

Competition Commission of India

[Case No. 47/2011]

Dated: 28.09.2011

**Dr. Kaushal Kumar Pandey
R/o 711, Gaur Galaxy, Sector 5, Vaishali,
Ghaziabad (U.P.)**

Informant

**1. M/s Raheja Design & Contract Ltd,
A-201, Okhla Industrial Area, Phase 1
New Delhi**

**2. Shri Suresh Raheja,
A-201, Okhla Industrial Area, Phase 1
New Delhi**

Opposite Parties

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

1. The present matter has been considered by the Commission on the basis of information received on 25.08.2011 from Dr. Kaushal Kumar Pandey (hereinafter referred to as the "Informant") under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act"). The case relates to alleged abuse of dominant position by M/s Raheja Design & Contract Ltd. (hereinafter referred to as "Opposite Party No. 1") and Shri Suresh Raheja (hereinafter referred to as "Opposite Party No. 2") in sale and purchase of apartment at Jaipur in the state of Rajasthan.
2. The facts and allegations of the case as stated in the information, in brief, are as under:

- 2.1. As per the information, the informant is a doctor by profession having his residence at Ghaziabad in the state of Uttar Pradesh. The Opposite Party No. 1 is a Delhi based construction company having its office at A-201, Okhla Industrial Area, New Delhi and Opposite Party No. 2 is an associate/partner of Opposite Party No. 1.
- 2.2. As stated in the information in June 2006, the Opposite Party No. 2 conveyed to the informant that he and his constituent partner, Opposite Party No. 1, is constructing a group housing luxury apartment "Raheja Towers" at Jaipur in the state of Rajasthan and induced the informant to book apartment in the proposed project. The Opposite Party No. 2 assured the informant that the proposed "Group Housing Scheme" will be completed within a period of two years from June 2006 and the informant will get handsome return on his investment.
- 2.3. Impressed by the rosy picture of the proposed housing project as given by the Opposite Party No. 2 and with a hope to get good return on investment, the informant booked two apartments in the said project; one in his name and another in the name of his wife Mrs. Raj Pandey.
- 2.4. It has been stated in the information that the informant paid a sum of Rs. 6,00,000/- (Rupees six lakh) to the Opposite Parties towards the booking amount of apartments; Rs. 3,00,000/- (Rupees three lakh) for him and Rs. 3,00,000/- (Rupees three lakh) for his wife on 22.06.2006 against receipt nos. RAH/07/06/159 dated 31.05.2007 and RAH/07/06/158 respectively at the time of booking. Further, on 01.06.2007 the informant made subsequent payment of Rs. 3, 00,000/- (Rupees three lakh) towards the cost of apartments to the Opposite Parties.
- 2.5. It has been alleged by the informant that on payment of the initial amounts, the Opposite Parties assured him to furnish an agreement to that effect and also

assured to give him the receipt of the subsequent payment of Rs. 3, 00,000/- (Rupees three lakh) towards the cost of apartments made on 01.06.2007. However, the Opposite Parties have not signed the agreement and have also not been given the receipt of Rs. 3,00,000/- (Rupees three lakh) for the payments made on 01.06.2007 till date. They have also not handed over the possession of the duly constructed flats/premises to the informant till date. The informant has further stated that the Opposite Parties are yet to furnish the break-up of the payments towards the cost of the apartments.

- 2.6. According to informant, after waiting for a long time, a legal notice was sent to the Opposite Parties on all the above issues. The Opposite Parties, through their legal representatives, in turn, have challenged the investment decision itself of the informant. The Opposite Parties have also blamed the informant for not submitting the agreements duly signed by him and his wife.
- 2.7. The informant has alleged that being in a dominant position in the sale of apartment in the city of Jaipur, Rajasthan, the Opposite Parties are abusing their dominant position by keeping the money they have received from the informant during 2006 and 2007 and by not furnishing the draft agreement for the said deal. The informant has submitted that because of the said act of the Opposite Parties, he is neither getting the possession of the apartments booked by him nor getting back his money.
3. The Commission considered the matter in its meeting held on 07.09.2011 and decided to call the informant before taking any decision in the matter. On 28.09.2011, the informant through his attorney Mr. B.N. Singhvi appeared before the Commission and presented his views in support of the allegations made in the information.

4. The Commission has carefully examined the allegations and arguments of the informant in light of the provisions of the Act and evidences available on record. The Commission notes that the Opposite Party No. 1 is engaged in the business of Real Estate Development and hence is covered in the definition of enterprise under Section 2 (h) of the Act.
5. The Commission also notes that any issue relating to competition ought to be looked into with reference to the relevant market, which happens to be the market for services provided by the developers for providing apartments to the customers in the city of Jaipur in Rajasthan in the present case.
6. On a careful consideration of the whole matter, the Commission further notes that the fundamental allegations of the informant in the matter is that being in a dominant position in the relevant market, the Opposite Parties are abusing their dominant position by retaining the money given by the informant at the time of booking and on subsequent occasion, not furnishing the draft agreement for the said deal and not giving possession of the apartment within the agreed time.
7. The Commission observes that the aforesaid facts and allegations in the information essentially relate to dispute between the informant and the Opposite Parties and no case has been made out by the informant in support of his arguments that the Opposite Party No.1 has abused its position of dominance in the relevant market in violation of the provisions of Section 4 of the Act in the matter.
8. The Commission is of the opinion that, *prima facie*, the provisions of Section 4 of the Act are not applicable in the case as from the information and materials available on record, it appears that the Opposite Party No. 1 is not in a dominant position in the relevant market. Since the Opposite Party No. 1 cannot be said to be dominant in the relevant market, the question of any abuse within the meaning of provisions of Section 4 also does not arise in the case.

9. The Commission, in view of the above discussion, holds that no *prima facie* case is made out for making a reference to the Director General (DG) for conducting investigation into this matter under Section 26 (1) of the Act.

10. In light of the above analysis, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.

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

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (G)