

**COMPETITION COMMISSION OF INDIA**

**Case No.77/2012**

**Date: 19 March, 2013**

**Mr. Jitendra P. Agarwal**

**Informant**

**M/s. Macrotech Constructions Pvt. Ltd.**

**Opposite Party**

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

Mr. Jitendra P. Agarwal, informant in this case alleged that he had booked a flat with the Opposite Party and entered into an agreement with the Opposite Party. As per clause 23 of the Agreement, the tentative date of delivery of possession was 31<sup>st</sup> March, 2010. A six months grace period was also provided, which expired on 30<sup>th</sup> September, 2010. However, the possession was not given as per the agreement and the possession was delivered to him only on 8<sup>th</sup> September, 2011. The informant submitted that post 30<sup>th</sup> September, 2010, the opposite party was liable to pay interest @ 12% per annum for the delayed period of handing over of possession. The interest was not payable by the opposite party only if the possession had not been handed over for the reasons beyond the control of the opposite party, in completing the project. However, no communication was sent to the informant about the reasons due to which possession could not be handed over to the informant.

2. The informant claimed that the opposite party was in a dominant position vis.-a-vis. him in the project. Before handing over possession, he was asked to sign a letter that he would not make a claim against the opposite party regarding delayed

possession. He had no option but to sign this letter since the possession was not being handed over without signing the letter.

3. The informant claimed that he was entitled to interest of Rs.81,72,801/- on the amount paid by him of Rs.4,80,75,300/-, at 12% from 1<sup>st</sup> April, 2010 to 31<sup>st</sup> August, 2011 and after 31.8.2011 he was entitled to interest @ 18% from 1.9.2011 to 31.10.2012. He claimed total interest of Rs.98,89,089/- and made a prayer that the Commission should pass an order against the opposite party to this effect and give directions to the opposite party to pay this amount to him. He also prayed for an interim relief for compensation of Rs.50 lakhs till the case was decided.

4. The informant alleged violation of section 3 & 4 of the Competition Act by the opposite party. However, in the information, no averment has been made either in respect of violation of section 3 of the Competition Act or in respect of dominance of the opposite party. A perusal of the information and material placed on record shows that there was no contention regarding violation of section 3 of the Competition Act and only contention was about abuse of dominance by opposite party. The dominance was alleged on the ground that despite the informant having paid the entire cost of flat, there was a considerable delay in delivering possession on the part of the opposite party and the opposite party compelled the informant to sign a letter of waiving of the claim in respect of delay in possession.

5. The dominance under Competition Act is not to be seen as dominance of an enterprise vis-à-vis an individual consumer. The dominance of an enterprise under Competition Act is to be considered in the relevant market. The informant has alleged in this application the dominance of the opposite party vis.-a.-vis himself. In any case,

the relevant market in this case would be the market of providing residential apartments in Mumbai. Opposite party was not the only player in the relevant product market of residential flats in the geographic market of Mumbai. There were many players in the market of providing residential flats e.g. HIRCO, Orbit Corporation, DLF etc. The informant had option to book flat with any one of the several builders/developers. There is no material to hold that the opposite party was a dominant player in the relevant market of providing residential apartments in Mumbai.

6. The information application given by the informant is in the form of a claim of liquidated damages against the opposite party, for delay in delivery of the possession of residential apartment. This kind of claim does not fall within the ambit of Competition Act and the appropriate forum for claiming liquidated damages is elsewhere.

7. In view of the above discussion, Commission finds that there does not exist a prima facie case for investigation. The matter is liable to be closed under section 26(2) of the Competition Act and is hereby closed.

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

Sd/-  
(H.C. Gupta)  
Member

Sd/-  
(Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M.L. Tayal)  
Member

Sd/-  
(Justice S.N. Dhingra {Retd.})  
Member

Sd/-  
(Ashok Chawla)  
Chairperson