

**Competition Commission of India
Case No. 83 of 2011**

February 21, 2012

In re:

Shri Praveen Kumar Sodhi

Informant

v.

1. Omaxe Limited

Opposite Party No.1

2. Shri Rohtas Goel
Chairman and Managing Director
Omaxe Limited

Opposite Party No.2

3. Shri Sunil Goel
Executive Director
Omaxe Limited

Opposite Party No.3

4. Shri Jai Bhagwan Goel
Executive Director
Omaxe Limited

Opposite Party No.4

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

The present information has been filed by Shri Praveen Kumar Sodhi ('the informant') under section 19(1) (a) of the Competition Act, 2002 ('the Act') against M/s Omaxe Limited ('the OP No.1') and its Chairman-cum- Managing Director and the executive Directors alleging *inter alia* abuse of dominant position in contravention of the provisions of section 4 of the Act.

2. Briefly stated, the informant in February, 2005 booked a residential flat bearing No. 604 in the tower *Richmond* of the group housing project *Omaxe Hills* promoted by the opposite parties at Faridabad. The allotment was confirmed by the OP No.1 on 12.09.2006. In May, 2007 the OP No.1 sent two original copies of Buyer's Agreement to the informant for being signed and sent back. The informant complied therewith accordingly. As the construction of the tower was not completed till the year 2010 as promised, the informant approached the opposite parties requesting for a final date of completion. To this, the OP No.1 insisted upon the informant to pay further instalments. The opposite parties also threatened the informant to cancel the allotment if a payment of Rs. 5 lac was not made to the OP No.1.

3. On the visit of the Office of the OP No.1, the informant was told that the booked flat will not be handed over to the informant. The opposite parties asked the informant to make further payments for some other flat as the allotment of flat No. 604 was stated to be cancelled. The OP No.1 planned to allot some other flat to the informant in another tower viz. Windsor. An agreement was sent by the opposite parties to the informant for the allotment of flat in Windsor.

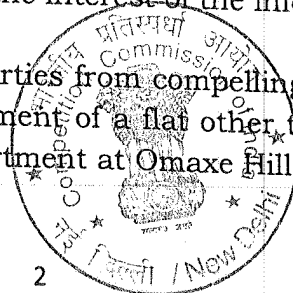
4. The informant has alleged that the change in plan, floor, flat and building by the opposite parties was fraudulent. The informant has also alleged that the opposite parties had assured that the flats would be ready by the year 2009, but looking at present stage of construction there was no scope of possession even by March, 2012.

5. The informant alleged that the OP No.1 made a sudden change in the plan, without an approval of the informant and cancelled the flat allotted to him after getting handsome amount from the informant and changed the flat which was never agreed upon. The act has been described by the informant as a fraudulent and deceitful conduct of the opposite parties.

6. The informant averred that the OP No.1 being in dominant position was putting pressure on the informant to agree to changed flat. However, by virtue of the documents in his favour (Buyer's Agreement and allotment letter), he was the actual allottee of the subject flat and had custodian rights till the performance of the contract between the parties and had right to deal with the same in a manner he might choose. The informant had become dependent on the opposite parties' terms, since a large amount has already been invested by the informant. The opposite parties were taking undue advantage of the money so deposited and have threatened the informant to put more money otherwise the previously deposited amount shall be forfeited. By such threats, the opposite parties were abusing their dominant position to impose undue and unfair restrictions over the informant.

7. On these averments and allegations, the informant made following prayers to the Commission:

- (i) To restrain the opposite parties from abusing dominant position in a manner to harm and hurt the interest of the informant;
- (ii) To restrain the opposite parties from compelling the informant to enter into an agreement for the allotment of a flat other than the already allotted flat no. 604 in 'Richmond' Apartment at Omaxe Hills, Faridabad;



- (iii) To restrain the opposite parties from allotment of flat (s) in the 'Richmond' Apartment to any other person unless the present matter was resolved;
- (iv) To restrain the opposite parties from forfeiting the money deposited by the informant for flat no. 604 or such other flat only in 'Richmond' at Omaxe Hills, Faridabad or to cancel the allotment at their own;
- (v) To restrain the opposite parties from imposing unfair, unjustified restrictions/conditions on the informant in respect of flat no. 604 or such other flat in 'Richmon' at Omaxe Hills, Faridabad;
- (vi) To pass necessary directions to the opposite parties to provide such flat (s) in the 'Richmond' Apartment at Omaxe Hills on the basis of the payments received already by the opposite parties in this regards; and
- (vii) To pass a direction to the Director General to cause an investigation to be made into the matter.

8. The Commission has examined the information and the documents filed therewith very carefully. The Commission also heard the counsel appearing for and on behalf of the informant at length.

9. Although, the informant has claimed the OP No.1 as a dominant enterprise but he has not averred as to how the OP No.1 was in a dominant position. No averment has been made to show that the OP No.1 enjoyed a position of strength in the relevant market which enabled it to operate independently of competitive forces prevailing in the market or to affect its competitors or consumers or the relevant market in its favour. Moreover, no material has been placed before the Commission as required under section 19(4) of the Act to enable the Commission to determine the dominance of the opposite party in the light of the factors mentioned therein *viz.* market share of enterprise, size and resources of the enterprises, size and importance of the competitors, economic power of the enterprises including commercial advantages over competitors, dependence of consumers on the enterprise *etc.* As the dominance of the opposite party is not established, the issue of abuse thereof does not arise for consideration.

10. Contravention of the provisions of section 3 of the Act is not specifically alleged. However, a passing reference has been made by pleading that the new agreement sent by the OP No.1 to the informant with respect to a different flat fell foul to the provision of section 3 (4) (a) of the Act. It may be noted that the reference by the informant to the provisions of section 3(4) of the Act is misplaced as the said provision envisages an agreement amongst enterprises or persons at different stages or levels of the production

chain in different markets. An end consumer is not part of any production chain in a market.

11. On the basis of the material available on record, it is apparent that the present dispute is largely a consumer dispute between the parties involving no competition issues. The informant has already invoked arbitration clause and has moved an application under section 9 of the Arbitration and Conciliation Act, 1996 before competent court. The matter appears to be pending before the Id. ADJ Faridabad.

12. In the result, there exists no *prima facie* case warranting any direction to the DG to cause an investigation to be made into the matter and the matter deserves to be closed forthwith leaving the informant to pursue his remedies before the appropriate forum, if so advised.

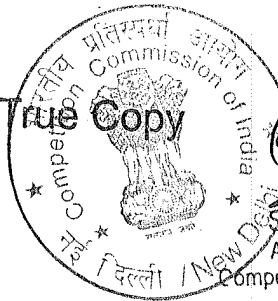
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Member (G)

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Certified True Copy



S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi

S. P. GAHLAUT
22/02/2012