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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 42 of 2015

In Re:

**Mr. Rahul Sharma
Flat no. 553, Neel Kanth Apartment,
Sector-13, Rohini, Delhi**

Informant

And

**Terra Group *alias* Adinath Properties Pvt. Ltd.
5th Floor, Plot No. 18,
Sector-44, Gurgaon, Haryana**

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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

**Mr. M. S. Sahoo
Member**



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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Mr. Rahul Sharma (the 'Informant') against Terra Group *alias* Adinath Properties Pvt. Ltd. (the 'Opposite Party') alleging *inter alia* contravention of the provisions of sections 3 & 4 of the Act in the matter.
2. The Opposite Party is a company incorporated under the Companies Act, 1956 and has been engaged in the business of development and sale of residential and commercial properties. The Informant is one of the allottees of a residential plot in the Terra City project developed by the Opposite Party at Alwar Express Highway, Bhiwadi (the 'Project').
3. As per the information, *vide* allotment letter dated 04.05.2012, the Informant was allotted Plot No. 95 admeasuring 240 sq. yards in the said project of the Opposite Party for a total consideration of Rs. 13,44,240/- (Rupees Thirteen Lakh Forty Four Thousand Two Hundred Forty Only). In this regard, a Plot Buyer Agreement (the 'Agreement') between the Informant and the Opposite Party was signed on 10.08.2012. As per 'the Agreement', development/ construction linked payment plan was opted for payment of the said amount. The Informant has already paid nine installments amounting to Rs. 12,56,628/- (Rupees Twelve Lakh Fifty Six Thousand Six Hundred Twenty Eight Only) to the Opposite Party.
4. It is averred that, *vide* letter dated 01.05.2015 offering possession of the said plot, the Opposite Party has demanded certain additional charges such as Rs. 60000/- (Rupees Sixty Thousand only) towards proportionate cost of electrical line and substation equipment cost, Rs. 24000/- (Rupees Twenty Four Thousand only) for sinking fund, and Rs. 25000/- (Rupees Twenty Five Thousand only) for club charges from the Informant. The Informant alleged that the said charges were not agreed between them as per the allotment letter and the 'Agreement'.



5. For the said illegal demand the Informant, *vide* his letter dated 03.05.2015, was agitated with the Opposite Party and also complained to the Confederation of Real Estate Developers' Associations of India (CREDAI) through an email dated 02.05.2015. It is the case of the Informant that despite his agitation, the Opposite Party has not responded to his query as to why the above said illegal charges were imposed on him which were not mentioned in the allotment letter and in the 'Agreement'. The Informant has submitted that at the time of negotiation and purchase of the said plot, the Opposite Party had not intentionally disclosed regarding the above said charges and the same was done with malafied intention to erode the negotiation ability of the Informant and to gain undue dominant position in the relevant market of 'plots sold and developed by Adinath Property in Terra City in Bhiwadi' which is in violation of the provisions of section 4 of the Act.
6. It is further submitted that the Opposite Party, *vide* letter dated 01.05.2015, informed the Informant to sign a maintenance agreement with the maintenance agency nominated by it and the Informant was asked to pay maintenance charges at the rate of Rs 8/- per sq. yard. As per the Informant, the Opposite Party has arbitrarily nominated the maintenance agency and fixed the maintenance charges without taking his consent. The Informant has also alleged that the Opposite Party is demanding maintenance charges for a year in advance in terms of post-dated cheques without leaving him an option to deduct the payment if services of the maintenance agency are not found to be satisfactory.
7. Based on the above submission, the Informant *inter alia* has requested the Commission to direct the Director General (DG) to cause an investigation into the matter, to direct the Opposite Party to withdraw the above said illegal charges, to direct the Opposite Party not to impose any penal charge on account of any delay in payment till the pendency of matter, to direct the Opposite Party to fix the fair market value of the maintenance services in consultation with the Informant and



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make provision for deduction from the charges if at any point of time services of the maintenance agency are not found satisfactory.

8. The Commission has considered the materials available on record. From the information it appears that the Informant is primarily aggrieved by the fact that the Opposite Party has demanded certain additional payments which were not mentioned in the allotment letter and in the 'Agreement' and the Opposite Party has arbitrarily nominated an agency for maintenance of the 'Project' and fixed the maintenance charges without the consent of the Informant. The Informant has alleged contravention of the provisions of sections 3 and 4 of the Act by the Opposite Party.
9. For examination of the alleged contravention of the provisions of section 4 of the Act, the relevant market is to be delineated first to assess the position of dominance of the Opposite Party and then to examine the alleged conduct of the Opposite Party in case it is found to be in a dominant position in the relevant market as defined.
10. Section 2 (r) of the Act defines the relevant market as "*the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets*". In the instant case the relevant product market to be considered is the market for 'the provision of the services of development and sale of residential plot'. It is observed that provision of the services of development and sale of residential plot is a distinct product compared to the services of development and sale of residential unit/ apartment in terms of end use. While residential plots allow buyers to decide on their own discretion the floor plan, number of floors, structure, and other specifics of dwelling unit subject to applicable regulations; on the contrary design and construction of a residential unit/ apartment is formulated and completed by the builder/ developer itself. Thus, from consumers' perspective, a residential plot and a residential unit/ apartment are not



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substitutable. The Informant has suggested the relevant product market as the market of plots sold and developed by M/s Adinath Property in Terra City. However, the Commission is of the view that the relevant product market cannot be defined on the basis of the product offered by the Opposite Party alone rather, all the substitutable products offered by all the enterprises operating in the relevant market need to be taken into account. Hence, the relevant product market as suggested by the Informant cannot be accepted. The relevant geographic market to be considered in the present case is Bhiwadi and its nearby areas. It may be noted that in two previously decided cases (Case Nos. 28 of 2013 & 57 of 2014) relating to real estate development in Bhiwadi, the Commission has delineated the relevant geographical market as Bhiwadi and its nearby areas. Accordingly, the Commission of the view that the relevant market to be considered in the present case is the market for “*provision of the services of development and sale of residential plot in Bhiwadi and its nearby areas*”.

11. Having delineated the relevant market, the next issue is whether the Opposite Party is a dominant player in the relevant market. In this regard the Commission observes that the relevant market is highly fragmented with the presence of large number of builders and developers having multiple projects. The presence of large players such as Omaxe Limited, Shiv Sai Infrastructure Private Limited, Bharat Bhumi Buildtech, *etc.* with comparable projects in the relevant market indicates that the buyers have options to switch to other builders/ developers in the relevant geographic market. In view of the foregoing, the Commission is of the view that the Opposite Party does not have significant market power in the relevant market and, *prima facie*, the Opposite Party does not appear to be in a dominant position in the relevant market. Since, *prima facie*, the Opposite Party does not appear to be in a dominant position in the relevant market, the question of abuse of dominant position by it, in terms of the provisions of section 4 of the Act, does not arise. Thus, there is no need to examine the alleged abusive conduct of the Opposite Party.



12. With regard to the allegations of violation of section 3, the Commission observes that the information does not disclose any kind of agreement which can be termed as anti-competitive in terms of any of the provisions of section 3 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 either section 3 or section 4 of the Act is made out against the Opposite Party 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/-

(S. L. Bunker)
Member

Sd/-

(Sudhir Mital)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U. C. Nahta)
Member

Sd/-

(M. S. Sahoo)
Member

New Delhi
Dated: 23.06.2015