



COMPETITION COMMISSION OF INDIA

Case No. 51 of 2014

In Re:

Shri Kirat Singh

E-32, Lajpat Nagar – III, New Delhi – 24

Informant

And

1. M/s Orchid Infrastructure Developers Pvt. Ltd.

1011, Surya Kiran Building

19, K.G. Marg, New Delhi – 1

Opposite Party No. 1

2. Haryana Urban Development Authority

Plot No. C-3, Huda Complex,

Sector – 6, Panchkula, Haryana

Opposite Party No. 2

3. Department of Town and Country Planning,

Government of Haryana

SCO-71-75, Sector- 17C, Chandigarh

Opposite Party No. 3

CORAM

Mr. Ashok Chawla

Chairperson

Mr. M. L. Tayal

Member

Mr. S. L. Bunker

Member



Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Present: The Informant in-person.

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

1. The present information has been filed by Sh. Kirat Singh (hereinafter referred to as the 'Informant') under section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as the 'Act') against M/s Orchid Infrastructure Developers Private Limited and others as mentioned above alleging, *inter alia*, contravention of the provisions of Section 4 of the Act in the matter.
2. M/s Orchid Infrastructure Developers Private Limited, the Opposite Party No. 1, is a real estate developer engaged in construction of residential and commercial properties. The Opposite Party No. 2, Haryana Urban Development Authority, is a statutory body constituted under the Haryana Urban Development Authority Act, 1977 and is responsible for planned development of urban areas in the State of Haryana and the Opposite Party No. 3, Department of Town and Country Planning, is a department of the Government of Haryana responsible for regulated urban development in the State. The Informant is a buyer of a residential unit in the 'Orchid Island', a residential project developed by the Opposite Party No. 1 in Sector 51, Gurgaon, Haryana (hereinafter referred to as the 'Project').
3. In the said project, the Informant had booked a residential unit admeasuring 275 sq. yards and super area 1453 sq. ft. on the ground floor bearing no. M-425 for a total consideration of Rs. 60, 59,590/-. The Informant paid a booking



amount of Rs. 6, 00,000 and was given a provisional allotment letter for the said residential unit on 06.01.2010. Also, a Floor Buyer's Agreement (hereinafter referred to as the 'Agreement') was signed between the Informant and the Opposite Party No. 1 on 08.03.2010 to that effect.

4. It is averred that, as an annexure to the Agreement, a 'Maintenance Services Agreement' was to be compulsorily executed between Opposite Party No. 1, the Informant and the maintenance agency chosen by the Opposite Party No. 1. As per clause 39 of the 'Agreement', after completion the Project is to be maintained through an agency nominated by the Opposite Party No. 1. Further, as per clause 2(f), failure to execute the 'Agreement' would lead to cancellation of the allotment and forfeiture of earnest money and all other payments as per the 'Agreement'.
5. It is alleged that as per the 'Agreement', the time period for completion of construction of the project was 30 months and physical possession of the unit was to be handed over to the Informant on payment of total cost of the unit. The Informant received a letter dated 01.07.2013 from Opposite Party No. 1, stating that the residential unit is ready for delivery of possession and possession shall be handed over after payment of remaining amount and completion of formalities. As per clause 1 and 2 of the above said letter, the Opposite Party No. 1, without assigning any reasons, had unilaterally increased super area of the said unit from 1453 Sq. Ft. to 1644 sq. ft and raised an additional demand of Rs 17, 29,166 in lieu of increase in super area. It is averred that the Opposite Party No. 1 had increased the super built area by 191 sq. ft. without increasing room size, size of balconies and any other part of the premises or other facilities in the said project. Moreover, no revised floor plan was attached to the letter and no documents/clarification or response was given by the Opposite Party No. 1 for the increase in super area and additional demand. The Informant submitted that despite several meetings and representations, the Opposite party No. 1 did not amend the increased area of the residential unit and consequent additional demand. The Informant had no



other option but to abide by the directions of the Opposite Party No. 1 because of fear of termination of contract and forfeiture of payments and made payment of Rs. 4, 55,778 on 19.08.2013 as per the due date.

6. Thereafter, the Informant approached the Opposite Party No. 1 for handover of physical possession. At the time of handover of possession, the Opposite Party No. 1 further asked the Informant to pay Rs. 4129 as interest for delay in making payment. Also, the Opposite Party No. 1 compelled the Informant to make full payment towards the cost of residential unit without providing him any clarity about the increase in super area of the flat, excess amounts charged from him for the increase in super area, revised floor plans for the increase in super area and, calculation of compensation to him for delay in giving possession of the flat. The Informant has submitted that the clearance certificate was issued even though the Project was not ready for handing over and the Opposite Party No. 1 has provided a residential unit to him without proper security, broken tiles, broken floorings, open electrical wires *etc.*
7. The Informant alleged that the Opposite Party No. 2 and the Opposite Party No. 3 have permitted the Opposite Party No. 1 to act in illegal and unfair manner. Various Government and statutory authorities, including the Opposite Party No. 2 and the Opposite Party No. 3, have allotted land and granted licenses, permissions and clearances to the Opposite Party No. 1 for the said project despite it has violated the provisions of various statutes including the Haryana Apartment Ownership Act, 1983, Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 and Haryana Development and Regulation of Urban Areas Rules, 1976.
8. Aggrieved by the above said conduct of the Opposite Party No. 1, the Informant has prayed to the Commission to impose heavy penalty on the Opposite Parties for contravention of Section 4 of the Act and has also sought modification of the 'Agreement'.



9. The Commission considered all the material on record and heard the arguments addressed by the Informant.
10. Having regard to the facts of the case, the relevant product market in the present case appears to be market of “*the services for development and sale of residential units*’. The product, residential unit was transacted between the Informant and the Opposite Party No. 1 and the allegations of the Informant pertain to the said transaction. The relevant geographic market appears to be the geographic area of Gurgaon. This is because geographic area of Gurgaon exhibits distinct characteristics from a buyer’s point of view and conditions of competition in Gurgaon appear to be distinct from the areas such as Delhi, Gurgaon and Ghaziabad in the National Capital Region. Thus, the relevant market in the present case appears to be the market of “*the services for development and sale of residential units in Gurgaon*”.
11. Based on the information available in public domain, the Opposite Party No. 1 does not appear to be in a dominant position in the relevant market. Apparently, there are many other large real estate developers such as DLF, Anantraj Group, Earth Infrastructure Group *etc.*, operating in the relevant market. The presence of other renowned builders in the relevant market reiterates that the Informant was not dependent on the Opposite Party No. 1 for booking a residential unit in Gurgaon.
12. Since the Opposite Party No. 1, *prima facie*, does not appear to be in a dominant position in the relevant market, there seems to be no question of abuse of its dominant position by it within the meaning of the provisions of Section 4 of the Act.
13. In view of the above, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties in the instant matter for causing an investigation by the



Director General. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

14. The Secretary is directed to inform the Informant and the Opposite Parties accordingly.

Sd/-

(Ashok Chawla)

Chairperson

Sd/-

(M. L. Tayal)

Member

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

New Delhi

Dated: 24.09.2014