

**Competition Commission of India  
Case No. 65 of 2012**

December 12, 2012

**1. Ms. Lalita Ramakrishnan** **Informant No.1**

**2. Shri V. Ramakrishnan** **Informant No.2**

**v.**

**M/s Vatika Limited** **Opposite Party**

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

The present information has been filed by Ms. Lalita Ramakrishnan ('the informant No.1') and Shri V. Ramakrishnan ('the informant No.2') (collectively to be referred to as 'the informants' hereinafter) under section 19(1)(a) of the Competition Act, 2002 ('the Act') against M/s Vatika Limited ('the opposite party') alleging *inter alia* contravention of the provisions of section 4 of the Act.

2. Shorn of details, the informants jointly booked a two bed room flat having a built-up area of 881.41 sq. ft. @ Rs.2991 *per* sq. ft., on the top floor *i.e.* the second floor of Vatika India Next Primrose Apartments, for which a Floors Buyer Agreement ('the Agreement') was entered into on May 11, 2011 by and between the informants and the opposite party.

3. As per informants, the 'Built-up Area' in the Agreement meant the entire area enclosed by its periphery walls including areas under walls, columns, balconies-which formed part of the FSI, cupboards and lofts *etc.* and half the area of common walls with other premises/dwelling units-which formed integral part of the said independent dwelling unit and common areas meant the area of the staircase on that particular floor including the area under walls. The said 'Built-Up Area' in the Agreement was shown not to include roof/ terrace above dwelling units/ penthouses. Further, as per the original floor plan and the Agreement, no payment was envisaged for the open terraces and balconies as these did not fall under the definition of 'Built-Up Area'. However, the opposite party *vide* letter dated 11.01.2012, conveyed to the informants that the area of the floor applicable to the informants had been revised from 881.41 sq. ft. to 1056.33 sq. ft. and consequently, the total sale price of Rs.26, 40,708 given in the Agreement stood revised to Rs.32, 51,436 leading to an increase of 23.31% over the original sale price. The informants *vide* their letter dated 30.07.2012 to the opposite party protested against this arbitrary unjustified increase in cost of

the said flat in contravention of the terms of the Agreement. The informants, however, did not receive any formal response from the opposite party.

4. It is alleged that the opposite party by virtue of its monopolistic position compelled the informants to pay for an area of 59.74 sq. ft. constituting 25% of the uncovered rear balcony in contravention of the terms of the Agreement and the original Floor Plan given therein. It is the case of the informants that this act/conduct of the opposite party amounted to an unfair trade practice and abuse of dominant position contravening section 4(2) of the Act.

5. Based on these averments and allegations, the informants sought following reliefs from the Commission:

- (a) to restrain the opposite party from charging for uncovered open terrace and balcony from the informants in respect of the dwelling unit booked by them;
- (b) to direct the opposite party to accept the payment in terms of the agreement; and
- (c) direct the recovery of the cost by the informants for resolution of the issue through the Commission

6. The informants appeared in person before the Commission in its ordinary meeting held on 29.11.2012 and made submissions.

7. The Commission has carefully perused the information and the material available on record besides considering the submissions made by the informants. To examine the alleged abuse of dominant position by the opposite party, the relevant market has to be determined and delineated, *albeit* in a tentative manner.

8. As per section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Further, the term 'relevant product market' has been defined in section 2(t) of the Act as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. And, the term 'relevant geographic market' has been defined in section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

9. For determining whether a market constitutes a 'relevant market' for the purposes of the Act, the Commission is required to have due regard to the 'relevant geographic market' and 'relevant product market' by virtue of the provisions contained on section 19(5) of the Act. To determine the 'relevant geographic market', the Commission is to have due regard to all or any of the following factors *viz.*, regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services. Further, to determine the 'relevant product market', the Commission is to have due regard to all or any of the following factors *viz.*, physical characteristics or end-use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.

10. In the present case, the informants have neither mentioned any relevant market in the light of the statutory provisions cited *supra*, nor delineated the same with the help of necessary data. However, the relevant market in the factual setting of the present case appears to be the market for provision of services for development and sale of flats in the territory of Gurgaon.

11. Once the relevant market is defined, the next step is to examine whether the opposite party is in dominant position in the said relevant market. By virtue of explanation (a) to section 4 of the Act, 'dominant position' means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or to affect its competitors or consumers or the relevant market in its favour.

12. The Commission, while inquiring whether an enterprise enjoys a dominant position or not under section 4 of the Act, is to have due regard to all or any of the following factors *viz.* market share of the enterprise; size and resources of the enterprise; size and importance of the competitors; economic power of the enterprise including commercial advantages over competitors; vertical integration of the enterprises or sale or service network of such enterprises; dependence of consumers on the enterprise; monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; countervailing buying power; market structure and size of market; social obligations and social costs; relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; and any other factor which the Commission may consider relevant for the inquiry.

13. On a reading of the information, it is evident that no material is placed on record in the light of the factors enumerated above to enable the Commission to hold the opposite party to be dominant in the relevant market. The dominance of an enterprise has to be *prima facie* seen before pressing into service the provisions of the Act relating to abuse of dominant position. The dominance cannot be presumed in the absence of relevant pleadings and materials in this regard. The flat in question is located in Gurgaon where a large number of real estate developers are operating. On the basis of material on record, it is not possible for the Commission to hold even *prima facie* the opposite party to be dominant in the relevant market. It is therefore, unnecessary for the Commission to examine alleged abuse of dominance by the opposite party.

14. In the result since the information does not raise competition issues, it deserves to be closed forthwith in terms of the provisions of section 26(2) of the Act.

15. It is ordered accordingly,

16. The Secretary is directed to inform the parties accordingly.

**Sd/-  
Member (G)**

**Sd/-  
Member (GG)**

**Sd/-  
Member (R)**

**Sd/-  
Member (AG)**

**Sd/-  
Member (T)**

**Sd/-  
Member (D)**

**Sd/-  
Chairperson**