



सत्यमेव जयते



**COMPETITION COMMISSION OF INDIA**

**Case No. 70 of 2015**

**In Re**

**Shri Vijaya Pal Singh  
1/451 A, Surendra Nagar,  
Bank Colony, Aligarh, Uttar Pradesh**

**Informant**

**And**

**M/s Universal Buildwell (P) Ltd.  
102, 1<sup>st</sup> Floor, Antriksh Bhawan,  
Connaught Place, New Delhi**

**Opposite Party**

**CORAM:**

**Mr. Ashok Chawla  
Chairperson**

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

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**



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

**Mr. M. S. Sahoo**  
**Member**

**Justice (Retd.) G. P. Mittal**  
**Member**

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

1. The information in the present matter has been filed by Shri Vijaya Pal Singh (hereinafter referred to as the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against M/s Universal Buildwell (P) Ltd. (hereinafter referred to as the '**OP**') alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
2. The brief facts of the case, as stated in the information, are as under:
3. As per the information, the Informant is a resident of Aligarh, Uttar Pradesh and OP is a renowned real estate developer having its registered office at New Delhi. It is submitted that the Informant had booked a commercial flat bearing No. 609, admeasuring 500 sq. ft., in the commercial complex 'Universal Trade Tower' (hereinafter referred to as the '**Project**') developed by OP in Sector 49, Gurgaon in the state of Haryana for a total consideration of Rs.6,50,000/- (Six lakhs fifty thousand only).



4. In this respect, a Builder Buyer Agreement (hereinafter referred to as the 'Agreement') was executed between the Informant and OP on 02.05.2006 with an assurance and commitment of OP that the construction of the 'Project' would be completed by 01.01.2007. OP is stated to have committed in the 'Agreement' that in case the subscriber to the 'Project' tenders the entire sale consideration at the time of signing of the 'Agreement', it will pay a return of Rs.29/- per sq. ft. per month on the super area till the period of completion of the 'Project'. It was further committed by OP that in the event of delay in completion of the project, the return would be paid till the date of giving possession of the flat.
5. As per the 'Agreement', in case the Informant opts for leasing out the flat, the lease would be arranged by OP which would not be less than the rent of Rs.29/- per sq. ft. per month on the super area for a minimum period of 36 months after the date of completion of the project or till the date the flat is put on lease, whichever is earlier. OP further agreed that in case the rent in respect of the flat as leased out by it is less than Rs.29/- per sq. ft. per month, it would compensate the allottee calculated at Rs.125/- per sq. ft. for every one rupee drop in the lease rental below Rs.29/- per sq. ft. per month. The Informant has also submitted that in case the rent exceeds the aforesaid specified rental, OP would claim for the additional sale consideration for enhanced rental calculated at 50% of Rs.125/- per sq. ft. for every one rupee increase in the lease rental.
6. It is submitted that the Informant paid the entire sale consideration of Rs.6,50,000/- for the said flat in the 'Project' and thus, OP started making remission of the return in terms of the 'Agreement' without even intimating the Informant about the completion of the project. The Informant received the assured return till August, 2011 and thereafter, OP is stated to have stopped remitting the return. In response to the representation made by the Informant in this regard, OP clarified that, in terms of the 'Agreement', it was required to pay the assured return for the



first 36 months after the date of completion of the 'Project' or till the date the said flat/ space is put on lease, whichever is earlier. Thus, OP stopped paying the assured return from the month of September, 2011 since it had crossed more than 36 months from the date of the completion of the building. The Informant submits that OP further demanded, *vide* letters dated 14.05.2012 and 25.07.2013, payment towards car parking, power back-up, maintenance charges *etc.*

7. The Informant has averred that no intimation was provided to him as regards the change in lay out plan of the 'Project'. It is further submitted that the flat which was to be allotted to the Informant, as per the original layout plan, was allotted to some other subscriber. It is alleged that the breach of the terms and conditions of the 'Agreement' by OP indicates an abuse of its dominant position in terms of section 4 of the Act.
8. Based on the above, the Informant has alleged that the conduct of OP is in contravention of the provisions of section 4 of the Act. Accordingly, the Informant has, *inter alia*, prayed the Commission to direct OP to hand over the possession of the commercial flat peacefully, to pay compensation for delay in handing over the possession of the said flat, and to pay assured return to the Informant calculated @ Rs. 29/- per sq. ft. per month with effect from July, 2011.
9. The Commission has perused the information and other materials on record. Primarily, the Informant appears to be allegedly aggrieved by the conduct of OP for breach of the terms and conditions as mentioned in the 'Agreement' in contravention of the provisions of section 4 of the Act.
10. For examination of the alleged contravention of the provisions of section 4 of the Act, the relevant market is to be delineated first to assess the position of



dominance of OP and then to examine the alleged conduct of OP in case it is found to be in a dominant position in the relevant market as defined.

11. The dispute in question in the instant case relates to imposition of unfair conditions by OP on the Informant, an allottee of a commercial flat in the 'Project' developed by OP, through the 'Agreement' and breach of the terms and conditions of the 'Agreement'. Thus, the relevant product market in question here is 'the market for provision of services of development and sale of commercial space' wherein the Informant is the buyer and OP is the seller. The Commission is of the view that 'provision of services of development and sale of commercial space' is a distinct product and it is distinguishable from the market of other related products (such as provision of services of development and sale of residential apartment and provision of services of development and sale of residential plot) in terms of the nature of product, consumer preference, prices, *etc.* Thus, 'the market for provision of services of development and sale of commercial space' appears to be the relevant product market in the instant case. In regards to relevant geographic market, it is observed that the geographical area of Gurgaon is distinct because of the factors such as availability of land, differences in commercial real estate price per sq. ft., relatively low rent for office spaces, proximity to the national capital, connectivity to airport, availability of residential apartments *etc.* Accordingly, the relevant geographic market may be considered as the territory of Gurgaon. In view of the above, the relevant market in the instant case may be defined as '*the market for the services of development and sale of commercial space in Gurgaon*'.

12. At the same time, the Commission notes that the Informant has not provided with any material which shows that OP is dominant or has abused its dominant position in contravention of the provisions of the Act. It is observed that compared to OP there are many bigger and established players such as Unitech



Limited, Vatika Groups, Ansal Housing, DLF Limited, Godrej Properties, Paras Buildtech, Emaar-MGF, Tata Housing, etc. (*Source: <http://gurgaonprojects.co.in/GurgaonDevelopers.aspx>*) which are operating in the relevant market and providing commercial space. In addition, the Commission has also taken note of the fact that there are various projects in commercial space which are being developed in the relevant market of Gurgaon. The data obtained from CMIE (Centre for Monitoring Indian Economy Pvt. Ltd.), an independent economic think-tank, has also been perused to find the size of the company (rank-wise) in the commercial complex Industry based on the net worth and investments made by the companies in this sector. It is observed that OP does not feature in the list of top 20 companies on any counts/ parameters. Further, the commercial space being developed by other players can be considered as substitutable and hence, provides multiple options for the buyers in the relevant market. Also, none of the factors enumerated under section 19(4) of the Act seems to support dominance of OP in the relevant market.

13. Further, it is observed that no information is available on record or in the public domain which can indicate the position of strength of OP and enables it to operate independently of competitive forces prevailing in the relevant market. Accordingly, the Commission is of the, *prima facie*, view that OP does not appear to be in a dominant position in the relevant market. In the absence of dominance of OP in the relevant market, its conduct need not be examined under the provisions of section 4 of the Act.
14. In 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 OP in the present case. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.



15. The Secretary is directed to inform the concerned parties accordingly.

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

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

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

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

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(M. S. Sahoo)**  
**Member**

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

**New Delhi**  
**Date: 21/10/2015**