



COMPETITION COMMISSION OF INDIA

Case No. 48 of 2014

In re:

1. Anil K Jain

30, Pocket-1, Jasola, New Delhi

2. Atul Maheshwari

84, Pocket-1, Jasola, New Delhi

3. Sangeeta Jain

S-319, Panchsheel Park, New Delhi

4. Agam Jain

30, Pocket-1, Jasola, New Delhi

5. Sanyam Jain

30, Pocket-1 J Jasola, New Delhi

6. Raj Jain

168, Ill Floor, Pocket- 2, Jasola, New Delhi

7. Priyal Jain

168, Ill Floor, Pocket- 2, Jasola, New Delhi

Informants

And

1. Yamuna Expressway Industrial Development Authority

Commercial Complex, Block P-2,

Sector Omega- I, Greater Noida- 201308

Opposite Party No. 1



2. Department of Stamp & Registration

**Government of Uttar Pradesh,
Vishwas Commercial Complex,
Vishwas Khand III, Gomti Nagar,
Lucknow, Uttar Pradesh**

Opposite Party No. 2

3. Sub-Registrar

**Gautam Budh Nagar, Sector Gamma-1,
Greater Noida, Uttar Pradesh**

Opposite Party No. 3

CORAM:

**Mr. M. L. Tayal
Member**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

Appearance: Advocate Mr. Nitesh Jain and Advocate Mr. Ishaan Madaan on
behalf of the Informants.



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

1. As per the provisions of section 19(1) (a) of the Competition Act, 2002 (hereinafter the ‘**Act**’) Shri Anil K Jain and others (hereinafter the ‘**Informants**’) have filed the information in the present case.
2. The matter relates to the alleged abuse of dominant position by Yamuna Expressway Industrial Development Authority (hereinafter the “**Opposite Party No. 1**”), Department of Stamp & Registration, Government of Uttar Pradesh (hereinafter “**Opposite Party No. 2**”) and Sub-Registrar, Gautam Budh Nagar, Uttar Pradesh (hereinafter the “**Opposite Party No. 3**”) in allocation of residential plots in Greater Noida.
3. The facts of the case, as detailed in the information, may be briefly noted:
 - 3.1 The Opposite Party No. 1 is a body established under the Uttar Pradesh Industrial Area Development Act, 1976. Its main responsibilities include: execution of Yamuna Expressway project; acquisition of land for construction of Yamuna Expressway and area development; preparation of zonal plan/master plan for planned development along the Expressway; development of drainage, feeder roads, electrification and other facilities in the area. Nearly 334 villages of Gautam Budh Nagar, Bulandshahar, Aligarh, Mahamaya Nagar (Hatrass), Mathura and Agra districts of Uttar Pradesh are notified under the Opposite Party No. 1. The Opposite Party No. 2 is a department of the Government of Uttar Pradesh and the Opposite Party No. 3 is an office under the Opposite Party No. 2 located in Gautam Budh Nagar district of Uttar Pradesh. The Informants are the allottees of residential plots under ‘Yamuna Expressway Industrial Development Authority Residential Plot Scheme 2009(1) [hereinafter the “**Scheme**”] developed by the Opposite Party No. 1 at Sector 20, Greater Noida.



3.2 It is averred in the information that the Opposite Party No. 1 allotted plots to the Informants under the said scheme without actually acquiring the land from the farmers/land owners under the provisions of Land Acquisition Act, 1894 which is in contravention of Section 7 of the Uttar Pradesh Industrial Development Act, 1976.

3.3 As per the Informants, the Hon'ble Allahabad High Court has stayed the land acquisition process for the said scheme. Despite the Hon'ble High Court's Order, the Opposite Party No. 1 continues to demand instalments from the allottees and threatened to impose heavy penalty in case any allottee fails to make timely payment. It is alleged that the Opposite Party No. 1 has retained the instalments of the allottees and generating interest out of it without giving any corresponding benefits to them. Further, without having possession of land, the Opposite Party No. 1 continues to market new plots.

3.4 The Informants state that the allottees were compelled to enter into 'Agreement to Lease' (hereinafter the "**Agreement**") with the Opposite Party No. 1 and the stamp duties for the same were paid by the respective allottees. It is averred that the Opposite Party No. 1 had executed the 'Agreement' without any land/property in its possession and the Opposite Party No. 2 and the Opposite Party No. 3 accepted stamp duty on contingent contracts. Also, the Opposite Party No. 2 and the Opposite Party No. 3 inflated the circle rate of property of the area which has not developed since 2009. The Informants alleged that there exists nexus between the Opposite Parties to carry out the above said unfair trade practices.

3.5 It is further stated that determination of circle rates by the state agencies is not a sovereign function of the state. While collection of tax can be categorised as a sovereign function, arbitrary fixation of circle rates as well as applying the circle rates on the allotment to be made by the state agencies is without any basis. Since the main objective of fixation of circle rates is to prevent deliberate undervaluation of properties to avoid the tax regime,



determination of the circle rates has to be on a proper evaluation of market prices. As no land is either bought or sold, there is no effective basis for determination of market price. It is alleged that the determination of circle rates by the state agencies is artificial and anti-competitive in violation of Section 3(1) and 3(3) of the Act since it is preventing actual determination of market price of the property.

3.6 It is averred that the Opposite Party No. 1, in connivance with the Opposite Party No. 2 and the Opposite Party No. 3, devised a scheme for permitting 'transfers' of the allotments of non-existent plots on which they collect 'transfer charges' and 'stamp duty'. The Informants alleged that the conditions laid down in the letter of transfer of allotment rights were violative of section 4(2) (a) and (d) of the Act.

3.7 The Informants alleged the 'Agreement' contains certain terms and conditions which are unfair and one sided. Some of such terms and conditions are: the Opposite Party No. 1 has the right to cancel the allotments without assigning any reasons to the allottees; the allottees to forego refund in case of cancellation of allotment for any reason whatsoever; no compensation to allottees in case of delay in giving possession, except simple interest at the rate of 4% in case the project failed, *etc.*

3.8 As per the Informants, they have already made more than 75% payment of the base premium amount and 4 years have already lapsed since the allotment of the plots but, the Opposite Party No. 1 is not in position to give possession. On visit to the sight, it was noticed that no development as such has taken place and the farm lands still continue to appear in possession of the farmers.

3.9 Aggrieved by the above said alleged anti-competitive conduct of the Opposite Parties, the Informants, *inter alia*, prayed before the Commission to :



- i) hold the Opposite Party No. 1 guilty of abusing its dominant position and impose penalty accordingly;
 - ii) direct the Opposite Party No. 1 to restrain from entering into the 'Agreement' with the allottees and to modify the terms of the 'Agreement' to the extent that in case of cancellation of allotment stamp duty paid by the allottees would be refunded and compensation would be given to the allottees for delay in giving of possession;
 - iii) hold the Opposite Parties guilty of adversely affecting property prices and baselessly increasing circle rates.
4. The Commission has perused the material available on record besides hearing the counsel who appeared on behalf of the Informants.
 5. The allegations of the Informants pertain to abuse of dominant position by the Opposite Party No. 1 in contravention of section 4 of the Act. For examination of the matter, the relevant market is to be delineated first to assess the position of dominance of the Opposite Party No. 1 and to examine its conduct in case the Opposite Party No. 1 is found to be a dominant enterprise in the relevant market.
 6. Since the Opposite Party No. 1 is engaged in the business of construction and development of residential units/plots, group housing, institutional, industrial commercial buildings in the notified areas, it is covered under the definition of 'enterprise' as provided in section 2 (h) of the Act.
 7. After careful perusal of the information, relevant materials available on record and hearing the advocates appeared on behalf of the Informants, it is observed that the relevant product associated in the matter seems to be the provision of '*the services for development and sale of residential plots*'. The provision of the services for development and sale of residential plots may be considered as



different product compared to provision of the services of development and sale of residential apartment. Unlike residential apartment, where the real estate developer completes the construction of the apartment before the possession is given to the allottee, the buyer of the plot has freedom to decide the floor plan, the number of floors, the structure, and the other specifics subject to applicable regulations. Considering the above, buyers wishing to purchase residential plot may not prefer to substitute it with the residential apartment and *vice versa*. Having regard to the foregoing, the relevant product market in the present case may be defined as the market for '*the provision of services for development and sale of residential plots*'.

8. The geographical area of "Noida, Greater Noida and Yamuna Expressway falling within the district of Gautam Budh Nagar" may be considered as the relevant geographic market in this case. It is so because the conditions of competition for development and sale of residential plots in Noida, Greater Noida and Yamuna Expressway falling within the district of Gautam Budh Nagar are homogenous and are distinct from the conditions of competition prevailing in adjacent areas. The consumers looking for a residential plot in said geographic area may not prefer other neighbouring areas because of the factors such as fast developing township, locational advantage, proximity and connectivity to National Capital Region (NCR) *etc.* Accordingly, the relevant market in this matter may be considered as the market of "*the services for development and sale of residential plots in the region of Noida, Greater Noida and Yamuna Expressway falling within the district of Gautam Budh Nagar*".

9. Based on the information available in public domain, *prima facie*, the Opposite Party No.1 does not appear to be in a dominant position in the relevant market defined *supra*. Apparently, there are many players such as NOIDA Authority, Greater Noida Authority, Jaypee, Jaypee Greens, Lotus Greens, Amarpali, Three C Company, Omaxe, Unitech, Parsvnath, Gaursons, Prateek Group, Mahagun, Steller Constellation, Shubkamana, Ajay

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Enterprises, ATS Infrastructure, Eldeco, and Gaur Yamuna City etc., are operating and competing with each other in the relevant market. Even though the Opposite Party No. 1 has few other projects in the relevant market apart from the one in which the Informants have booked their plots, the presence of NOIDA Authority, Greater Noida Authority and other renowned builders indicates that the consumers are not dependent on the Opposite Party No. 1 for booking of a residential plots in the relevant market.

10. Since the Opposite Party No. 1, *prima facie*, does not appear to be in a dominant position in the relevant market, the question of abuse of dominant position by it within the meaning of the provisions of Section 4 of the Act does not arise.
11. In regards to the allegation of contravention of Section 3 of the Act, no information available on record to suggest any kind of agreement or collusion among the Opposite Parties which can be termed as anti-competitive. Further, the Opposite Party No. 2 is a government department and the Opposite Party No. 3 is one of its district offices. They cannot be termed as enterprises as they are not engaged in any of the activities enumerated in section 2(h) of the Act. They also cannot be said to be engaged in the similar trade of goods or provision of services along with the Opposite Party No. 1. Therefore, the allegation that all Opposite Parties are in collusion to fix the circle rate is baseless and has no substance.
12. In the light of the above, the Commission finds that no *prima facie* case is made out against the Opposite Parties to refer the matter to the Director General for investigation. Therefore, the matter is closed under the provisions of section 26(2) of the Act.



13. Secretary is directed to inform all concerned accordingly

Sd/-

(M. L. Tayal)

Member

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

Sd/-

(U. C. Nahta)

Member

New Delhi

Date: 01-10-2014