



**COMPETITION COMMISSION OF INDIA**

**Case No. 83 of 2014**

**In Re:**

**M/s VidaySagar Realtors Pvt. Ltd.,  
Through its Director Shri Ankur Jain  
198, Vasant Enclave,  
Vasant Vihar, New Delhi**

**Informant**

**And**

**M/s Bestech India Pvt. Ltd.,  
Plot No.124, Sector 44,  
Gurgaon, Haryana**

**Opposite Party No. 1**

**The Chairman/Managing Director  
of M/s Bestech India Pvt. Ltd.,  
Plot No.124, Sector 44,  
Gurgaon, Haryana**

**Opposite Party No. 2**

**M/s Olympus Realtors Pvt. Ltd.,  
Plot No. 7D, Maruti Industrial Complex,  
Udyog Vihar, Sector 18,  
Gurgaon, Haryana**

**Opposite Party No. 3**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**



**Mr. S L Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. U.C. Nahta**

**Member**

**Appearances:**

For the Informant: Shri Ashok Goyal and  
Shri Izhar Ahmad,  
Advocates

**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 M/s VidaySagar Realtors Pvt. Ltd., through its Director Shri Ankur Jain (hereinafter referred to as the 'Informant') against M/s Bestech India Pvt. Ltd., (OP-1), the Chairman/Managing Director of M/s Bestech India Pvt. Ltd., (OP-2) and M/s Olympus Realtors Pvt. Ltd., (OP-3) alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
2. Facts of the case may be briefly noted:



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2.1 As per the Information, the Informant is a private limited company incorporated under the provisions of the Companies Act, 1956. The OP-1 is a registered company engaged, *inter alia*, in the business of real estate development. OP-2 is the Chairman/ Managing Director of OP-1. OP-3 executed an agreement of collaboration with M/s Orient Craft Limited, owner of the property situated in the revenue estate of Khandsa, Gurgaon for the construction of cyber complex over the said property. OP-3 further entered into 'Development Agreement' with OP-1 in terms of which OP-1 agreed to construct/develop and sale of a cyber park over the said property.

2.2 The Informant has submitted that it booked four office units no. 416, 417, 418 & 419 in December 2006 in Orient Bestech Business Tower, Gurgaon, Haryana ('Project) being developed by OP-1 on the said property and made the payment towards the booking amount.

2.3 However, despite the payment being made in December 2006, the Buyers' agreement was alleged to have been executed by OP-1 on 14.02.2009 i.e., after a delay of 26 months. In terms of the said agreement, the possession of the abovesaid office units was stated to be handed over to the buyer within a period of 24 months from the date of the said agreement instead of date of allotment. The Informant had alleged that such a clause is an abuse of dominant position by the OP-1. The possession of the said four units/ space was alleged to have been handed over to the Informant on 28/07/2013 after a delay of 28 months.

2.4 It is alleged that, OP-1 demanded an additional amount of Rs.6.25 lakhs per office unit on account of floor usage charge and Rs.1.25 lakhs per office unit on account of electricity charges in case it chooses/opt to have the possession of the office unit separately. The Informant found



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the said demand of OP-1 as unjustified and contrary to the terms of the agreement dated 14/02/2009.

- 2.5 The Informant is stated to have requested OP-1 to waive-off the interest charges for delayed payment since the completion of the project was delayed substantially at its end also. The OP-1 rejected the said request vide its letter dated 12/04/2014 and alleged to have asked the Informant to pay the user floor charges and electricity charges.
- 2.6 The Informant has alleged that the aforesaid conduct of the OP-1 of demanding of a huge sum of amount without any basis is an act of abuse of its dominant position. It is also submitted that such alleged unfair trade practices amounts to deficiency in service under the Consumer Protection Act. The Informant is alleged to have served legal notice on OP-1 for which no response is stated to have been received by it.
- 2.7 Based on the abovesaid allegations, the Informant alleged contravention of section 4 of the Act by the OP-1.
- 2.8 Accordingly, the Informant has prayed, inter alia, for the issuance of directions to OP-1 for discontinuation of abuse of its dominant position.
- 3 The Commission has perused the material placed on record including the information and heard the counsel on behalf of the Informant.
- 4 It is observed that the Informant is primarily aggrieved by the alleged abusive and discriminatory conduct of OP-1 which is alleged to be in contravention of the provisions of section 4 of the Act. At the outset, it may be observed that section 4 of the Act prohibits abuse of dominance by a dominant enterprise in a relevant market. Accordingly,



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determination of relevant market is must in order to examine the alleged abusive conduct of OP-1.

- 5 In terms of the provisions of section 2(r) of the Act, ‘relevant market’ means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. The allegation of the Informant in the instant case is regarding investment in IT/Cyber space in IT/ Cyber Complex ‘Orient Bestech Business Tower’ in Gurgaon, Haryana. Therefore, considering the issues in the present matter, it appears that the relevant product market for the OP-1 would be the *“services for development and sale of commercial IT/Cyber space”*. As regards the geographical market, the Commission is of the view that the relevant geographic market would be *“Gurgaon”*. The geographic area of Gurgaon exhibits distinct characteristics from a buyer’s point of view and conditions of competition in Gurgaon appear to be distinct from the areas such as Noida, Delhi and Ghaziabad in the National Capital Region (NCR). In Case No. 24/2014, the Commission observed that *“owing to certain distinct factors such as availability of land for real estate development, differences in commercial real estate price per sq. ft., relatively low rent for office spaces, proximity to the national capital, connectivity to airport, presence of a large number of IT/ITES firms, availability of residential apartments and other infrastructure facilities, Gurgaon appears to be a distinct geographic market.”*
- 6 Thus, the Commission feels that the relevant market for the OP-1 in the instant case would be the *“services for development and sale of commercial IT/Cyber space in Gurgaon”*.



सत्यमेव जयते



- 7 After demarcation of the relevant market, the next step in the analysis is to study whether the OP-1 is dominant or not in the relevant market.
8. The Commission observes that there are many other real estate developers offering 'Information Technology real estate projects' (hereinafter referred to as "IT/ ITES") in the relevant market like DLF (4 projects), Unitech (3 projects), JMD (1 project), Landmark (1 project), Welldone Group (1 project), Spaze (1 project) etc. In the present case, based on the information available in public domain, the OP-1 has developed only one IT/ITES projects – Cyber Park in the relevant market. Furthermore, as per the information available on public domain, it transpires from a comparative study of the total saleable area of major real estate developers i.e. summation of saleable area of all the projects of each developer that DLF has the highest total saleable area of around 89.6 lakh sq. ft. followed by Unitech with 74 lakh sq. ft. (excluding Unitech Cyber Park). The OP-1 has the lowest total saleable area of 5.5 lakh sq. ft.
9. Thus, OP-1 does not appear to be in a dominant position in the relevant market since it has the lowest total saleable area of 5.5 lakh sq. ft. Many other large real estate developers like DLF, Unitech, JMD, Landmark, Welldone Group, Spaze etc. are also operating in the relevant market. These large developers are competing with each other in the relevant market with projects of varying magnitudes and have comparable size and resources than that of the OP-1. Presence of such players with comparable projects in the relevant market clearly shows that the buyers have the option to choose from other developers in the relevant geographic market. In the present case, there is an option of interchangeability of the services of development and sale of commercial



सत्यमेव जयते



IT/Cyber space in Gurgaon. The buyers do not seem to be wholly dependent on the OP-1.

10. There is no information available in the public domain to show the position of strength of the OP-1 which enables it to operate independently of competitive forces prevailing in the relevant market. Thus, *prima facie*, the OP-1 does not appear to be in a dominant position in the relevant market. In the absence of dominance of the OP-1 in the relevant market, it's conduct need not to be examined under the provisions of section 4 of the Act.
11. 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.
12. The Secretary is directed to inform all concerned accordingly.

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

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

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



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

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

**New Delhi**

**Dated: 17.2.2015**