domain, *prima facie*, the Opposite Party does not appear to be in a dominant position in the relevant market. Apparently, there are many other real estate developers such as DLF, Anantraj Group, Earth Infrastructure Group etc. which are operating in the relevant market. The presence of other renowned builders in the relevant market may indicate that the Informants were not dependent on the Opposite Party for purchase of a residential plot.
11. Since the Opposite Party, *prima facie*, does not appear to be in a dominant position in the relevant market, the question of abuse of dominant position by it within the meaning of the provisions of section 4 of the Act does not arise.
12. In the light of the facts and circumstances of the matter, *prima facie*, no case of contravention of the provisions of section 4 of the Act is made out against the Opposite Party. Therefore, the matter is closed under section 26(2) of the Act.
13. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**



**Sd/-**  
**(M. L. Tayal)**  
**Member**

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

**Sd/-**  
**(Sudhir Mital)**  
**Member**

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

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

**New Delhi**

**Dated: 01-10-2014**