

BEFORE COMPETITION COMMISSION OF INDIA

Case No. 83/2011

Date of Order - 21.02.2012

In. Re:

Shri Praveen Kumar Sodhi

Informant

Vs.

- | | |
|---|----------------------|
| 1. Omaxe Limited | Opposite Party No. 1 |
| 2. Shri Rohtas Goel
Chairman and Managing Director
Omaxe Limite | Opposite Party No. 2 |
| 3. Shri Sunil Goel
Executive Director
Omaxe Limited | Opposite Party No. 3 |
| 4. Shir Jai Bhagwan Goel
Executive Director
Omaxe Limited | Opposite Party No. 4 |

As per R. Prasad (Dissenting)

Order under section 26(1) of the Competition Act, 2002

The facts of the case and the allegations made by the informant are already discussed at length in the Order being passed by the Commission under Section 26(2) of the Competition Act, 2002 and thus, there is no need to reproduce the same here. However, the facts in brief are that the informant is a Non-Resident Indian and has booked a 3BHK apartment of 1600 square feet in 'Richmond' tower in the

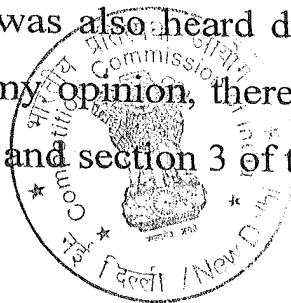


housing Project launched by OPs namely, "Omaxe Hills" in Faridabad (Haryana) in February 2005. For the same, the informant has paid 15.20 lakh in two installments to the opposite party. The opposite party confirmed the allotment of the residential flat bearing no. 604, on 12.09.2006 and convinced the informant that the project will be completed in 2010 and the flat shall be hand over to him. However, the informant has come to know that the opposite party had cancelled the allotment of flat no. 604 and planned to allot some different flat in another tower namely 'Windsor'.

The informant has alleged that this willful cancellation is arbitrary in nature and damaged and restricted the rights of the informant which is abuse of dominance by the opposite party u/s 4(2)(a) of the Competition Act, 2002. The informant has also alleged that the new agreement sent by the respondent for allotment/purchase of different flat than the one as agreed for is anti-competitive u/s 3(4)(a) of Competition Act, 2002 and thus is imposing unreasonable restrictions on the informant to purchase the flat not of its choice but by compulsion.

FINDINGS

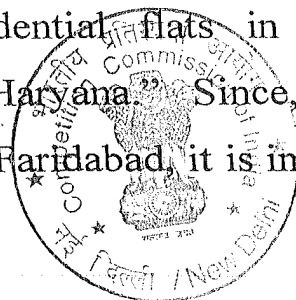
I have carefully examined the information, the documents filed along with the information and all other related aspects of this case. The counsel of the Informant was also heard during the proceedings under section 26 of the Act. In my opinion, there exists a prima facie case of contravention of section 4 and section 3 of the Act in the



present case on following grounds:-

1. OPs enjoy a position of strength in the relevant market in terms of explanation (a) to Section 4 as they are in such a position which enables them to operate independently of other competitive forces prevailing in the market and to affect its consumers in its favour. It so happens when a consumer enters into an agreement with any such builders, it becomes impossible for the consumer to get out of that agreement because of huge switching cost involved in it and this gives the builders a position of strength which enable them to operate independently of its competitors as the consumer cannot switch over to other competitors. This position of strength acquired by way of agreement also enable them to affects its consumers as the consumers become captive after signing the agreement. The agreements are always loaded in favor of the builder and usually contain unfair and discriminatory conditions. Once the customers become captive, the builders start fleecing them. I have already held in the case of DLF that this conduct is called "after market abuse." Thus, this is a fit case of abuse of dominance by the OPs.

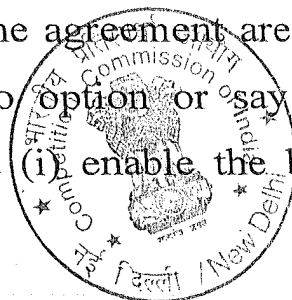
2. The only thing required to be proved is that the builder is holding a dominant position in the relevant market. Though this is not the stage where relevant market needs to be determined, yet prima facie the relevant market in this case is "provision of services for development of residential flats in the geographic area of Faridabad district of Haryana." Since, the relevant geographical market in this case is Faridabad, it is important to see whether the



OP is a dominant player in that area. According to me the entire project i.e. "Omaxe Hills" in Faridabad launched by the OP constitutes one relevant market as this particular product (the flat in Richmond) is not substitutable or interchangeable as required in a relevant market.

3. Otherwise also, OP is a well known player in the field of Real Estate construction and has a number of other projects in the country. It has also got substantial market share in the relevant market share though by virtue of the market share it cannot be said that the OP is the only dominant player in the relevant market but of course it is one of the dominant players in the relevant market.
4. So far the question of violation of section 3 is concerned, the practices being followed by the OP as well as other builders are quite common and prima facie anti-competitive. These practices may be of various type and some of them are given below:

- a) Advertisements are issued for launching projects and application and initial deposits are received by the builders without the necessary approvals or registrations required for the project land;
- b) The terms and conditions indicated for attracting buyers often contain misleading statements and unattainable commitments by the builders;
- c) The terms of the agreement are often one sided leaving the buyers with no option or say in the matter and include provisions that (i) enable the builders to change the area,



design and other major aspects of the project unilaterally, (ii) require forfeiture of large amounts in certain cases including exit by buyers; (iii) provide for little commitment to complete the projects in a time bound manner; (iv) charge a high penal interest rate from buyers for late payment etc.; and (v) impose excessive maintenance charges.

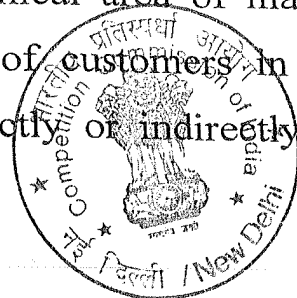
- d) Non transparent method of accounting as the collected amounts are often diverted to other projects; and
- e) Builders retaining rights over common area despite charging the full cost from the buyers as part of the total project cost including

5. Further, it is also in the knowledge of the commission that the builders do not disclose documents relating to the title of the property before signing the flat buyer agreement; ambiguous rates are quoted for built-up area and super built-up area; collection of 10-20% of the cost of the flat in the form of booking amount without diverging the project details; providing of buyer's agreements only after the prospective buyer is locked in by payment of booking amount. Further, it appears that such agreements include several onerous and one sided terms favoring the builder including a provision for mandatory purchase of car parking which is separately charged for even though parking areas are included in common areas and facilities; compelling the buyer to pay the taxes levied by the authority even during the construction period when the buyer does not even enjoy the ownership of the property, mortgaging of the project to banks;



financial institutions by the builders to raise the funds even though the property is simultaneously sold to the buyers and reserving of the right by builder; developer to alter/ delete/ modify building and floor plans.

6. Under section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Any agreement entered into in contravention of the provisions contained in sub-section (1) of section 3 of the Act shall be void as per the provisions contained in sub-section (2) of section 3 of the Act. Further, sub-section (3) of section 3 of the Act states that any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or



collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

In view of the above provisions and on a careful perusal of the informations filed in this case, the various practices being adopted by the OPs prima facie appear to be anti-competitive.

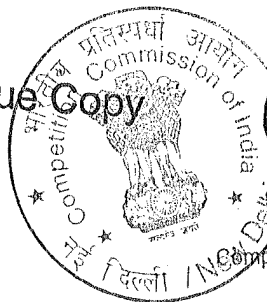
Thus, I am of the opinion that there exists a prima facie case to direct the Director General (DG) to cause an investigation into the matter and to submit his report within a period of 45 days from the communication of this order.

The Secretary is directed to send a copy of the informations to the Office of the DG in terms of the relevant provisions of the Act and the Regulations made thereunder.

It is clarified that nothing stated in this order shall tantamount to final expression of opinion on the merits of the case and the observations made herein shall not affect the investigations in any manner.

Sd/-
Member (R)

Certified True Copy



S.P. Gahlaut
22/02/2012
S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi