



COMPETITION COMMISSION OF INDIA

Case No. 77 of 2014

In Re:

**Sh. Ankit Jain
Kranti Nagar, Vinoba Nagar,
Bilaspur,
Chattisgarh**

Informant

And

**M/s BPTP Limited
BPTP Crest, Plot No. 15, UdyogVihar,
Phase-IV, Gurgaon**

Opposite Party No 1

**The Chairman/Managing Director,
M/s BPTP Ltd.
BPTP Crest, Plot No. 15, UdyogVihar,
Phase-IV, Gurgaon**

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**



Mr. U.C.Nahata
Member

Present: Shri A K Goyal, Advocate 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 (the“**Act**”) by Shri Ankit Jain(hereinafter referred to as ‘**Informant**’) against against M/s BPTP Ltd., (**OP 1**) and its Chairman/ Managing Director (**OP 2**) 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:
 - 2.1 The Informant submitted that he purchased a residential plot in “Amstoria” (the ‘Project’) being developed by the Opposite Parties in Sector 102, Gurgaon district of Haryana.
 - 2.2 The Informant has alleged to have paid Rs.2,48,29,419/- towards the total sale price including preferential location charges of Rs.10,89,000/-. It is stated that the Informant requested the Opposite Parties for providing him ‘Verification Report’ as he desired to transfer the said plot. He even paid the requisite fees of Rs.2,600/- to the Opposite Parties for providing the Verification Certificate.
 - 2.3 It is alleged that the Opposite Parties had shown an amount of Rs.22,02,663/- as outstanding towards additional preferential location charges in the Verification Report. As per the agreed terms and conditions for purchase of the said plot, the Informant was required to pay the preferential location charges only once and the



same was already paid by him to the Opposite Parties. Despite raising the issue of additional preferential location charges before the Opposite Parties, OP1 alleged to have continued to pressurise him for the payment of additional preferential location charges and in case of failure he should face the consequences of cancellation of the said plot and forfeiture of the amount paid by him.

2.4 The Informant has submitted that he, vide letter dated 04/06/2014, had specifically mentioned that in case the demand of additional preferential charges is not withdrawn/ revoked, the Informant would no longer be interested in allotment of the said plot and that the entire amount paid by him for the said plot may be refunded to him along with interest @ 18%. It is alleged that the Opposite Parties did not respond to his letter dated 04/06/2014 till the date of submission of this information. It is further averred that the Opposite Parties were putting pressure on the Informant to pay the alleged additional amount. Despite the fact that the rights to transfer the said plot were assigned to him by the Opposite Parties, the Opposite Parties alleged to have refused to transfer the said plot in favour of the person to whom the Informant wants to sell his plot.

2.5 It is stated that a legal notice dated 26/07/2014 was also served on the Opposite Parties for which no response were received by the Informant. But after the issuance of the said legal notice, the Opposite Parties stated to have threatened him with dire consequences of termination / cancellation of the Buyers' Agreement and forfeiture of amount paid by the Informant.

2.6 Based on the above allegations, it is alleged that such conduct of the Opposite Parties is illegal, unjustified and in violation of section 4 of the Act. It is also averred that the Opposite Parties are following unfair trade practice, which amounts to deficiency in services as defined under section 2 (d) of the Consumer Protection Act, 1986.



- 2.7 The Informant has prayed *inter alia*, for the issuance of direction to OP 1 to discontinue its conduct of abusing its dominant position.
3. The Commission perused the material available on record including the information, facts and data placed on record by the Informant. The Counsel, who appeared on behalf of the Informant, was also heard by the Commission on 09.12.2014.
4. The Commission observed that the allegations of the Informant in the present case pertains to the residential plot in “Amstoria” being developed by OP1 in Sector 102, Gurgaon district of Haryana. Therefore, considering the issues in the present matter, it appears that the relevant market for OP 1 would be the market of “*services of development and sale of residential plots in Gurgaon*”. The Commission, in a similar Case no. 25 of 2014, held Gurgaon to be the relevant geographic market on the ground that the consumers looking for a residential plot in Gurgaon may not prefer Faridabad or any other neighbouring areas.
5. 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, there are many other real estate developers such as DLF, Emaar MGF, Central Park, Supertech, Vatika Group etc. operating in the relevant market. The presence of these renowned builders in the relevant market indicates that OP1 may not enjoying dominant position in the relevant market.
6. Another factor for the determination of dominance is the dependence of consumers on the enterprise. It is observed that 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 OP 1. Presence of such players with comparable projects in the relevant market indicates that the buyers have an option to choose from other developers in the relevant geographic market. In the present case, there is an option of inter-changeability of services of development and sale of residential plots in Gurgaon. The buyer does not seem to be completely dependent on OP 1.

7. The Commission also notes that the Informant has not furnished any cogent material from which the dominance of OP in the relevant market can be seen. Thus, *prima facie*, OP 1 does not appear to be in a dominant position in the relevant market and in the absence of dominance of the OP 1 in the relevant market, the conduct need not to be examined under the provisions of section 4 of the Act.
8. 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.
9. The Secretary is directed to inform all concerned accordingly.

Sd/-

(Ashok Chawla)

Chairperson

Sd/-

(S .L. Bunker)

Member



Sd/-
(SudhirMital)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Date: 30.12.2014