



सत्यमेव जयते



Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 64 of 2017

In Re:

**Mr. Indudhar M. Patil
House No. 1-12-30
Daddy Colony
Raichur, Karnataka - 584101**

Informant

And

**DS-Max Properties Private Limited
1854, 17th Main, 30th B Cross
5th Block, HBR Layout
Bengaluru, Karnataka - 560043**

Opposite Party

CORAM

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

**Mr. Sudhir Mital
Member**

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

**Justice G.P. Mittal
Member**



सत्यमेव जयते



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

1. The present information has been filed by Mr. Indudhar M. Patil (the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against DS-Max Properties Private Limited (the '**Opposite Party/OP**') alleging contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant is the Karta of a HUF and the OP is stated to be a private real estate development company based in Bengaluru.
3. The Informant has stated that in the year 2006, he came across an advertisement in 'The Hindu' about a project of the OP, relating to development of a residential layout consisting of residential plots of different sizes in the name and style of '*Charming Heights*' located at Singapura village, falling in Bengaluru North Taluk. During interaction with the OP, the Informant came to know that the above-stated project will have a number of amenities like senior citizens' park, children's play area, swimming pool, lavish landscaping, cement roads, street lights, underground sewage system, club house with lounge, multipurpose hall, water tank with water line to each site, compound wall for entire layouts, walking tracks, 24 hour security *etc.* It is averred by the Informant that the OP induced him to purchase a residential plot bearing Plot No. 6, Khata No. 154/122 developed by Bytarayanapura City Municipal Council, admeasuring 1,500 square feet approximately in '*Charming Heights*'. Accordingly, the Informant agreed to purchase the said residential plot in the name of his wife Smt. Kavitha I. Patel for consideration of Rs.14,92,500/-.
4. It is stated that on the day of entering into Agreement to sell ('**Agreement**') *i.e.* 8th November, 2006, the Informant paid Rs. 10,00,000/- in cash to the OP, as it refused to take the said amount through cheque. However, the OP did not execute the Agreement stating that its concerned persons were not in Bengaluru. It promised to send the signed Agreement within few days. Later, the OP sent a signed Agreement to sell to the



सत्यमेव जयते



Informant through courier. The Informant noticed that the Agreement was executed by persons Sri Kilari Thirupathi Naidu, Sri Gowreneni Srinivasulu, Sri Boppuru Prasad and Sri Veldi Venkateswarlu (the '**Registered Owners**') and not by the OP. After inquiry, it was made known to him that these persons are the land owners and the OP only the developer. The OP would not sign the agreement. The agreement only contained a recital stating that builder/developer would provide the amenities, as stated *supra*. The Informant was hence, rendered helpless as he had already paid a substantial amount to the OP and signed the Agreement. The Informant thereafter arranged the balance amount which had to be paid at the time of execution and registration of the sale deed of the residential plot. At the time of the execution of the Sale Deed, the Informant wanted the whole amount of purchase consideration as well as the name of the OP to be mentioned in the Sale Deed. However, the OP refused to do the same. The Informant has alleged that the OP rather threatened him to agree to the standard terms of the Sale Deed, failing which the OP would cancel the Agreement. Therefore, under coercive consent from the Informant, the Sale Deed was executed by and between the registered owners of the land, and Smt. Kavita I. Patel (wife of the Informant) on 24th January, 2007.

5. The Informant has alleged that after the execution of the Sale Deed, the OP has been lingering on the provision of facilities/amenities as promised at the time of purchase of the plot. It is further averred by the Informant that till date, cement roads and compound wall for the entire layout are the only facilities provided. Due to unavailability of basic amenities such as water and electricity, the Informant is unable to construct his house on the said site and is forced to keep the plot vacant.
6. The Informant has also alleged that the OP intentionally concealed the fact that the said land was granted free of cost to SC and ST persons by the Government. The said land is stated to have been granted in favour of Shri H. Muniyappa ('**Original Grantee**'). His wife and children had sold a portion of the land bearing Old Survey No. 109, Re Survey No. 122 to Smt. Susheela Padmanabha and had executed a



Registered General Power of Attorney. Subsequently, Smt. Susheela Padmanabha sold the property to Shri Anantha Padmanabha Madyastha, who further sold it to Shri C. Anjanappa, who then finally sold it to the Registered Owners of land from whom the Informant had purchased the residential plot. The Registered Owners had entered into a development agreement with the OP. It had further come to the knowledge of the Informant that the family members of the Original Grantee had filed an application before the Deputy Commissioner, Bengaluru District for cancellation of sale under The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. It is also alleged that the OP did not sign the Agreement or any other document with the purchasers of the plots, but is only stated to have signed a development agreement with the Registered Owners of the land.

7. The Informant has further alleged that the OP had sold many sites in the project '*Charming Heights*' to various purchasers who are also suffering without basic amenities. One such example given by the Informant is of Shri Suresh Nair, who after construction of his house on the said site, is getting water daily on payment basis and has got electricity supply with his own expenses.
8. In the light of the above facts, the Informant has alleged that the OP has misused its dominant position by misleading the purchasers including the Informant that it will provide various amenities and devising a Sale Deed whereby the purchasers merely have to adhere to the dictated terms of the OP.
9. Based on the above facts and allegations, the Informant has alleged abuse of dominance as per the provisions of Section 4 of the Act. In view of the same, the Informant has, *inter alia*, prayed to institute an inquiry against the OP and pass an order directing the DG to carry out an investigation into the abuse of dominant position by the OP.



10. The Commission has perused the information and the material available on record. From the facts and circumstance of the case, it appears that the Informant is aggrieved with the fraudulent sale of land as residential plot by the OP, which was originally allotted by the Karnataka Government to SC/ST free of cost. The OP has allegedly misled the buyers purchasing the residential plots by promising to provide various amenities on the said land.
11. The Commission observes that the Agreement and Sale Deed have been entered into during 2006-2007 *i.e.* before relevant provisions of the Act came into force. Nonetheless, as the effect of the Agreement/Sale Deed has been continuing till date, the same are examined as per the provisions of the Act.
12. Upon examination of the issues pointed out in the information like insisting on cash payment, selling the land originally allotted to SC/ST free of cost, developer (OP) not entering into contract with the purchasers (including the Informant), the Commission is of the opinion that the case broadly relates to corruption, money laundering, unfair practices *etc.* and does not highlight any competition issue which requires intervention by the Commission. Accordingly, an assessment of the alleged abusive conduct of the OP under Section 4 of the Act is not required.
13. However, even if the conduct of the OP is examined under Section 4 of the Act, no case is made out.
14. First step is to delineate the relevant market. On the basis of the information provided by the Informant and the information available in public domain, the Commission is of the view that the allegations in the instant case are related to purchase of a residential plot in the project '*Charming Heights*'. A residential plot is a bare piece of land purchased from a developer/builder with or without fencing and planning of the layout for the property and construction of house thereon is done as per the choice of the buyer. The price of these independent units are higher as compared to residential units in standalone residential apartments or residential units in a multi storeyed building in



integrated townships. All such units are viewed differently by the consumers because of differences in price, characteristics and intended use. Therefore, the Commission is of the opinion that the relevant product market in the present case would be market for “*provision of services for development and sale of residential plots*”. Further, the Commission notes that the said project ‘*Charming Heights*’ is located at Singapura village in Byatarayanapura, which is a part of a suburb area of Bengaluru, in the State of Karnataka. The conditions of competition for supply and demand for development and sale of residential plots in Bengaluru seem to be homogenous and can be distinguished from other neighbouring regions. Therefore, in the instant case, the relevant geographic market appears to be Bengaluru. Accordingly, the relevant market in instant case would be considered as the market for ‘*provision of services for development and sale of residential plots in Bengaluru*’.

15. Next step is to ascertain dominance. The Commission observes that the Informant has not submitted any cogent material to show that the OP is dominant in the relevant market delineated above. As per the information available in the public domain, the OP has a number of projects in the residential segment, both completed and ongoing in the relevant market, but only two out of them relate to residential plots namely, ‘*DS Charming Heights*’ and ‘*DS Greenwich*’. Further, as per the information available in the public domain, there are several other real estate developers offering residential plots in the aforesaid relevant market such as Irshads Property, Ziva Ventures, Diamond Properties, Reliaable Developers, Pioneer Developers, San Infrastructures, Magnolia projects, Upkar, NBR Developers, Vakil Housing Development *etc.*, which are fiercely competing with the OP. Apart from these, purchasers also have the option of buying plots from individual plot owners intending to sell their property through local property dealers or through various online platforms such as ‘*magicbricks.com*’, ‘*99acres.com*’, ‘*housing.com*’, ‘*commonfloor.com*’.

16. Hence, the Commission observes that with the presence of a number of players in the relevant market, the OP does not appear to be dominant and in absence of dominance,



सत्यमेव जयते



the conduct of the OP is not required to be assessed for alleged abuse in violation of Section 4 of the Act.

17. In the light of the above analysis, the Commission finds that no case of contravention of the provisions of Section 4 of the Act is made out against the OP in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
18. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Date: 04.01.2018