



Opposite Party allocated 12 Residential Apartments in the Project to the Informant and the Informant paid advance money for the same.

2. It is submitted that at the time of booking, the Informant made it specifically clear, that they would be approaching Banks/financial institution for home loan to make the balance payment to OP for which OP assured co-operation. But before the banks could complete the formalities for sanction of the home loan, OP unilaterally cancelled the allotment of 8 allocated Residential Apartments and unilaterally rescinded the Agreements, under the pretext of 'not performing as per the agreed scheduled of payment at the time of booking' and unilaterally re-allotted 4 cancelled Apartments to the informant at revised rates. Further the OP also claimed 'cancellation charges' at the rate of 10% as well as revised price of the allotted apartments and demanded further moneys being the 'balance amount' payable for the said 're-allotted' 4 Apartments.

3. The informant submitted that owing to the dominant position of the OP, the Informant was forced to sign four fresh Agreements, viz:- Construction Agreement & Agreement for Common Areas, Private Open Terrace, Amenities and Car Parks dated 09.07.2012 ('the agreement'), for the said re-allotted four Apartments, even though the informant was conscious that the terms of the said agreements were one sided, arbitrary and unreasonable.

4. The informant further contended that although 'time was claimed to be of essence of the contract, it was only used against the informant for securing payments of money to the OP. The agreement exonerated OP from any liability for delayed possession.



5. On the basis of the foregoing facts, the informant prayed to the Commission to hold various clauses of the agreement as null and void and violative of section 3 of the Competition Act, 2002 ('the Act') e.g. clauses relating to 'time as an essence', 'Unforeseen delay, not attributable to negligence by the builder', 'delay in handing over' etc. Also the informant prayed that the OP be held guilty for abusing its dominant position within the meaning of section 4 of the Act.

6. The informant alleged violations of sections 3 and 4 of the Act. With regard to section 3 of the Act, the informant argued that the clauses of the agreement between informant and OP were anti-competitive. The contention is misconceived. Agreements under section 3 are held anti-competitive only if they create market distortions by causing an appreciable adverse effect on competition either through concerted action of horizontally placed enterprises or through agreement between or among vertically placed enterprises including tie-in arrangement, exclusive supply agreement, exclusive distribution agreement, refusal to deal & resale price maintenance. In this case, informant and OP are not working at same level (at horizontal level) and the conducts in question are also not covered within the ambit of Section 3 (4) of the Act. As such, the allegations pertaining to the clauses dealing with 'Time an Essence' or 'Delay in handing over the possession' do not create any market distortion within the meaning of section 3 of the Act. Also, the real estate enterprises (including the opposite party) were not shown to have agreed/colluded to adopt similar practice of cancelling prior allotments with the objective to fetch higher prices or to delay possession. Therefore, no *prima facie* case is made out under section 3 of the Act.



7. Dealing with the allegations of abuse of dominance under Section 4 of the Act, the first step is to determine the relevant market. Although the informant has alleged abuse of dominant position by OP, neither the relevant market is stated nor does the material on record substantiate informant's claim regarding the dominance of OP. As per the information available in public domain, OP mainly deals in real estate sector in Tamil Nadu. As the project in the present case is of residential nature, the relevant product market would be the provisions of services for development and sale/purchase of residential apartments. As per information in public domain, Guduvancheri is a fast developing residential area between Tambaram and Chengalpetin Tamil Nadu due to presence of some industries of repute & coming up of industries in that area. As such, geographic area around Guduvancheri being distinct from adjoining areas can be considered as relevant geographic market. Considering relevant product market and relevant geographic market, the relevant market here would be "the provision of services for development and sale/purchase of residential apartments in and around Guduvancheri in district Kancheepuram in Tamil Nadu". The information available in public domain suggests that there was no dearth of players in the real estate sector selling residential apartments in the determined relevant market. The market share of OP in this market has neither been given by the informant nor is available in public domain. In *Mr. Ajit Mishra vs Supertech Limited* (Case No. 3 of 3013), the Commission held that 'the presence of other well known builders in the relevant market negates the contention that informant or any other consumer was dependent only on the opposite party to purchase an apartment. Presence of other builders of repute also shows prevalence of competition. It cannot be a case where opposite party could operate independent of competitive forces. The Commission *prima facie* was of the opinion that OP is not



dominant in the determined relevant market. In the present case also the opposite party had competitive constraints due to presence of other developers in the relevant market. OP cannot be said to be dominant in the relevant market.

7. Since the Opposite Party does not appear to be in a dominant position in the relevant market, there seems to be no question of abuse of its dominant position within the meaning of the provisions of Section 4 of the Act arises.

8. For the reasons stated above, the case deserves to be closed under section 26(2) of the Act. The Secretary is directed to send a copy of the order to all concerned.

New Delhi

Dated: 02/01/2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. N. Dhingra)
Member

Sd/-
(S. L. Bunker)
Member