



In re:

Mr. Raghuvinder Singh ... Informant

V-2/4 Jay Pee Green Golf Course, Greater Noida (U.P)

And

Jai Prakash Associate Ltd. ...OP-1

Sector-128, Noida (U.P)

Mr. Jay Prakash Gaur, Managing Director ...OP-2

Sector – 128, Noida (U.P)

Mr. Manoj Gaur, Director ...OP-3

Sector – 128, Noida (U.P)

Authorised Signatory ...OP-4

Sector – 128, Noida (U.P)

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (retd.) S. N. Dhingra
Member

Mr. S.L.Bunker
Member

Order under Section 26(1) of the Competition Act, 2002

OP-1 was stated to be a real estate company and other OPs its officials at the time of filing of information. The informant was aggrieved by the purported abuse of dominant position by the opposite parties. In the year 2009, OP-1 is stated to have launched a residential scheme namely ‘Jay Pee



Greens' in which the informant booked a flat in May 2010. The possession of the flat was assured to be given within 24 months i.e. by May 2012 but was not given till the date of filing this information. Further, the information stated that OP-1 failed to complete the construction and raised an illegal and unreasonable demand from the informant against the terms of the contract, failing which OP-1 threatened cancellation of the allotment.

2. The informant stated that since OP-1 was in a dominant position having huge projects in the relevant market of the development and sale of residential apartments in Noida and Greater Noida area. It acted in an illegal and arbitrary manner by taking money from the informant in May 2009 as booking amount and not offering possession even after 4 years. Further, the informant was aggrieved by the illegal demand of money (through demand notice dated 14.09.2012) in violation of the agreed payment plan and notice of cancellation sent by OP-1 to informant on 10.05.2013, on non-fulfilment of such illegal demands.

3. On the basis of these facts, the informant prayed to the Commission to direct OP-1 to give possession of the flat to the informant allotted to him along with monetary compensation on account of damages towards negligence, mental harassment/ agony and deficiency in service.

4. Before dealing with the specific allegations posed in the present information it may be noted that the Commission had occasion to consider the dominance in a *prima facie* manner in respect of OP-1 in earlier cases (Case No. 72 of 2011, Case No. 16 of 2012, Case No. 34 of 2012 and Case No. 53 of 2012) wherein the Commission formed a *prima facie* opinion that the OP-1 was in a dominant position in the relevant market of 'provision of services for development and sale of residential apartments in the geographic area of NOIDA and Greater NOIDA'. The Commission considered buyers' agreements in those earlier cases and found that *prima facie*, the terms of the agreements between the OPs and allottees were abusive. Accordingly, the Commission passed orders under section 26(1) of the Act and directed the DG to cause an investigation to be made for alleged contravention of abuse of dominant position under section 4 of the Act.



5. The relevant market in the present case is the same where OP-1 is already under investigation in earlier cases i.e. ‘provision of services for development and sale of residential apartments in the geographic area of NOIDA and Greater NOIDA’. In view of the Commission’s earlier orders under section 26(1) of the Act in the above stated cases, OP 1 has to be considered *prima facie* dominant in the relevant market of ‘provision of services for development and sale of residential apartments in the geographic area of NOIDA and Greater NOIDA’.

6. The allegation in the present case pertains to abusive and one sided conditions in the provisional allotment letter and agreement, delay in delivering possession and illegal demand of money by OP-1. Though, the buyers’ agreement has not been placed on record by the informant, the Commission examined the provisional allotment letters sent by OP-1 to Informant and found that the allotment in the present case was made on the standard terms and conditions as mentioned by OP-1 in the said letter. The Commission perused the ‘Standard Terms and Conditions of Provisional Allotment of an Apartment at Jaypee Greens Aman, Noida’ available on OP-1’s official website. Following excerpts from the clauses, inter alia, of the ‘Standard Terms and Conditions of Provisional Allotment of an Apartment at Jaypee Greens Aman, Noida’ appear one sided and *prima facie* abusive:

Clause 2.3: The Applicant agrees that unless an Indenture of Conveyance is executed in favour of the Allottee, the Jaypee Infratech Ltd. shall continue to be the owner of the Said Premises and no payments made pursuant to the Provisional Allotment of the Said Premises to the Allottee, whether pursuant to the Standard Terms & Conditions or otherwise, shall give any Person any lien on the Said Premises until they have complied with all the terms and conditions of the Provisional Allotment and the Indenture of Conveyance has been executed in favour of the Allottee.

Clause 2.4. Nothing herein shall be construed to provide the Applicant / Allottee with any right, whether before or after taking possession of the Said Premises or at any time thereafter, to prevent the Company/JIL from

(i) construction or continuing with the construction of the other building(s) or other structure in the area adjoining the Said Premises;

(ii) putting up additional constructions at Jaypee Greens Aman;



(iii) amending / altering the Plans herein.

Clause 5.6 The Allottee shall be liable to make payment of interest at the rate of 18% per annum on the outstanding amounts of Consideration and other dues from the date(s) upto their payment or cancellation of the Provisional Allotment. The payment made by the Allottee shall first be adjusted against the interest and/or any penalty, if any, due from the Allottee to the JIL under the terms herein and the balance available, if any, shall be appropriated against the instalment(s) due from the Allottee under the Standard Terms & Conditions and the Provisional Allotment.

Clause 7.1 The Company/JIL shall make best efforts to deliver possession of the Said Premises to the Applicant within the period more specifically described in the Provisional Allotment Letter with a further grace period of 90 days. If the completion of the Said Premises is delayed by reason of.....the Company/JIL shall be entitled to a reasonable extension of time for delivery of possession of the Said Premises.

*Clause 7.2 If, however, the Company/JIL falls to deliver possession of the Said Premises within the stipulated period as mentioned here in above, and within the further grace period of 90 days thereafter, the Applicant shall be entitled to a discount in Consideration for delay thereafter @ Rs.5/- per sq. ft. (Rs. 54/- per sq. mtr) per month for the Super Area of the Said Premises (**"Rebate"**).....*

Clause 7.7 The Applicant shall haven no claim, right, title or interest of any nature or kind whatsoever except right of ingress/egress over or in respect of land, open spaces & all or any of the Common Areas/Facilities etc. which shall remain the property of the JIL. The JIL can, as per applicable laws, transfer and assign the Common Areas/Facilities to a body or association of owners of unites of Jaypee Greens Aman or their co-operative society.....

7. The above stated clauses appear abusive being one-sided and onerous on the allottees without creating any reciprocal obligation on OP-1.

8. The Commission in earlier cases had formed a *prima facie* view under section 26(1) against OP-1 for imposing unfair and one-sided conditions on buyers through the buyers' agreement, being abusive of dominant position. The same *prima facie* view holds good for this case also as the facts are similar. Since the DG investigation report is already received in those cases, the DG is directed to submit a separate report in this case within 60 days from the receipt of this order.



9. The Secretary is directed to send a copy of this direction passed under section 26(1) to the office of the DG. DG shall investigate the matter about violation of the provisions of the Act. In case the DG finds OP-1 in violation of the provision of the Act, it shall also investigate the role of the persons, including OP-2, OP-3 and OP-4, who at the time of such contravention were incharge of and responsible for the conduct of the business of the opposite parties so as to fix responsibility of such persons under section 48 of the Act. DG shall give opportunity of hearing to such persons in terms of section 48 of the Act. The report of DG be submitted within 60 days from receipt of the order.

10. Nothing stated in this order shall tantamount to a final expression of opinion on merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

New Delhi
Dated: 01/7/2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

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