



COMPETITION COMMISSION OF INDIA

Case No. 89 of 2015

In Re:

**Mr. Laxmikant Dhyani
303, Grollo Tower, Block-12
Sector-15, Omaxe North Avenue
Bahadurgarh, Haryana-124507.**

....Informant

And

1. Omaxe Ltd.

**Through: Mr. Rohtas Goel/
Mr. Sunil Goel /Mr. JB Goel
Omaxe House, Local Shopping Centre,
7&10, Kalkaji, New Delhi-110019.**

....Opposite Party 1

2. Shanvi Estate Management Services (P) Ltd.

**Through: Mr. Amit Bansal, Basement-1,
Omaxe Square, Plot No. 14, Jasola,
New Delhi- 110025.**

.....Opposite Party 2

CORAM

**Mr. Ashok Chawla
Chairperson**



Mr. S. L Bunker

Member

Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member

Mr. M. S. Sahoo

Member

Mr. (Justice) G.P. Mittal

Member

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

1. The information in the present case has been filed by Mr. Laxmikant Dhyani (hereinafter, the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against Omaxe Limited (hereinafter, '**Opposite Party No. 1**'/ '**OP-1**') and Shanvi Estate Management Services Pvt. Ltd. (hereinafter '**Opposite Party No. 2**'/ '**OP-2**'), (collectively referred to as '**Opposite Parties/ OPs**') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.



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2. The Informant is a resident of Bahadurgarh, Haryana. It has been stated in the information that he had purchased a flat from the original allottee in Omaxe North Avenue, Bahadurgarh, Haryana on 02.01.2008 in resale. Thereafter on 25.03.2008, a Builder Buyer Agreement (hereinafter the ‘**Agreement**’) was entered between the Informant and OP-1. The original allottee had booked the said flat with OP-1 on 29.03.2006. The Informant has stated that he was assured by OP-1 and the original allottee that possession will be delivered to him by January 2009 and an assurance letter was also issued to the Informant from OP-1 on 10.10.2008. However, the Informant was handed over partial possession only on 25.03.2014 i.e. he was only given possession of the flat and he did not receive the exclusive covered parking which was also assured to him as per the agreement. The Informant further has alleged various infirmities in the flat, such as OP-1 has used inferior quality materials for the construction, the flats were not constructed as per the layout plans sanctioned by the Director, Town and Country Planning (‘DTCP’), the facilities like schools, taxi stand, nursing home, clinic, milk and vegetable booth etc. which were initially promised were also not provided by OP-1. In support of the allegations, various clauses of the agreement have been cited by the Informant which have allegedly been violated by OP-1.

3. It is stated that owing to non-delivery of the flat, the Informant had sent two legal notices dated 15.07.2013 and 20.09.2013 to OP-1 but did not receive any reply to the aforesaid notices. The Informant had also approached Confederation of Real Estate Developers’ Associations of India (hereinafter referred to as the ‘**CREDAI**’), a leading Real Estate Association *vide* Complaint No. 0713003082 dated 18.07.2013. CREDAI had assured that they will help the Informant to resolve his issues with OP-1, but nothing fruitful materialized. The Informant followed with CREDAI by sending emails on 14.08.2013 and 20.08.2013 but no reply was received from their end too. The Informant also wrote an email dated 28.10.2013 to the Chairman of OP-1 as



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well as an email to one of their executive Mr. Vishal Solanki, but no one from OP-1 tried to resolve his grievances.

4. It is stated that the Informant had approached OP-1 for the possession of the Flat but he was asked by OP-1 to obtain 'No Objection Certificate' (hereinafter, 'NOC') from OP-2. Accordingly, the Informant had approached OP-2 for NOC for which OP-2 demanded Rs. 4,600/- from the Informant. Initially, the Informant refused to pay the aforesaid sum being demanded by OP-2 but finally left with no other option, he had deposited the same for getting the possession of the flat. The Informant has further averred that OP-1 appointed a maintenance agency named as Shanvi Estate Management Services (P) Limited i.e. OP-2 which was also not adequately carrying out the services and maintenance of the residential complex. In this regard, the Informant had sent emails to OP-2 on numerous occasions regarding poor maintenance of the residential complex which was never responded by OP-2. After receiving the possession of the flat, the Informant found that the lifts in the residential premises were running without safety checks and statutory permissions. The Informant has further alleged that as per clause 28(f) of the Agreement, OP-1 was required to pay a penalty for the entire period of delay in handing over the possession. However, contrary to the said clause, OP-1 did not pay any compensation or penalty amount to the Informant for the delay involved in handing over the possession.
5. Based on the foregoing, the Informant has alleged that the conduct of OP-1 and OP-2 are in contravention of the provisions of sections 3 and 4 of the Act. The Informant has prayed to the Commission, *inter alia*, to grant compensation from OP-1 and OP-2 for cheating and mental harassment and for adoption of unfair trade practices alongwith breach of the Agreement. The Informant has also asked for full refund of the cost of flat including all the charges paid till date with interest.



6. The Commission has perused the information and considered the material available on record.
7. It appears that the Informant is mainly aggrieved by the conduct of OP-1 and OP-2 which includes but not limited to partial possession of flat, deficiency in workmanship, poor quality of construction materials, non-availability of essential services as agreed in agreement, improper delivery of maintenance services etc. which have been alleged to be, *inter alia*, unfair, anti-competitive and abusive.
8. Before advertent to the specific allegations put forth by the Informant, the Commission notes that the Informant had purchased a flat in resale in Bahadurgarh, Haryana. Section 4 of the Act prohibits abuse of dominance by a dominant enterprise/group in a relevant market. Accordingly, determination of relevant market is required for examining the alleged abusive conduct. As per the provision 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.
9. The relevant product market as defined under section 2(t) of the Act means a market comprising of all products or services which are interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. Whereas the relevant geographical market as given under section 2(s) of the Act means a market comprising the area in which the conditions of competition for supply of goods or provision of services etc. are distinctly homogeneous and distinguishable from the conditions prevailing in neighboring areas. Keeping in view the above yardsticks, the Commission considered the material available on record, the



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allegations, the factual matrix and the information available in public domain and holds that the relevant product market in the instant case is “*provisions of services relating to development and sale of residential flats*”. This is for the reason that the consumer who opts for buying a flat keeps many factors into consideration which are not substitutable with buying a plot.

10. As discussed in the preceding paragraphs, the Informant had bought a flat in Bahadurgarh Tehsil which falls within the Jhajjar district. The conditions of competitions prevailing in the neighbouring districts like Noida, Ghaziabad and other areas of Haryana like Faridabad, Gurgaon or Sonapat etc. are altogether different and distinct in terms of factors like price, land availability, distance and commuting facilities etc. Therefore, the relevant market in the instant matter is “*provisions of services relating to development and sale of residential flats in Jhajjar*”.

11. With respect to the position of dominance of OP-1, it is noted that OP-1 is one of the real estate developer engaged in the provisions of services relating to development and sale of residential flat in the relevant market. The data/information available from the public domain brings out that presently there are several other major real estate developers like PDM Hi-Tech Homes, Tata Housing Development and HL City Sapphire etc. apart from many other small real estate developers operating in the aforesaid relevant market who are engaged in the provision of services relating to the development and sale of residential dwelling units/flats. These developers pose competitive constraints to OP-1 in the relevant market. Further, it is noted that no information is available on record or in the public domain indicating the position of strength of OP-1, which enables it to operate independently of its competitive forces prevailing in the relevant market. The Informant has also not produced cogent material(s) to show the dominance of OP-1 in the relevant market. Thus, OP-1



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does not appear to be dominant in the relevant market. In the absence of dominance of OP-1 in the relevant market, the Commission is of the view that its conduct may not be required to be examined under provisions of section 4(2)(a) to 4(2)(e) of the Act.

12. The Commission has also examined the allegation of the Informant pertaining to “tie-in arrangement” between OP-1, OP-2 and CREDAI. It is noted that the Informant was required to obtain the maintenance services from OP-2. The Informant and OP-2 had entered into a maintenance agreement dated 10.02.2014 in this regard. Further, the Informant has entered into builder buyer agreement with OP-1 which provides under clause 34(a) that “*in order to provide necessary maintenance services, the Company may, upon the completion of the said project, hand over the maintenance of the said project to anybody corporate, association etc. as the Company in its sole discretion may deem fit which will be referred as Maintenance Agency*”. This appears to be in the nature of an exclusive condition being put forth by OP-1 on the buyers of the flats so far as the service of maintenance is concerned. However, the Informant being the end consumer is not a part of the production chain or distribution chain therefore, such agreements would not be covered under section 3(4) of the Act. Notwithstanding that, for any agreement/ arrangement to be in violation of section 3 of the Act, there has to be appreciable adverse effect on competition in the market, which is not observed in the instant case.

13. In light of the foregoing analysis and observations, the Commission finds that no case of contravention of the provisions of either section 3 or 4 of the Act is made out against the Opposite Parties in the instant matter. Accordingly, the matter is closed under the provision of section 26(2) of the Act.



14. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S .L. Bunker)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

Sd/-
(Justice) G.P. Mittal)
Member

New Delhi

Dated: 15.12.2015