



(Case No. 80/2013)

Tunuguntla Chandra Shekar
TunuguntlaSudha Rani
House no. 217, Sector 2-C,
Near Mewar Institute
Vasundhra,
Ghaziabad-201012

....Informants

And

M/s S.G. Estates Limited
105-06, Deep Shikha Tower,
Rajendra Place,
New Delhi – 110008

...Opposite Party No.1

M/s SKI View Hotel (P) Limited
105-06, Deep Shikha Tower,
Rajendra Place,
New Delhi – 110008

...Opposite Party No.2

UP Housing and Development Board
Vasundhra Complex,
VasundhraYozana,
Sector 16-A, Vasundhra
Ghaziabad – 201012

...Opposite Party No.3

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice S. N. Dhingra (Retd.)
Member

Mr. S. L. Bunker
Member

Present: Mr.Tunuguntla Chandra Shekar, Informant



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

The information in the present case has been filed by the Informants under Section 19(1)(a) of the Competition Act, 2002, (“**Act**”)alleging violation of the provisions of the Act, more specifically Section 4 by the Opposite Party 1 (“**OP1**”) and Opposite Party 2 (“**OP2**”) with regard to development of a commercial real estate project in Vasundhara, Ghaziabad, Uttar Pradesh.

2. The Informants are residents of Vasundhara, Ghaziabad and investors in the project ‘Beta Commercial Complex’ developed by OPs 1 and 2 (“**Project**”). OPs 1 and 2 are companies incorporated under the Companies Act, 1956 and engaged in real estate development. The Opposite Party 3 (“**OP3**”), established under the UP Avas Evam Vikas Parishad Adhiniyam, 1965, is entrusted with the task of planned real estate development in the state of Uttar Pradesh and has been made pro forma party.

3. The Informants stated that OP2 gave advertisements for sale of commercial space in the Projectclaiming that the Project would have world class offices, showrooms, entertainment zones, ample parking space, open air restaurant, etc. Based on the advertisements and assurance of OP2’s representatives, the Informants booked a commercial space in the Project and vide allotment letter of OP2 dated 30.08.2006, Shop-Office No. UG-15 was allotted to the Informants at agreed rate of INR 5490 per sq. ft., allied charges at6% and other terms and conditions. The Informants stated that OPs 1 and 2 had promised that possession of the shop would be given tentatively by 31.03.2008.



4. Subsequently, OPs 1 and 2 entered into a purchase agreement with the Informants on 02.06.2007 (“**Purchase Agreement**”). The Informants alleged that the conditions of the Purchase Agreement were predominantly in favour of OPs 1 and 2. The Informants alleged that they signed the Purchase Agreement under compelling circumstances since a substantial amount towards purchase price of the said commercial space had already been paid and non-payment/withdrawal from the purchase would have led to forfeiture of 15% of the total sale consideration. The Informants stated that neither the Project was completed within the stipulated time nor the deficiencies in construction design as pointed out by them were removed.

5. The Informants contended that without addressing their concerns and completing the Project in all respects, OPs 1 and 2 compelled the Informants to get the sale-deed executed which was also largely in favour of OPs 1 and 2 and the shop was forcefully transferred to them by OPs 1 and 2. The Informants further alleged that OPs 1 and 2 have been demanding maintenance charges at unjustified rates and such rates are not based on actual expenditure and despite several requests, project completion certificate from the municipal authority/architect has not been provided.

6. It was also contended that in 2006 when they booked the said commercial space in the Project, OPs 1 and 2 were the only players in the commercial segment in Vasundhara, Ghaziabad and hence were in a dominant position in this particular segment. The Informants alleged that by imposing one sided unfair terms and conditions in the Purchase Agreement and sale deed, charging higher price for maintenance, not fulfilling their commitments and obligations, OPs 1 and 2 abused their dominant position and contravened the provisions of section 4 of the Act.

7. The Commission considered the information, facts and data placed on record by the Informants. From the information it is considered that the relevant product market in this case would be ‘the development and sale of commercial space’. The relevant geographic market in the instant case would be the geographical



area of Ghaziabad. The market of commercial space in Ghaziabad, Uttar Pradesh is distinct from that of neighbouring areas such as Delhi, Faridabad, Gurgaon etc. because of distinct characteristics as distance of Ghaziabad city, Uttar Pradesh from other cities of NCR including comparative low cost of commercial space vis-a-vis Delhi, Gurgaon etc. Therefore, the relevant market to be considered in the instant case is the market for “*development and sale of commercial space in Ghaziabad*”.

8. Based on the information available in the public domain, it appears that OPs 1 and 2 belong to the same group as defined in the clause (b) of the Explanation to section 5 of the Act since the members of the Board of Directors of both the companies are the same. Therefore, for the purposes of Section 4 of the Act, OPs 1 and 2 are to be considered as a group. From the material available in the public domain and provided by the Informants, it appears that OPs 1 and 2 are not in a dominant position in the relevant market. Apart from OPs 1 and 2, other well-known builders including Parsavnath, Ajnara, Gaurs, Supertech, Omaxe etc., have a substantial presence in the commercial property segment in Ghaziabad. It also appears that in terms of size and resources, some of the competitors of OPs 1 and 2 such as Gaurs, Supertech, Ajnara, etc. are bigger than OPs 1 and 2. In the light of the above, it appears that OPs 1 and 2 were not in a dominant position in the relevant market.

9. Since OPs 1 and 2 do not appear to be in a dominant position in the relevant market there was no question of abuse of dominance. As such the Commission finds that no *prima facie* case was made out for directing Director General to carry out investigation into the matter under Section 26(1) of the Act.

10. For the reasons mentioned above, the Commission is of the opinion that there arises no competition concern actionable under section 4 of the Act and the case deserves to be closed under section 26(2) of the Act. The case is therefore, hereby closed under section 26(2) the Act.



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

New Delhi
Date: 02.01.2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

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

Sd/-
(S.L. Bunker)
Member