



COMPETITION COMMISSION OF INDIA

Case No. 40 of 2014

In Re:

**Shri Deepak Kumar Jain
& Shri Manoj Kumar Jain
100 Vaishali, Pitampura, New Delhi**

Informants

And

**M/s TDI Infrastructure Ltd.
9, K. G. Marg, New Delhi**

Opposite Party No. 1

**Town and Country Planning Haryana
HQ, SCO-71-75, Sector- 17C, Chandigarh**

Opposite Party No. 2

**Haryana Urban Development Authority
Plot No. C-3, Huda Complex,
Sector – 6, Panchkula, Haryana**

Opposite Party No. 3

CORAM:

**Mr. Ashok Chawla
Chairperson**

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

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



Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Present: Shri Jeevan Prakash, Advocate for the Informants.

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

1. Shri Deepak Kumar Jain and Shri Manoj Kumar Jain (the “**Informants**”) have filed the instant information under section 19(1) (a) of the Competition Act, 2002 (the “**Act**”) against M/s TDI Infrastructure Ltd. and others alleging, *inter alia*, contravention of the provisions of Section 4 of the Act in the matter.
2. Facts of the case, as stated in the information, may be briefly noted:
 - 2.1 The Opposite Party No. 1, M/s TDI Infrastructure Ltd., is a public limited company engaged in the business development of real estate. The Opposite Party No. 2, Town and Country Planning Haryana, is a department of the Government of Haryana responsible for regulated urban development in the State and the Opposite Party No. 3, Haryana Urban Development Authority, is a statutory body constituted under the Haryana Urban Development Authority Act, 1977 and is responsible for planned development of urban areas in the State of Haryana. The Informants are the buyers of residential plots in the integrated township project (“**the Project**”) developed by the Opposite Party No. 1 at Kundli in the Sonapat district of Haryana.



2.2 In the said project, the Informants booked four plots for which they had paid about 79.80% of the total consideration to the Opposite Party No. 1. It is the case of the Informants that even though they had paid the charges towards preferential location of the plots, the Opposite Party No. 1 allotted them the plots which are of ordinary location in the backside of the colony. On questioning the said allotment and asked to adjust the money taken as preferential charges towards the outstanding balance, the Opposite Party No. 1 instead kept on adding additional charges on the Informants which significantly inflated their outstanding balance.

2.3 It is averred in the information that the Opposite Party No. 1 had threatened the Informants that holding charges of Rs. 100/- per square yard shall be payable in case the outstanding balance is not made on or before 15.03.2010. However, on their visit to the site of the project, the Informants found that the demand for the outstanding amount by the Opposite Party No.1 was premature. Also, the Informants found that the Opposite Party No. 1 had not obtained the necessary statutory permissions required for developing the project. On demanding the certificate from Haryana Government regarding compliance of statutory requirements for development of the colony, the Opposite Party No. 1 asked them either to pay the amount as per the demand letters and have the plots otherwise have the amount refunded without interest and after deducting the earnest money and other charges.

2.4 The Informants submitted that the Opposite Party No. 1 deliberately declared them as defaulters and cancelled their allotted plots and forfeited huge amount in the name of earnest money and thereby took away the benefits of capital gains from them. It is alleged that the Opposite Party No. 1 manipulated its account statement more than six times and accordingly demanded the outstanding balance from the Informants.



- 2.5 It is averred that in spite of clear fact that the Opposite Party No. 1 has violated the provisions of various statutes including Haryana Development and Regulation of Urban Act and Rules made there under, the Haryana Government agencies allotted land to the Opposite Party No.1.
- 2.6 The Informants have alleged that the Opposite Party No. 1 has abused its dominant position by imposing highly arbitrary, unfair, unreasonable and discriminatory conditions on the plot buyers, thereby causing serious adverse effects on the rights of the plot buyers. Also, it is alleged that after having taken substantial amount, the Opposite Party No. 1 compelled the Informants to sign erroneous agreement with exploitative terms and also concealed material information. Further, it is alleged that the plot buyers' agreement had unreasonable and exploitative terms and loaded heavily in favour of the Opposite Party No. 1. The buyers have no exit option because of high switching cost as they have already paid huge amount of money to the Opposite Party No. 1.
- 2.7 Apart from the said four residential plots for self use, the Informants and their family members had also booked 24 other properties and flats from the Opposite Party No. 1. Fearing its unfair conduct, they sold 19 properties. With apprehension of its alleged unfair conduct, the Informants and their family members did not deposit the subsequent demand on the Opposite Party No. 1 with respect of six properties because of which the Opposite Party No. 1 forfeited Rs. 33, 75,000/-.
- 2.8 Accordingly, the Informants have alleged that the conduct of the Opposite Party No. 1 is unfair in terms of the provisions of section 4 of the Act.
- 2.9 Based on the above averments, the Informants have made the following prayers before the Commission:



- (i) to institute inquiry and to hold the Opposite Parties guilty under section 4 of the Act;
 - (ii) to direct the Opposite Party No. 1 to discontinue and not to re-enter such agreement with the plot buyers; and
 - (iii) to direct the Opposite Party No. 1 to restore the booking of the said plots and rectify the statement removing the holding charges and other alleged illegal charges.
3. The Commission perused the materials available on record and considered the information, additional information, facts and data placed on record by the Informants. Facts of the case reveal that the grievances of the Informants primarily pertain to the alleged abusive conduct of the Opposite Party No. 1 in allocation of residential plots to the Informants in the integrated township project developed by it at Kundli in the Sonapat district of Haryana which is in contravention of the provisions of section 4 of the Act.
4. For examinations of the alleged abusive conduct of the Opposite Party No. 1, it is required first to delineate the relevant market where the Opposite Party No. 1 is operating and then to assess the position of dominance of the Opposite Party No. 1 in the relevant market so delineated and finally, examination of conduct in case it is found to be in a dominant position in the relevant market.
5. In their additional information, the Informants have submitted that the relevant product market in the matter should be considered as the market of “upcoming large size (Class-I) integrated plotted residential township spread over 1250 acres for one lakh population for mid segment consumers at affordable price with all modern amenities”. It is contended by the Informants that integrated township of category Class-I for one lakh population is quite distinct from other categories of township such as class-II, III, IV, etc. because residential accommodation for



lower income group, middle income group and higher income group are distinctly identifiable and cannot substituted with the integrated township. Apart from the physical attributes, this categorization also takes into account the income or expenditure levels of the customers. As per the Informants, a consumer's choice of preferring plot in a well planned integrated township of class-I category is backed by the factors such as family size, privacy, security, demonstration effect *etc.* Even in case of a small increase in price of property in the integrated township, a consumer would not switch to an apartment or to a township of inferior category because of absence of above mentioned factors. Further, in an integrated township, one can avail all the advantages of a city without confronting the problems of a city such as traffic, pollution and congestion, *etc.*

6. However, the Commission feels that “*the market for the services of development and sale of residential plots*” is the relevant product market in the instant case. It is true that integrated townships do offer some different characteristics than other forms of plotted residential units but it cannot be considered as separate relevant product market in the present case as contended by the Informants. The customers make buying decisions keeping in mind various factors such as intended use, surrounding areas, transportation facilities, connectivity with major areas, proximity to various amenities like schools, universities, hospitals and vistas of entertainment and leisure like malls and restaurants, distance from workplace, potential rate of return, *etc.* Many of these attributes are not present in the integrated township project to be considered as a separate relevant product market. Residential plots may form a separate relevant market because the motives and factors of buying plot by the consumers may be different from buying apartment and other residential units and for a buyer residential plots and other forms of residential units may not be substitutable.
7. In regards to the relevant geographic market, the Informants have submitted that since Kundli is nearer to Delhi and is a preferred option for the buyers compared



to other areas of Sonapat, the area of Kundli should be considered as the relevant geographic market in the matter. As per Informants, relatively higher prices in Kundli make it a separate relevant market and a 5% increase in price of residential property will not make the buyers switch to any other areas. It is submitted that Rule 3 of the Haryana Development and Regulation of Urban Areas Rules, 1976 classified the urban area Kundli as High-II zone which is a distinct and separate geographical area. It is also submitted that the license granted in form LC-III under rule-10 by Director of Town and Country Planning Haryana indicates that the city complex at Kundli is distinct and separate geographical market. Further, Kundli is an extension of northwest Delhi and it is an attraction for the people of northwest Delhi. Also, the conveyance cost and time consumed is a relevant factor in the minds of the consumers while taking the purchase decision. The consumers will not prefer other parts of Sonapat district which are at distance of about 15 km or so from Kundli.

8. However, the Commission do not agree with the Informants' contention that area of Kundli is the relevant geographic market in the instant case. The relevant geographic market cannot be restricted to Kundli just because Kundli is nearly 15 Kms or so away from the other areas of Sonapat where different builders have their projects. Moreover, the conditions of competition in Kundli are not distinct from other areas of Sonapat district. Rather, the conditions of competition for development of residential plots are homogenous within the district of Sonapat. The arguments of the Informants that being a part of NCR region as per Delhi Master Plan 2021, Kundli form a separate relevant market cannot be accepted. Thus, the area of Sonapat district of Haryana is the relevant geographic market in the instant case. Further, the other areas of Haryana like Gurgaon, Faridabad, Bahadurgarh, etc. cannot form the part of the relevant geographical market because of difference in price of land, availability of quality essential services, distance and commutation facilities from the national capital of Delhi, etc. Also, the conditions of competition for development of residential plots in Sonapat are



different from other adjacent cities of Haryana and National Capital Region. Although other areas like Rohtak, Rewari, Jhajjar, Panipat, Alwar, Bulandsheher, Baghpat are also a part of NCR region as per Delhi Master Plan 2021, they also do not present an alternative investment opportunity when compared to Sonapat as the latter offers greater potential of return on investment and these areas are yet to see comparable infrastructural development.

9. Accordingly, “*the market of the services for the development of residential plots in the Sonapat District of Haryana*” is considered as the relevant market in the instant case.
10. The Informants have contended that the Opposite Party No. 1 is in a dominant position whether the relevant geographic market is considered as Kundli or the entire Sonapat district of Haryana. In the view of the Informants it is so because the Opposite Party No. 1 has vast land bank and the prices of its residential property are much higher compared to other developers. In this regard it is observed that even though these two factors establish that the Opposite Party No. 1 is a major player in the relevant market, but it cannot said to be in a dominant position in the relevant market. Large land bank gives the Opposite Party No. 1 the opportunity to push more supply into the market but buying behaviour in real estate is not only influenced by the size of the project but also because of several other factors. Also, integrated township with a higher land base may be just another option before the consumer; it is not a guaranteed consumer-puller, who may have other factors in mind. Higher prices of a project belonging to a developer also do not translate into dominance.
11. Further, apart from the Opposite Party No. 1, other large developers like Ansal API, Parshavnath Developer, Jindal Realty, *etc.* are competing with each other in the relevant market with projects of varying magnitudes and having comparable size and resources than that of the Opposite Party No. 1. The Commission notes



that the Informant has himself submitted that Ansal API is bigger player in terms of resources and brand value in other geographical markets. Presence of such players in the relevant market indicates that the buyers have the option to switch to other developers in the relevant geographic market.

12. Since there is no information available on record and on the public domain to show the position of strength of the Opposite Party No. 1 which enables it to operate independent of competitive forces prevailing in the relevant market, *prima facie*, the Opposite Party No. 1 does not appear to be in a dominant position in the relevant market. In the absence of dominance of the Opposite Party No. 1 in the relevant market, its conduct cannot be examined under the provisions of section 4 of the Act.
13. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.
14. 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

New Delhi

Date: 24.09.2014