



COMPETITION COMMISSION OF INDIA

Case No. 39 of 2021

In Re:

Mr. Ramesh Kumar
House no. 454/7, New Colony, Adarsh Gali
No.3, Kurukshetra 136118 Haryana

Informant

And

Chandigarh Housing Board
8, Jan Marg 9-D, Sector 9 Chandigarh -160022.

Opposite Party

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Directions for investigation under Section 26(1) of the Competition Act, 2002

1. The present Information has been filed by Mr. Ramesh Kumar (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) alleging contravention of provisions of Section 4 of the Act by **Chandigarh Housing Board** hereinafter “Opposite Party” (“**CHB/OP**”).
2. As stated in the Information, Opposite Party/CHB floated a Self-Financing Housing Scheme (hereinafter, the “**Scheme**”) on 13.12.2010 offering 160 flats on free hold basis in Sector 51-A, Chandigarh. It has been averred that at the launch of the scheme, it was highly publicised that the project would be completed within 18 months of the commencement, the same being 25.10.2011 *i.e.* the construction was scheduled to be completed by 25.04.2013.



सत्यमेव जयते



3. The Informant has also enclosed a Press Note dated 25.10.2011, issued by the Chandigarh Administration, which states that “it will take two years to complete the housing scheme including all other infrastructure development works”.
4. It has also been averred that the construction of flats in Sector 51-A, Chandigarh commenced in October 2011, but the contractor failed to complete the construction within 18 months. The CHB was required to initiate the process of allotment of flats after the completion of construction by the contractor. However, CHB issued an Acceptance-cum-Demand Letter (ACDL) on 25.04.2012, advising the schedule of payment of instalments, along with interest @ 12% p.a. and the last instalment as per such schedule was to be paid within 18 months of issuance of the ACDL, *i.e.*, by 25.10.2013, corresponding to the date of completion of the scheme, along with all infrastructure development works.
5. Further the Informant states that as per the aforementioned ACDL issued to him, Rs.5,00,000/ was to be paid as initial deposit, Rs.6,84,750/ within 30 days of issue of the same and rest in 3 instalments of Rs.13,29,681/-, each payable within 6 months, 12 months, 18 months respectively from the issue date, alongwith remaining amount (*i.e.* 100% of the chargeable price minus price already paid) at the time of handing over possession.
6. The Informant has further stated that he had deposited an amount of over Rs. 38 lakhs till April 2013, but could not pay the last instalment due on 25.10.2013 in time. However, there was also corresponding delay in completion of construction for one year by CHB and that during October 2014 while the construction was nearing completion, CHB decided to initiate the process of allotment and cancelled the registration of the Informant on 24.10.2014 after issuing a short notice on 17.10.2014 owing to non-payment of last instalment due on 25.10.2013. The Informant has submitted that his allotment was cancelled by CHB without considering his requests dated 23.10.2014 as well 25.10.2014 and that CHB held a draw of allotment on 28.10.2014 by excluding the Informant’s registration.
7. Owing to the cancellation of his registration, the Informant submitted an appeal on 03.11.2014, to the Chairman of CHB requesting condonation of delay in deposit of third instalment and revival of allotment of the flat and thereafter deposited the amount of last instalment on 18.11.2014. CHB intimated the Informant on 27.01.2015, to deposit an



- additional amount of Rs.5,36,900/- towards interest, *etc.* The said amount was deposited by the Informant on 06.02.2015 and the revival order was issued by CHB on 22.04.2015.
8. The Informant has further stated that the CHB charged an interest at the rate of 30% p.a. from 25.10.2013 till 18.11.2014 (till the payment of last instalment) although there was concurrent delay on part of CHB in initiating the process of allotment and that the Board also charged renewal fees for revival of registration.
 9. The Informant has also averred that for a notional delay of one day in payment of instalment, CHB had charged interest @18% on Rs.13,29,681/- (commensurate to the period of entire month). As per the Informant his two instalments due on 24.10.2012 and 24.04.2013 were paid before the due dates *i.e.* on 22.10.2012 and 22.04.2013, however they got credited in the account of the CHB on 25.10.2012 and 25.04.2013, for which also the Board charged an interest (commensurate to a month) for the delay of one day and that the Informant had to pay an amount of Rs.5,36,900/- towards interest and renewal charges on 06.02.2015. Thus the Informant made a total payment of Rs.57,10,693/- to CHB.
 10. Thereafter, *vide* its letter dated 28.08.2015, CHB issued offer of allotment of flat with request for submission of some documents. On 06.10.2015 CHB issued possession slip and handed over the physical possession of flat on 19.10.2015. The Informant was allotted a third floor 2-bedroom flat bearing No.72C.
 11. The Informant avers that CHB even after levying renewal charges from the Informant, further delayed the process of allotment of flats for another 11 months (in addition to delay of one year in construction), whereas the entire amount of consideration of Rs.51 lakh stood paid by the Informant by 18.11.2014.
 12. The Informant has submitted that CHB, in its brochure issued for the scheme, did not make any specific mention of date or time schedule for completion of construction or for handing over the possession of the flat. Further, even in the ACDL dated 25.04.2012, there was no mention of any specific date for completion/handing over of the possession of the flat.
 13. The Informant avers that as per the brochure of the scheme, there were provisions for imposing penalty by way of heavy interest in case of delay in payment of instalments by



the allottees wherein in case the payment of registration money or the subsequent instalments were not paid by the due date as prescribed in the ACDL, the allottee/applicant was liable to pay interest @18% p.a. for the first month, @21% p.a. for the second month and @24% p.a. for the third month. However, there was no provision to pay corresponding interest to allottees for delay on part of the CHB in allotment of flats either in the brochure or in ACDL.

14. The Informant has also alleged that CHB charged interest @12% p.a. even during the construction period *i.e.* during the period of payment of usual instalments. The instalment of Rs.13,29,681/- was inclusive of interest @12% p.a. which was unusually high.
15. The Informant has alleged certain clauses in the brochure/scheme to be exploitative, which are illustrated as under:

“CLAUSE XI SURRENDER/CANCELLATION

XI (3) In case payment of registration money or the subsequent instalment are not made by the due date of the payment prescribed in the Acceptance-cum-Demand Letter, the applicant shall have to pay interest @ 18% per annum for the 1st month, @ 21% for the 2nd month and @ 24% p.a. for the 3rd month.

No extension will be allowed beyond three months and the registration shall be cancelled. However, the Chairman, CHB may allow an extension beyond three months, or revive registration, if the same has been cancelled, as the case may be, in case(s) of exceptional circumstances, on written request subject to the payment of interest @ 30% p.a. beyond the period of 3 months.

XI (4) If the registration and allotment is cancelled either on the applicant's own request or for non-payment of registration money or any of the subsequent instalment with interest, if any, or due to any other reason, the amount deposited with the Board shall be refunded after forfeiting 10% of the initial deposit. However, where the surrender or cancellation is made after the expiry of 1,2 & 3 months from the due date, in addition, interest calculated @ 18%,21% and 24% p.a. respectively, shall be charged on the due amount remaining unpaid, from the due date till the date of surrender or cancellation. Where the surrender/cancellation is made after 3 months, interest @ 30% p.a. shall be charged further for the period beyond 3 months in addition to the forfeiture of 10% of the initial deposit.”

16. The Informant had also filed an application dated 03.10.2019 with CHB under Right to Information Act, 2005, regarding the two years of delay in providing possession of flats to which the response dated 28.02.2020 of the Board was that “*no time limit for handing over the possession of the flat was mentioned and the same was handed over to you after actual*



completion of the work and that the reason for delay in completion of work was scarcity of raw material for building, construction, finalization of tenders of various allied material etc. which were beyond the control of agency and CHB, hence the claim of interest on account of delay in completion of the project is not justified". The Informant states that CHB wilfully did not mention the schedule of completion in its brochure to avoid any liability.

17. The Informant has also enclosed copies of news articles which stated that CHB had raised interest charges running approximately to lakhs of rupees for a shortfall of amount ranging from Rs.1/- to Rs.880/- even in respect of its other projects also.

18. Thus the Informant has submitted that aforementioned clauses as stipulated under the housing scheme as offered by CHB are unfair, exploitative and in contravention of the provisions of Section 4 of the Act.

19. The Informant has sought interim relief in the form of direction of refund of the amount of Rs.5,36,900/- imposed upon the Informant by the CHB on 06.02.2015.

20. The Informant has, *inter alia*, prayed for grant of following reliefs:

- i. to pay an interest for the delay from October, 2013 when the CHB was required to allot flat till October, 2014 for the amount deposited by the Informant up to October, 2013, *i.e.*, Rs.38,44,111/-,
- ii. to pay an interest from November, 2014 till the date of possession *i.e.* for the amount deposited by the Informant with the CHB *i.e.*, Rs.51,73,111/- (deposited till 18.11.2014) and Rs.57,10,693/- (deposited till 06.02.2015),
- iii. any other relief which the Commission may deem fit and appropriate.

Analysis of the Commission

21. At the outset, the Commission notes that the Informant has alleged that CHB has abused its dominant position under Section 4 of the Act by way of imposing unfair terms and clauses on the allottees. The allegations in this regard have been summarised as under:



सत्यमेव जयते



- i) Interest charged at the rate of 12% p.a. by CHB towards payment of instalments even during construction period is unfair and arbitrary.
- ii) Non-disclosure of date of possession by the CHB (in any of the relevant documents- brochure and/or ACDL) purportedly to avoid liability in case of any delay.
- iii) Requirement to pay interest @ 18% p.a. for the 1st month, @ 21% p.a. for the 2nd month and @24% p.a. for the 3rd month and 30% p.a. thereafter for revival of registration in case of delayed payment of registration money or the subsequent instalments in conjunction with the fact that no corresponding liability has been placed on CHB for delay in handing over possession of the flats to the allottees.
- iv) Levy of interest @ 18% p.a. (commensurate with a month) for the delay of one day in payment of two instalments due on 24.10.2012 and 24.04.2013 which were paid before the due dates *i.e.* on 22.10.2012 and 22.04.2013 which got credited in the account of the CHB on 25.10.2012 and 25.04.2013.

22. The Commission observes that for an assessment of alleged violations by an entity, it has to pass through the touchstone of being an enterprise as defined u/s 2(h) of the Act. In the instant case, the Commission is cognizant of the fact that Chandigarh Housing Board, a Chandigarh Administration undertaking, was established in the year 1976 by extending the Haryana Housing Board Act, 1971 to the Union Territory of Chandigarh. The functioning of the Board is, *inter alia*, governed by the provisions of the Chandigarh Housing Board (Allotment, Management & Sale of Tenements) Regulations, 1979 (hereinafter “The Regulations”). As per its website, the primary objective of the Board is to provide reasonably priced, good quality housing for the shelter less persons residing in the Union Territory of Chandigarh. The Commission notes that CHB, allots flats after taking consideration for the same and is involved in an economic activity and thus is an enterprise within the meaning of the Act.

23. Further for assessing dominance of any entity and its alleged conduct, a relevant market needs to be delineated. The Commission is of view that the real estate market can broadly be classified into residential and commercial segments. The concern in the present case stems from an allotment of a residential flat. Development and sale of a residential flat



सत्यमेव जयते



forms a separate relevant product market as the factors considered by a consumer while buying a residential unit are different from buying a commercial flat or plot. Further, not only is the intended use and characteristic of a residential property different from a commercial property but the pricing of the two is also different. Thus, taking into account factors such as physical characteristics or end use of goods, price of goods or services, consumer preferences etc., the relevant product market for the purposes of the present case *prima facie* appears to be the “*market for the provision of services for development and sale of residential flats*”.

24. For the purpose of defining the relevant geographic market, the Commission is of the *prima facie* view that the geographic area of the Union Territory of Chandigarh, which is centrally administered area, possesses distinct market conditions in so far as the development and sale of residential flats under schemes offered by CHB are concerned and CHB has been specifically formed to cater to the residential needs of the people residing in the said UT. It may be noted that a consumer intending to buy a residential flat under housing scheme in the UT of Chandigarh may not prefer to purchase the same in other adjacent areas of Chandigarh because of factors such as difference in regulatory authorities (and hence, different rules, regulation and taxes), availability of various civic amenities, personal preferences, *etc.* Thus the relevant geographic market appears to be “*the Union Territory of Chandigarh*”.

25. In view of the relevant product market and the relevant geographic market delineated above, the Commission defines the relevant market as the “*market for the provision of services for development and sale of residential flats in the Union Territory of Chandigarh*”

26. Having delineated the relevant market, the Commission notes that the next issue to be determined is whether CHB holds a position of dominance, as alleged, in the said relevant market.

27. The underlying principle in assessing dominant position of any enterprise in the relevant market is whether the enterprise in question can operate independently of the competitive forces prevailing in the relevant market or can it affect its competitors or consumers or relevant market in its favour. Based on the information available in the public domain, it



appears that, in the Union Territory of Chandigarh, the consumers of residential units/flats in Chandigarh are primarily dependent on CHB as they do not have other options available. There also does not appear to be private developers operating in Chandigarh posing any competitive restraint on the Opposite Party. Moreover, CHB also appears to enjoy a statutory monopoly in provision of housing facility to the persons who desire to own a residential flat /plot in the said UT. The Commission also takes note of the fact that CHB received more than 5000 applications as against 160 flats in response to the scheme that was opened long ago in the year 2010, which itself, is indicative of the fact that CHB schemes are much awaited by consumers who are dependent upon it for such flats. Also based on other factors under Section 19(4) of the Act, more particularly, the dependence of consumers on the enterprise, the monopoly acquired by virtue of a statute and its social obligations, *etc.* CHB, *prima facie*, appears to enjoy a dominant position in the relevant market so delineated.

28. Having determined dominance of CHB in the relevant market, the Commission now analyses the allegations of the Informant within the framework of Section 4 of the Act.

i) Interest of 12% charged by the CHB – With respect to the contention of the Informant that the interest of 12% charged by the CHB is unfair and arbitrary, the Commission deems it advisable to refer the conditions under Rule 7 (2) and (3) of the Chandigarh Housing Board (Allotment, Management & Sale of Tenements) Regulations, 1979 wherein it is provided that the amount of property may be paid as a lump sum payment, on which no interest is levied; however, if the purchaser/allottee chooses to pay the same in instalments then they would have to pay interest on balance amount after payment of premium as per the rate fixed and after prior intimation by the Board. Thus, interest is payable only when full price is not paid as lumpsum but in instalments. Consumer has a choice to opt for the means he wishes to adopt and thus charging of interest on instalments, does not *prima facie* appear to be abusive and in violation of the Act, in the facts and circumstances of the case.

ii) Non- disclosure of date of possession by the CHB: The Commission notes that CHB has stipulated a time-line for payment of amount of flat (through its brochure) though no time-line was specified by CHB for delivery of possession to the allottee



and it has not in any manner, whatsoever, specified its concomitant obligation towards the allottee while the allottee is obliged to pay interest rates as stipulated by CHB for delayed deposit of instalments. CHB appears to have relieved itself by not making time as an essence for fulfilling its obligations towards the allottee, more particularly, by not disclosing the date of handing over of possession to the allottee, though at the same time subjecting them to terms, which in the *prima facie* view of the Commission is unfair qua the consumers of CHB and merits an investigation.

iii) Imposition of penal interest in the event of delayed payment of instalments: The Commission notes that as per the stipulations in the brochure, the applicant/allottee was required to pay interest @ 18% p.a. for the 1st month, @ 21% p.a. for the 2nd month and @ 24% p.a. for the 3rd month and 30% p.a beyond a period of three months. Ordinarily in the view of the Commission, stipulation of penal interest, may not *prima facie* be of concern, to secure an obligation and prevent a default, yet a dominant enterprise ought not to have unbridled powers, to enforce one sided terms which it can enforce with impunity. In the facts and circumstances of the case, the Commission however, does not deem it appropriate to state that stipulations of interest and charging of the same by CHB is grossly unfair, warranting an investigation.

iv) Levy of interest for delay of one day in credit of required instalments: The Informant has averred that his two instalments due on 24.10.2012 and 24.04.2013 were paid before the due dates *i.e.* on 22.10.2012 and 22.04.2013 however they got credited in the account of the CHB on 25.10.2012 and 25.04.2013, for which the CHB charged an interest (commensurate to a period of one month) for the delay of one day. The Commission is of the *prima facie* view that this aspect merits an investigation and DG may look into this aspect, as to whether the same is violative of the provisions of the Act.

29. In view of the foregoing, the Commission is of the *prima facie* view that Opposite Party/CHB appears to have acted in derogation of the provisions of Section 4(1) read with Section 4(2) of the Act.



30. Accordingly, the Commission directs the Director General ('DG') to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of this order.
31. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case, and the DG shall conduct the investigation without being swayed in any manner, whatsoever, by the observations made herein.
32. The Commission notes that the Informant has also sought interim relief as aforementioned, which shall be dealt with separately.
33. The Secretary is directed to send a copy of this order alongwith the material available on record to the DG forthwith.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 13/01/2022