



COMPETITION COMMISSION OF INDIA

Case No. 56 of 2014

In Re:

**Ms. Aanchal Khetarpal
Axis Trendz, G-21,
Crown Interiorz Mall,
Sector- 35, Faridabad, Haryana**

Informant

And

**Jaiprakash Associates Ltd.
Sector – 128, Noida, Uttar Pradesh**

Opposite Party

CORAM:

**Mr. Ashok Chawla
Chairperson**

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

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**



सत्यमेव जयते



Order under Section 26(1) of the Competition Act, 2002

1. The present information has been filed by Ms. Aanchal Khetarpal, (“**the Informant**”) under section 19(1) (a) of the Competition Act, 2002 (“**the Act**”) against M/s Jaiparakash Associates Limited (“**the Opposite Party**”) alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
2. The Opposite Party is a company engaged in real estate business in Noida and Greater Noida. The Informant is a buyer of plot in the project ‘Kensington Park’ at Jaypee Greens, Noida, Uttar Pradesh developed by the Opposite Party.
3. As per the information, in the said project of the Opposite Party the Informant had booked a plot bearing No. H-033 and measuring 127.93 sq. mtrs for a consideration of Rs. 61, 93, 990/-. Sum of Rs. 11, 57,598/-; which is nearly 25% of the total consideration; has already been paid to the Opposite Party.
4. As per the “Standard Term and Condition or Provisional Allotment of Plot at Jaypee Greens, Noida” (‘**Agreement**’), allotment of the above said plot was provisional and the Opposite Party was supposed to hand over the possession of the plot to the Informant within 12 month from the issuance of the allotment letter. However, when the Informant raised her concerns for the delay in giving possession, instead of providing a suitable reply, the Opposite Party cancelled her allotment.
5. The Informant has claimed to make numerous communications with the Opposite Party in this regard but received no satisfactory reply. Instead, a refund cheque of Rs. 5, 38, 199/- dated 20.09.2013 was sent after a period of more than 30 months from the date of issue of cancellation letter. The Informant objected to this refund and has not en-cashed the refund cheque till date. It is averred that a sum of Rs. 11, 57, 598/- still remains with the Opposite Party in spite of a cancellation of allotment of the said plot.



सत्यमेव जयते



6. The Informant has alleged that the Opposite Party is abusing its dominant position by enforcing one sided terms and conditions in the 'Agreement'. It is alleged that the act of cancellation of plot by the Opposite Party was to cover its own faults which is gross misuse of its position of dominance.
7. The Informant stated that in case nos. 72 of 2011, 16 of 2012, 34 of 2012, 53 of 2012 and 45 of 2013 the Commission had formed a *prima facie* opinion that the Opposite Party was in a dominant position in the relevant market of 'provision of services for development and sale of residential apartments in the geographic area of Noida and Greater Noida.' Also, the Commission had considered some clauses of the buyers' agreements in the said cases were abusive and accordingly passed orders under section 26(1) of the Act, directing the DG to cause an investigation.
8. Aggrieved by the abusive conduct of the Opposite Party, the Informant prayed the Commission to direct an inquiry into the alleged contravention of provisions of the Act; direct the Opposite Party to give possession of the allotted/alternative plot or refund the entire amount, along with appropriate interest and compensation for causing mental harassment; restrain the Opposite Party from further misuse of their dominant position in causing prejudice to consumers; impose suitable penalty upon the Opposite Party for misusing their dominant position & causing harassment to consumers; and pass such orders as the Commission may deem fit in the circumstances of the case.
9. The Commission has perused the information and material available on record. From the facts of the case it is clear that the allegations of the Informant pertain to the alleged abuse of dominant position by the Opposite Party in violation of the provisions of section 4 of the Act.
10. To examine the alleged contravention of the provisions of Section 4 of the Act, the primary requirement is to define the relevant market first and then to examine whether the Opposite Party is in a dominant position in the relevant



market as defined and if the Opposite Party is found to be dominant in the relevant market then the alleged conduct need to be examined.

11. It is observed that the Informant had booked a residential plot of land measuring area 127.93 sq. mtrs in the 'Kensington Park' project of the Opposite Party and accordingly executed the 'Agreement'. Thus, 'the market for the services of development and sale of residential plots' appears to be the relevant product market in the instant matter in which the Opposite Party is the seller and the Informant is the buyer.
12. The relevant geographic market to be considered in this case appears to be the region of Noida and Greater Noida. This is because Noida and Greater Noida exhibit distinct characteristics from a buyer's point of view and conditions of competition in Noida and Greater Noida areas appear to be distinct from the areas such as Delhi, Gurgaon and Ghaziabad in the National Capital Region. Moreover, earlier in similar cases such as case nos. 72 of 2011, 16 of 2012, 34 of 2012 and 53 of 2012 the Commission had considered the region of Noida and Greater Noida as the relevant geographic market.
13. Based on the above, the relevant market in the present case is considered as *"the market for the services of development and sale of residential plot in Noida and Greater Noida"*.
14. The next issue is examination of the position of dominance of the Opposite Party in the relevant market. The Opposite Party has undertaken real estate development in Noida and Greater Noida region and has developed various types of residential projects on 452 acres of land in the Greater Noida region. As part of the Yamuna Expressway Project, Jaypee Infratech Limited (JIL) - a subsidiary of the Opposite Party was given approximately 6175 acres of land along the Yamuna Expressway in five parcels for residential, commercial, amusement, industrial and institutional purposes out of which one location of approximately 1223 acres of land is in Noida and the remaining four locations are outside the Noida and Greater Noida regions.



15. It is noted that apart from Jaypee Group, there are various other developers operating in the Noida and Greater Noida region like Amrapali, Supertech, Mahagun *etc.* However, based on the information available in the public domain the land bank available with Jaypee Group is much higher than that available with any other developer. Based on the above, the Commission is of the *prima facie* opinion that the Opposite Party appears to be in a dominant position in the relevant market.
16. It is the case of the Informant that terms and conditions of the ‘Agreement’ are unfair and therefore abusive in nature in terms of section 4 of the Act. On examination of the ‘Agreement’, it is found that some of the clauses of the ‘Agreement’ are, *prima facie*, appear to be unfair, one sided and loaded in favour of the Opposite Party. Some of such clauses are:

Clause 2.4: Nothing herein shall be construed to provide that the Applicant/Allottee with any right, whether before or after taking possession of the Said Premises or at any time thereafter, to prevent the Company/JIL from

(i).....

(ii)

(iii) amending/ altering the Plans herein. [size?]

Clause 4.2: For the sake of clarity it is stated that nothing herein shall be construed to give the Applicant /Allottee any right to raise any claim against the Company/JIL on account of any Alterations (as defined herein), if any;

Clause 5.6: Notwithstanding anything stated herein and without prejudice to the Company's right to cancel the Provisional Allotment or to refuse execution of the Indenture of Conveyance by JIL, as provided herein, and without, in any manner condoning any delay in payment of Consideration and other dues, the Allottee shall be liable to make payment of interest at the rate of 18% per annum on the



outstanding amounts of Consideration and other dues from the due date(s) upto their payment or cancellation of the Provisional Allotment . The payments made by the Allottee shall first be adjusted against the interest and/or any penalty, if any, due from the Allottee to the JIL under the terms herein and the balance available, if any, shall be appropriated against the installment(s) due from the Allottee under the Standard Terms & Conditions and the Provisional Allotment Letter.

***Clause 6.10:** The JIL reserves the right to transfer/assign the Leased Land in whole or in parts to any other entity such as Partnership Firm, Body Corporate(s), whether incorporated or not, association or agency by way of sale/disposal or any other arrangement as may be decided by the JIL in its sole discretion and the Applicant agrees that he/she shall not raise any objection in this regard.*

17. Even though clause 6.8 of the 'Agreement' provides that in case the consideration amount is decreased pursuant to alterations, the excess amounts, if any, paid by the applicant shall be refunded by the JIL/Company without interest but, from the above mentioned clauses it appears that allottee has no right whatsoever with regard to the plot for which he/she is paying consideration/amount time to time as per the 'Agreement'.
18. The Commission is of the *prima facie* view that the conduct of the Opposite Party in imposing the above mentioned unfair and one sided terms and conditions in the 'Agreement' appears to be abusive in terms of the provisions of section 4(2) (a) (i) of the Act. Moreover, the allegations and the facts of the instant case are akin to the earlier cases mentioned above in which the Commission has already ordered for investigation by the DG.
19. Based on the foregoing, the Commission is of the *prima facie* opinion that there appears to be a case of contravention of section 4(2) (a) (i) of the Act in the matter. Accordingly, the Commission, under section 26(1) of the Act,



directs the Director General (DG) to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.

20. In case the DG finds that the Opposite Party has acted in contravention of the provisions of Act, it shall also investigate the role of the officials/persons who at the time of such contravention were in-charge of and responsible for the conduct of the business of the company.
21. Nothing stated in this order shall tantamount to a final expression of opinion on merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
22. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member



Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

New Delhi

Date: 24.09.2014