



COMPETITION COMMISSION OF INDIA

Case No. 47 of 2021

In Re:

1. **Mrs. Nirmla Agarwal**
5/7, Buroshibtala Main Road Bangur Complex
Flat #42, Kolkata – 700 038
West Bengal **Informant No. 1**

2. **Mr. Mohan Lal Agarwal**
5/7, Buroshibtala Main Road Bangur Complex
Flat #42, Kolkata – 700 038
West Bengal **Informant No. 2**

And

1. **Greenfield City Projects LLP**
Srijan House, 36/1A
Elgin Road, Kolkata – 700 020
West Bengal **Opposite Party No. 1**

2. **Srijan Realty Pvt. Ltd.**
Srijan House, 36/1A
Elgin Road, Kolkata – 700 020
West Bengal **Opposite Party No. 2**

3. **Bengal Greenfield Housing Development Company**
Hi-Tech Chambers, 7th Floor, 884/1B
Topsia Road (S), Kolkata – 700 046
West Bengal. **Opposite Party No. 3**

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member



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Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Ms. Nirmala Agarwal and Mr. Mohan Lal Agarwal ('**Informants**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against Greenfield City Projects LLP ('**OP-1**'), Srijan Realty Pvt. Ltd. ('**OP-2**') and Bengal Greenfield Housing Development Company ('**OP-3**'), *inter alia*, alleging contravention of the provisions of Section 4 of the Act.
2. As per the Information, OP-1 is a limited liability partnership, promoted and incorporated by OP-2 and OP-3 to develop residential projects under the name "Green Field City" in Kolkata. OP-2 is a private limited company and is engaged in the business of developing residential and commercial real estate projects in Kolkata. OP-3 is also a real estate and civil construction company based in Kolkata.
3. It is stated that the Informants had booked an apartment for Rs. 83,70,625/- (Rupees Eighty-Three Lakhs Seventy Thousand Six Hundred and Twenty-Five only) developed by OP-1. Upon signing the agreement, the Informants were allotted an apartment in Classic Homes Phase-III measuring 895 square feet. It was, *inter alia*, mentioned in the agreement that, in case of failure to make payments, the buyer would be liable to pay compound interest @18% per annum for delay in making the payment.
4. It is averred that the Informants had made timely payments as per the scheduled payment plan laid out in the agreement. Further, they requested an inspection of the apartment and delayed their last and final instalment of Rs. 52,500/- until their request for inspection was granted.
5. It is alleged that the Informants were allowed to inspect the premises after a long delay. On inspection, it was found that a substantial part of the construction work



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was remaining and accordingly, the Informants refused to pay the final instalment which was payable only after completion of the apartment.

6. On 08.05.2015, OP-1 intimated that the construction of the apartment was completed, and the Informants inspected the same on 07.06.2015. It is stated that a letter dated 15.05.2015 was issued by OP-1 demanding Rs. 2,16,012/- instead of Rs. 2,00,490/- adding thereto interest @ 18% and guarding charges of Rs. 2,500/- per month. After negotiation and discussions of the Informants with OP-1, the amount was brought down to Rs. 2,00,490/- and was paid by way of cheque. In view of the same, the Informants requested OP-1 to initiate the process of registration of the apartment and hand over the possession letter for the same. It is alleged that, after multiple requests, OP-1 agreed to the same, subject to the payment of Rs. 80,500/- as guarding charges.
7. The Informants have stated that the estimated delivery of the project was scheduled on 31.04.2014, with a grace period of 6 months, but OP-1 issued a letter of deemed possession which was received by the Informants on 06.01.2015 only. Accordingly, the Informants have alleged that OP-1 failed to deliver physical possession on the due date.
8. The Informants have also alleged that the agreement between the Informant and OP-1 was one-sided, with discriminatory clauses against the buyers of the project, so much so that the Informants had no option of backing out of the project due to the forfeiture clause.
9. Apart from the above, it has been alleged that OP-1 has collected a sum of Rs. 10,000/- from each buyer towards the cost of legal charges which, apparently, is illegal.
10. In view of the above facts and circumstances, the Informants have alleged that the OPs have imposed unfair conditions in the agreement due to the position of strength in the market. Hence, the conduct of the OPs is alleged to be in violation of the provisions of Section 4 of the Act, and the Informants have prayed the Commission,



inter alia, for refund of the amount, interest paid to OP-1, compensation from OP-1 for mental and physical harassment and injury suffered and to impose penalties as the Commission deems fit.

11. The Commission has considered the Information and material available on record in its ordinary meeting held on 19.01.2022 and decided to pass an appropriate order in due course.
12. The Commission notes that the matter relates to the sale of residential units/apartments in a project developed by OP-1 and alleged imposition of unfair terms and conditions by OP-1. Since the allegations pertain to violation of the provisions of the Section 4 of the Act, the relevant market in terms of provisions of Section 2(r) of the Act is required to be delineated before examining the alleged abusive conduct of OP-1. In this regard, it is noted that the Informants have not attributed any relevant market in the Information and have not provided any document with respect to the alleged dominance of OPs.
13. In relation to the relevant market, the Commission notes that a potential buyer of a residential apartments/units enters into an agreement with the developer after taking into account factors such as substitutability, characteristics of services offered, price and intended use. Accordingly, in the instant matter, the relevant product market may be taken as *“provision of services for development and sale of residential apartments.”*
14. With regard to the relevant geographical market, the Commission is of the view that consumers looking for residential apartments in the geographical region of Kolkata and its surrounding areas may not prefer other areas because of factors such as differences in the price of land, commutation facilities, quality of essential services, *etc.*, which play an important role in potential buyers’ decision making process. Further, the geographical region of Kolkata appears to exhibit homogeneous and distinct market conditions. Considering this, the Commission opines that the relevant geographic market in the instant case is *“Kolkata”*.



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15. Thus, the relevant market would be the market of “*provision of services for development and sale of residential apartments in Kolkata.*”
16. Having identified the relevant market, the Commission now proceeds to determine dominance of OPs in the relevant market.
17. The Commission notes that the Informants have not provided any information/data in support of the alleged dominance of OPs in the relevant market. The Commission, however, on the basis of the information available in the public domain, notes that, other than OPs, a number of real estate developers are operating in the relevant market, *viz.*, Eden Group, Merlin Group, GM Group, Magnolia Infrastructure Development, Danish Construction, PS Group, West Bengal Housing Board, Jeet Nirman and Realtech Group Kolkata. These developers are competing with each other in the relevant market. The presence of these real estate players with comparable projects in the relevant market indicates that buyers have various options while buying residential apartments and that they are not dependent on OPs alone for the same. Thus, the services offered by these real estate developers pose sufficient competitive constraints upon OPs in the relevant market.
18. Based on the above, the Commission concludes that OPs do not enjoy a dominant position in the aforesaid relevant market. Accordingly, in the absence of dominance, the issue of examination of alleged abusive conduct does not arise.
19. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case of contravention of the provisions of Section 4 of the Act against OPs, and therefore, the matter is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
20. It is, however, made clear that nothing stated in the present order shall preclude the Informants from taking/availing any other remedy(s) available to them in accordance with law.



21. The Secretary is directed to communicate to the Informants, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 07/02/2022
New Delhi