



**COMPETITION COMMISSION OF INDIA**

**Case No. 66 of 2014**

**In Re:**

**Mr. Ramesh Mehta  
A-208, New Friends Colony,  
New Delhi**

**Informant**

**And**

**M/s North Star Apartments Pvt. Ltd.  
B-4/43, Safdarjung Enclave,  
New Delhi**

**Opposite Party**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Mr. S. L Bunker  
Member**

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**



Present on behalf of the Informant: Advocates Shri Pradeep Aggrawal, and  
Shri Vivya Nagpal.

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

1. The present information has been filed by Shri Ramesh Mehta (hereinafter referred to as '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the "**Act**") against M/s North Star Apartments Pvt. Ltd. (hereinafter referred to as the '**Opposite Party**') alleging, *inter alia* contravention of the provisions of section 4 of the Act in the matter.
2. Facts of the case, as stated in the information, may be briefly noted:
3. The Opposite Party is a real estate developer engaged in the construction of residential apartments. The Informant has stated that he purchased a residential apartment in the Group Housing Complex 'The Hibiscus' (hereinafter referred to as the '**Project**') developed by the Opposite Party in Sector 50, Gurgaon District of Haryana.
4. Informant contended that at the time of the launch of the Project, Opposite Party stated that the Project was managed and marketed by Silverglades Developers Pvt. Ltd., who were co-promoters of other projects like 'Laburnum', 'The Ivy' and 'Tarudhan Valley' in Gurgaon and Silverglades also advertised about the Project in the market. By using the brand name of Silverglades, the Opposite Party allegedly concealed the fact that they had neither the track record in development of premium segment group housing nor the brand value to command premium rates charged for the Project.



5. It is alleged that the Opposite Party follows certain anti-competitive practices by way of imposing one sided conditions, inadequate disclosures and misleading information in the Buyers' agreement.
6. It is submitted that the Informant booked a residential unit having super area of 3900 sq. ft. in the Project and made a payment of Rs.10,00,000/- on 01.08.2006 towards the Total Sale Price of Rs.1,77,45,000/-. It is alleged that the Opposite Party committed that the Project would be ready for delivery by mid of 2009, but the Buyers' agreement was executed after a period of seven months from the date of the payment of booking amount. Informant has alleged that the Buyers' Agreement had unreasonable, exploitative and heavily loaded terms and conditions which were in favour of the Opposite Party. Informant had no exit option because of high switching cost as he had already paid substantial amount of money to the Opposite Party.
7. The Informant also enumerated certain other clauses of the Buyers' agreement which were stated to be abusive in nature. The clauses are briefly as under:
  - i) The clause pertaining to earnest money provided that earnest money calculated @ 10% of the sale price and further stipulated forfeiture of earnest money in the event of failure to sign and return the Buyers' agreement (in original) within 30 days from the date of its dispatch.
  - ii) Opposite Party vested with the right to increase or decrease super area, right to allot, sell, transfer of any right in common area and the right to move out of the Project.
  - iii) No Built up area was disclosed by the Opposite Party under clause 1.2 of the said agreement.



- iv) It was stipulated that 10% of the sale price would be adjusted towards earnest money and the same could be forfeited by the Opposite Party without any notice to the Buyer.
- v) Clause 1(1.3) of the Agreement provided that facilities like swimming pool, health club, club area were specifically excluded from the scope of the Agreement and that the Buyer shall not be entitled for ownership rights, title or interest etc. in any form to these facilities.
- vi) Clause 6 of the Agreement provided that the Opposite Party shall have the right to terminate the Agreement and forfeit the Earnest Money in case of delay of 60 days in making payment and will also be further entitled to charge interest @ 15 % p.a. from the due date of the instalment till the date of payment. While the Opposite Party was liable under the agreement to pay only a nominal amount of Rs 5/- per square feet per month of the super area till the handing over of possession on its default to hand over possession within stipulated time.
- vii) Clause 7.1 of the said agreement unilaterally authorized the Opposite Party to carry out such additions, alterations, deletions and modifications in the building plans of the block, floor plans, Flat plans etc. on behalf of the Flat Buyer as it may deem necessary.
- viii) Clause 7.2 conferred absolute rights on the Opposite Party for making major alteration/modification resulting in excess of 10% change in the super area of the flat by merely sending intimation. In case non-receipt of any objection/consent from the buyer from the date of the dispatch of such intimation, the buyer will be deemed to have imparted its consent for the same.



- ix) The Opposite Party, by virtue of clause 8.2(b), completely insulated itself for any latent defects which may come to the notice of the buyers after they have taken possession of the flat in the Project.
  - x) Prejudicial to the interests of the buyer, clause 25 of the said agreement authorised the Opposite Party to appoint a Sole Arbitrator who shall be the Company Secretary or any other person nominated by it.
  - xi) The Opposite Party vide letter dated 04.04.2014, demanded, additional sum of Rs.26,34,058/- inclusive of service tax on account of increase in super area from original 3900 sq. ft. to 4399 sq. ft.
8. It is stated that the Opposite Party, vide its notice dated 27.05.2014, adopted unfair trade practice by raising exorbitant demands. The Informant has alleged that the conduct of the Opposite Party is unfair and discriminatory in terms of the provisions of section 4 of the Act.
9. Based on the above averments and allegations, the Informant has prayed, inter alia, for initiation of inquiry against the Opposite Party for its alleged contravention of the provisions of section 4 of the Act.
10. The Commission perused the material available on record including the information and facts placed on record by the Informant. The Counsel who appeared on behalf of the Informant was also heard by the Commission on - 10.12.2014.
11. Facts of the case reveal that the grievance of the Informant primarily pertains to the alleged abusive terms and conditions of the Buyers' Agreement of the Opposite Party. For examination of the alleged abusive conduct of the Opposite Party, it is required first to delineate the relevant market where the Opposite Party is operating and then to assess the position of dominance of the Opposite Party in



the relevant market so delineated and finally examine the conduct in case Opposite Party is found to be in a dominant position in the relevant market.

12. Considering the issues in the present matter, it is noted that the allegations of the Informant is regarding the residential project developed by the Opposite Party in Gurgaon. Therefore, the relevant product market would be the “*services of development and sale of residential apartments*”. As regards the geographical market, it is observed that the 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 Noida, Delhi and Ghaziabad in the National Capital Region. A decision to purchase an apartment in Gurgaon is not easily substitutable by a decision to purchase a similar apartment in another geographical location. Gurgaon is known to possess certain unique geographical characteristics such as its proximity to Delhi, proximity to Airports and a distinct brand image as a destination for commercial activities. Therefore, the relevant geographic market in the present case would be ‘*Gurgaon*’. Consequently, the relevant market of the Opposite Party would be “*services of development and sale of residential apartments in Gurgaon*”.

13. After demarcation of the relevant market, the next step would be to analyse whether the Opposite Party is dominant or not in the relevant market. The underlying principle in the definition of a dominant position is linked to the concept of market power which allows an enterprise to act independently of competitive constraints. Such independence affords such an enterprise with the capacity to affect the relevant market in its favour to the economic detriment of its competitors and consumers. In the present case, based on the information available in public domain, the Opposite Party 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, Emaar MGF, Vatika, Tata Housing, Ireo, Anantraj Group, Unitech, Earth Infrastructure Group, Parsvanath Developers, Ramprastha *etc.*, operating in the relevant market. The presence of these



renowned builders in the relevant market indicates that the Opposite Party may not be enjoying dominant position in the relevant market.

14. Another factor for the determination of dominance is the dependence of consumers on the enterprise. Apart from the Opposite Party, other large developers are competing with each other in the relevant market with projects of varying magnitudes and having comparable size and resources than that of the Opposite Party. Presence of other players with comparable projects in the relevant market indicates that the buyers have the option to choose from other developers in the relevant geographic market. In the present case, there is an option of interchangeability of services of development and sale of residential apartments in Gurgaon. The buyer does not seem to be completely dependent on the Opposite Party.

15. As no information is available on record and on the public domain to show the position of strength of the Opposite Party which enables it to operate independently of competitive forces prevailing in the relevant market, *prima facie*, the Opposite Party does not appear to be in a dominant position. In the absence of dominance of the Opposite Party in the relevant market, its conduct need not be examined under the provisions of section 4 of the Act.

16. In the light of the above analysis, 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 Party in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

17. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**



**Sd/-**

**(S .L. Bunker)**

**Member**

**Sd/-**

**(Sudhir Mital)**

**Member**

**Sd/-**

**(Augustine Peter)**

**Member**

**New Delhi**

**Date: 29.01.2015**