



**COMPETITION COMMISSION OF INDIA**

**Case No. 69 of 2014**

**In Re:**

**Mr. Gautam Dhawan  
A-62, DLF Park Place,  
DLF Phase 5,  
Gurgaon**

**Informant**

**And**

**M/s. Parsvanath Hessa Developers Pvt. Ltd.,  
Parsvanath Metro Tower,  
Shahdara, Delhi**

**Opposite Party No. 1**

**M/s. Parsvnath Developers Ltd.,  
6<sup>th</sup> Floor, Arunachal Building,  
19, Barakhamba Road,  
New Delhi**

**Opposite Party No. 2**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Mr. S. L Bunker  
Member**

**Mr. Sudhir Mital  
Member**



**Mr. Augustine Peter**

**Member**

Present: Shri D P Singh, Shri Shrey Sahay and Ms. Suchita Srivastava,  
Counsels on behalf of the Informant

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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) by Shri Gautam Dhawan (hereinafter referred to as the “**Informant**”) against M/s. Parsvanath Hessa Developers Pvt. Ltd., (**Opposite Party 1**) and the M/s. Parsvanath Developers Ltd., (**Opposite Party 2**) alleging, *inter alia* that the Opposite Parties abused their dominant position by imposing unfair conditions, which are in contravention of the provisions of section 4 of the Act.
2. Facts of the case, as stated in the information, may be briefly noted:
3. As per the information, OP 2 is a company engaged in the business of real estate development, having a sturdy presence in nearly 44 cities and 15 states of India. OP2, through its subsidiary OP1 launched a residential project namely ‘Parsvanath Exotica’ (hereinafter referred to as ‘**Project**’) on an area of 27.765 acres in a village namely Wazirabad in sector-53 of Gurgaon, Haryana.
4. The Informant stated that he booked a residential apartment having super area of 6805 sq. feet in OP 1’s residential project, Parsvnath Exotica. The sale price of the apartment was Rs.5,78,76,525 inclusive of Preferential Location Charges and two car parking spaces.



5. The Informant alleged that most of the clauses in the Buyer's Agreement were onerous and one-sided which were in gross violation of section 4 of the Act. It is stated that the Buyer's Agreement entailed an imposition of a high compound interest rate in case of delay in paying instalment whereas OP 1 was liable for a nominal simple interest rate in case of delay, if any, on its part. Further, OP 1 had the unilateral right to increase or decrease the super area without consulting the buyer, and that the buyer was bound to pay additional amount as demanded by OP 1 or else accept reduction in the area.
6. It is averred that OP 1 abandoned the construction of the building by only constructing a skeletal structure and later increased two floors without any necessary clearances from the Authority and notice to the Informant. OP 1 is alleged to have added 6 more apartments to the building which led to shifting of Informant's apartment at 14<sup>th</sup> floor instead of 12<sup>th</sup> floor for which he had applied. Further, OP 1 had at its own discretion, introduced a new tower in front of the Informant's building, thereby depriving him of the garden facilities.
7. It is further alleged that OP 1 has unilateral rights to change the Agreement without seeking any consent from the buyer. Apart from the foregoing, the Informant is also aggrieved from preferential location charges (PLC), external development charges, infrastructure development charges, arrangement etc. as these charges were payable without the buyer having any bargaining power. It is alleged that the Buyers' agreement has unreasonable, exploitative terms and heavily loaded in favour of OP 1. The buyers had no exit option because of high switching cost as they had already paid substantial amount of money to OP 1.
8. The Informant alleged that the unfair and discriminatory conduct of OP 1 is possible because of its dominant position in the relevant market. Based on the above averments, the Informant has alleged that the conduct of the OP 1 is in violation of the provisions of section 4(2)(a)(i) and 4(2)(a)(ii) of the Act and has



prayed, *inter alia*, for initiation of inquiry against the Opposite Parties for their alleged contravention of the provisions of section 4 of the Act.

9. The Commission perused the material available on record including the information and facts placed on record by the Informant. The Counsels who appeared on behalf of the Informant were also heard by the Commission on 10.12.2014.
10. It is noted that facts of the case reveal that the grievance of the Informant primarily pertains to the alleged abusive conduct of the OP 1. The commission observes that for the purpose of examination of the alleged abusive conduct of the OP 1, it is required first to delineate the relevant market where OP 1 is operating and then to assess the position of dominance of the same in the relevant market so delineated. The Commission will then examine any abuse, in case OP 1 is found to be in a dominant position in the relevant market.
11. Considering the issues in the present matter, 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. Therefore, the relevant geographic market in the present case would be '*Gurgaon*'. Consequently, the relevant market in the present case would be "*services of development and sale of residential apartments in Gurgaon*".
12. 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 an enterprise with the capacity to affect the relevant market in its favour to the economic detriment of its



competitors and consumers. The Commission observes that there are many other large real estate developers such as DLF, Unitech, Emaar MGF, Vipul Orchid Greens, India bulls etc. operating in the relevant market of services of development and sale of residential apartments in Gurgaon. The presence of these renowned builders in the relevant market indicates that the Informant was not dependent on OP 1 for booking a residential unit in Gurgaon. Therefore, based on the information provided by the Informant and the information available in public domain, OP 1 does not appear to be in a dominant position in the relevant market.

13. Another factor for the determination of dominance is the dependence of consumers on the enterprise. Apart from OP 1, 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 OP 1. Presence of such players with comparable projects in the relevant market indicates that the buyers have the option to choose from various developers in the relevant geographic market. In the present case, there exists an option of interchangeability of services of development and sale of residential apartments in Gurgaon. The buyer does not seem to be wholly dependent on OP 1.
14. Thus, the relevant market appears to have a number of entities. The Informant has not provided sufficient information to show the dominance of OP 1. Further, there is no information available in the public domain to show the position of strength of the OP 1 which enables it to operate independently of competitive forces prevailing in the relevant market. *Prima facie*, OP 1 does not appear to be in a dominant position in the relevant market. In the absence of dominance of OP 1 in the relevant market, its conducts need not to be examined under the provisions of section 4 of the Act.
15. 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 Parties in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

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

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

**Sd/-**  
**(S .L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**New Delhi**  
**Date: 29-01-2015**

**Sd/-**  
**(Augustine Peter)**  
**Member**