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COMPETITION COMMISSION OF INDIA
Case No. 47 of 2015

In Re

Ms. Babita Roy,

85/3, Aaradhana Nagar, Bhopal

Informant

And

M/s Swadesh Developers and Colonisers,

Through its proprietor Mr. Nitin Agrawal,

Head office- E-5/16,

First Floor, Above Top N Town,

Bittan Market, Bhopal

Opposite Party No. 1

Bank of India, Zonal Head,

Bank of India Bhawan

Arera Hills Jail Road, Bhopal

Opposite Party No.2

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member



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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 (hereinafter referred to as the ‘Act’) by Ms. Babita Roy (hereinafter referred to as the ‘**Informant**’) against M/s Swadesh Developers and Colonisers through its proprietor Mr. Nitin Agrawal (hereinafter referred to as ‘**OP-1**’) and Bank of India (hereinafter referred to as ‘**OP-2**’) alleging, *inter-alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. Facts of the case may be briefly noted:
3. As per the Information, the Informant had booked a duplex in “Red Square” (hereinafter referred to as the “**Project**”), developed by OP-1 in Bhopal and had paid Rs.7,00,000 (*i.e.* 10% of the total cost of the property) as booking amount. Thereafter, the Informant entered into an “agreement to sell” (hereinafter referred to as “**agreement**”) on 28.02.2015 with OP-1 for purchase of the said duplex.



4. It is alleged that despite lower interest rate offered by Union Bank of India (UBI) and State Bank of India (SBI), OP-1 had insisted upon the Informant to avail home loan facility from OP-2 only else OP-1 would forfeit the said booking amount. The Informant has stated that she had contacted OP-1 several times to obtain necessary documents required for availing home loan from UBI or SBI, but OP-1 refused to provide the same. It is averred that in the absence of required documents, the Informant could not avail home loan from UBI or SBI.
5. It is submitted that a demand letter dated 11.03.2015 was sent by OP-1 to the Informant to pay the balance amount of Rs.63 lakhs along with service tax to the tune of Rs.2,16,300/- before the date of registration of the duplex i.e., 28.03.2015. It is further stated that service tax was waived-off by OP-1 later under protest.
6. It is stated that the Informant had sent a notice dated 23.03.2015 to OP-1 to either provide her with the necessary documents or else cancel the agreement and refund the booking amount paid by her. Further it is stated that the Informant through her counsel had sent an email to OP-2 informing about the discrepancies in the documents provided by OP-1 for availing a home loan. In response to the said email, Informant's counsel had received a legal notice from OP-1.
7. It has been submitted that OP-1 has not refunded the booking amount till the date of filing of the information which is causing mental torture and harassment to the Informant. It has been alleged that OP-2 has sanctioned a home loan for one buyer in the same project and another loan was in the pipe line thereby indicating that there exists an arrangement between OP-1 and OP-2 to benefit each other in



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contravention of the provisions of section 3 of the Act. It has been further alleged that at the same time OP-2, in reply to an RTI, has informed the Informant that the project was not approved by OP-2 and in other RTI reply, it has stated that without registered joint venture agreement between the land owner and OP-1, home loan would not be sanctioned.

8. Based on the above allegations, the Informant has alleged that the conduct of OPs is in contravention of the provisions of sections 3 and 4 of the Act. Thus, the Informant has prayed, *inter alia*, for initiating an inquiry under the Act.
9. The Commission has perused the information.
10. The Commission observes that the grievance of the Informant primarily pertains to the non-supply of necessary documents by OP-1 to enable the Informant to avail home loan from other banks as they were offering lower interest rates than OP-2. Further it has been alleged that OPs have entered into an anti-competitive arrangement between themselves which is in contravention of the provisions of section 3 of the Act. The Commission notes that neither the Informant has provided any cogent material nor any information is available in the public domain to show any arrangement between OPs which amounts to contravention of the provisions of section 3 of the Act. Thus, *prima facie*, no contravention of the provisions of section 3 of the Act by OPs is made out.
11. It is further noted that the allegations of the Informant also relate to the contravention of the provisions of section 4 of the Act by OP-1.



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Accordingly, relevant market is determined in order to examine the alleged abusive conduct of OP-1.

12. The Commission notes that the Informant had booked a duplex in a project developed by OP-1 in Bhopal, MP. Taking into account the facts of the present case, the relevant product market would be the “*services for development and sale of residential apartments*”. With regard to the relevant geographic market, it may be noted that the consumers, looking for a residential apartment in Bhopal, may not prefer other areas. Various factors like distance between locations frequently commuted, regional or personal preference, transport connectivity *etc.* play a decisive role in a potential buyer’s decision making process while choosing a residential property in a particular area. Therefore, the Commission is of the view that the relevant geographic market in the instant case would be “*Bhopal*”. Thus, the relevant market would be the market of “*services for development and sale of residential apartments in Bhopal*”.
13. The definition of “dominant position” as provided in section 4 of the Act, essentially links the same with the concept of market power which allows an enterprise to act independently of competitive constraints. Such independence allows an enterprise to affect the relevant market in its favour and results in economic detriment to its competitors and consumers. Based on the information available in public domain in terms of total number of projects, the Commission observes that apart from OP-1 (has 3 projects), there are many other real estate developers who are operating in the relevant market like Fortune Builders (has 21 projects), Mahendra Builders (has 10 projects), Chinarr Group (has 9 projects), Om Construction &



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Builders (has 6 projects), The Signature Group (has 6 projects), Meenakshi Builders (has 5 projects), Agrawal Construction (has 5 projects), A G Group (has 4 projects), Unitech Group (has 2 projects), Maa Vaishnav Builders (has 2 projects) and Akshara Infraestates Pvt Ltd (has 2 projects) *etc.* In view of the unconcentrated nature of the market, the presence of OP-1 is not significant in the relevant market. *(Source: websites of the real estate developers)*

14. Another factor for determination of dominance is the dependence of consumers on the enterprise. All the real estate developers are competing with each other in the relevant market with projects of varying magnitudes and having comparable size and resources. Presence of other players in a significant way with comparable projects in the relevant market indicates that the buyers have the options to buy flats from other developers in the relevant geographic market. Therefore, the dependence of buyers on OP-1 is limited.
15. Further, it is observed that no information is available in the public domain indicating the position of strength of OP-1, which enables it to operate independently of competitive forces prevailing in the relevant market. Further, the Informant has also not placed before the Commission any cogent material to show the dominance of OP-1. Thus, *prima facie*, OP-1 does not appear to be dominant in the relevant market. In the absence of dominance of OP-1 in the relevant market, the question of examination of abuse of dominance does not arise.
16. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of sections 3 and 4 of the Act is made out against OPs in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.



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17. The Secretary is directed to inform the parties 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

Date: 02.07.2015