

COMPETITION COMMISSION OF INDIA

Case No.- 43/2012

Date: 11/10/2012

Filed by: Shri A.K. Jain, Gurgaon, Haryana

Against : The Dwarkadhis Projects Pvt. Ltd., Delhi

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The present information was filed under Section 19(1) (a) of the Competition Act, 2002(hereinafter referred to as “the Act”) by Mr. A.K. Jain(hereinafter referred as “Informant) against Dwarkadhis Projects (P) Ltd., Delhi(hereinafter referred to as “Opposite Party) alleging abuse of dominant position by the Opposite Party in contravention of Section 4 of the Act.

2. As per the information, informant had purchased a dwelling unit in the group housing project namely “Aravali Heights at Sector-24, Dharuhera, District Rewari, Haryana” of OP who promised to complete the construction of the dwelling units within the stipulated time as per the rules of Haryana Government. However, despite expiry of 5 years and 8 months(against promised time of 3 years for completion of the project) and despite having collected 95% of the price without even getting the mandatory occupation/completion certificate from the Director General, Town and Country Planning, Haryana, OP sent a final demand letter dated 27/04/2012 seeking payment of Rs.3,29,012/- as charges for conducting improvement work before handing over the possession. On 26/06/2012, OP also forwarded ‘Buyer’s Agreement’ containing several unfair, objectionable and one-sided terms, for the signature of the informant.

3. It is alleged by the informant that OP abused its dominant position qua Informant by offering the possession of the unit only if he paid the illegal demand as raised and if he signed the buyer's agreement on the dotted lines as suggested by OP.

4. The Informant pleaded that the relevant market, in this case, was 'provision of services of real estate in the Revenue Estate of Dharuhera in the State of Haryana' and OP was in a dominant position on the basis of factors like economic power of OP, sole dependence of informant (consumer) on OP and other factors mentioned in section 19(4). The clauses in the buyer's agreement, which were stated to be abusive related to (a) obtaining pre-consent of the allottee in favour of OP to subsequently change the lay-out/building plan at any time without consent from the allottee; (b) obtaining an unconditional undertaking from the allottee that the title deeds, plans and other documents were in order; (c) acquiring waiver of time-limit of completion of construction of the project and giving possession on account of undisclosed events of force majeure; (d) calculating super area at the sole discretion of OP; (e) acquiring the right to cancel the dwelling unit and sell it to some other party in case the possession was not taken by the allottee even after having paid the full amount; (f) authorizing OP to create all types of mortgages on the land and buildings under the project and; (g) appointment of sole arbitrator at OP's discretion. It was contended that aforesaid clauses were also discriminatory and unfair.

5. In the end, informant prayed that the buyer's agreement and the charges demanded by OP should be declared illegal and OP should be directed not to force him to sign its one-sided buyer's agreement, besides penalizing it for the delay in handing over the possession of the above-said residential unit.

6. After considering the material on record, including written submissions filed by informant, it is found that the informant has basically alleged abuse of dominance by OP against the informant because of one-sided conditions in the buyer's agreement. In order to examine the allegations of the informant, first of all, the relevant market is to be taken into consideration. Informant stated that relevant market, in this case, should be 'provision of services of real estate in the

Revenue Estate of Dharuhera in the State of Haryana'. The product market of 'the provision of services of real estate' appears to be too broad and will include all types of real estate properties i.e. residential plots/flats, commercial and industrial properties which cannot be regarded as interchangeable or substitutable for the simple reason of different characteristics of the products, their price and intended use. The Commission considers that 'provision of services of development and sale of residential units in Dharuhera in the State of Haryana' would be appropriate relevant market in this case.

7. In order to attract provisions of the section 4 of the Act, the dominant position of the enterprise needs to be examined under explanation (a) to section 4 of the Act. Even though the opposite party is alleged to be a leading real estate developer in the relevant market, there is no material on record to hold it a dominant enterprise in the relevant market. The informant has cited certain factors like economic power of OP and sole dependence of informant on the OP but without giving any specific data to support his contention. Information available in public domain shows that many building projects were in progress in the above area namely Vipul Gardens, Aravali Heights-II and III, M2K Country, M2K Country Heights, Avalon Rangoli, Vardhman Springdale, Lotus Green City, Gurgaon Extension, Gurgaon Extension-II, Raheja Highway Arcade, Piyush Horizon, Parsvnath Pleasant, Cubix, Tivoli Holiday village, Bestech Parkview Delight, etc. and these also provided the services of development and sale of residential units in Dharuhera in the State of Haryana.

8. As such, dominance of OP in the relevant market is prima facie not established and so there is no question of abuse of the same. The Commission finds that no prima facie case was made out for directing the Director General to carry out investigation into the matter under Section 26(1) of the Act.

9. In view of the foregoing, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.

10. The Secretary is directed to communicate the decision of the Commission to the informant accordingly.

Sd/-
Member(G)

Sd/-
Member(AG)

Sd/-
Member(GG)

Sd/-
Member(T)

Sd/-
Member(D)

Sd/-
Chairperson