



**COMPETITION COMMISSION OF INDIA**

**Case No. 95 of 2015**

**In Re:**

**M/s Nutan Barter Pvt. Ltd.**

**B-65, Gulmohar Park,**

**New Delhi-110049.**

**....Informant**

**And**

**M/s Imperial Housing Ventures Pvt. Ltd.**

**205, Welcome Plaza, S-551, School Block-II,**

**Shakarpur, Delhi-110092**

**....Opposite Party**

**CORAM**

**Mr. S. L Bunker**

**Member**

**Mr. Sudhir Mital**

**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 M/s Nutan Barter Pvt. Ltd. (hereinafter, the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s Imperial Housing Ventures Pvt. Ltd. (hereinafter, the '**Opposite Party**'/ '**OP**') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. As per the information filed with the Competition Commission of India (hereinafter, the '**Commission**'), the Informant is a private limited company under the name and style of Nutan Barter Pvt. Ltd. incorporated under the Companies Act, 1956 having its Registered Office at Kolkata and branch office at B- 65, Gulmohar Park, New Delhi-110049. The present information has been filed through one of its Directors, Shri Sharad Kumar Dugar. The Memorandum of Association provides that the main objects of company are to undertake work related to as commission agents, brokers, contractors, processors order suppliers and dealing agents for buyers, sellers, suppliers, growers, traders, merchants, indenture brokers, agents, assemblers, stockists of goods and commodities of any kind.
3. The opposite party is stated to be a special purpose company which has been allotted a plot of land numbered as GH-001 admeasuring 1,19,770 sq. mtr. approximately in Sector 137 by the Noida Authority through a lease deed dated 26<sup>th</sup> February, 2010 for the purpose of construction, development,



marketing and allotment of apartments in a housing project named as 'PARAS TIEREA' (hereinafter the '**project**').

4. As averred in information, the Informant *vide* its application dated 30<sup>th</sup> October, 2010 applied for the allotment of an apartment in the said project and was provisionally allotted an apartment bearing No. T-25/ 1405 in Tower T-25, Type 'G', Unit Type 3 BHK Duplex admeasuring 1725 sq. ft. approximately through a letter dated 7<sup>th</sup> December, 2010. However, *vide* letter dated 07<sup>th</sup> January 2011, the opposite party informed the Informant that due to some design changes in the master plan of Tower T-25 has been re-located to a prime new location and has been numbered as T-26 and that the unit/apartment of the Informant had been shifted from Tower T-25 to T-26. It was further stated that due to prime location, the unit Nos. 1 and 2 will attract Preferential Location Charges (hereinafter referred to as the "**PLC**") of Rs.50/- per sq. ft.
5. The Informant has submitted that an agreement dated 21<sup>st</sup> January, 2011 was executed between the Informant and the opposite party for allotment of the apartment bearing number T-26/ 1405 in Tower T-26, Type 'G', Unit Type 3 BHK Duplex admeasuring 1725 sq. ft. approximately (hereinafter, '**apartment**'). Schedule-I and II of the agreement contained the total consideration of the apartment for Rs.60,37,500/- and the payment plan respectively. It's further stated that the tentative layout plan was specified in Schedule III whereas, the tentative specification was mentioned in Schedule IV of the agreement. Furthermore, it was mentioned that the possession will be given in 24 months and the grace period would be 12 months. One fourth of the total consideration i.e. Rs.15,09,375/- was paid by the Informant on 1<sup>st</sup> December, 2010 and the possession was to be handed over within 36 months including a grace period of 12 months i.e. latest by 1<sup>st</sup> December, 2013.



However, the Informant has alleged that the possession of the aforesaid apartment has not been given till date.

6. It has been submitted by the Informant that the opposite party asked the Informant to clear all the dues/outstanding before handing over the possession *vide* its letter dated 07<sup>th</sup> July, 2015 within thirty days of the issuance of the same. The said letter further stated that payments received after 30 days of the receipt would attract interest and holding charges. It was also conveyed that the maintenance charges shall be levied from the day of the actual possession and after expiry of 45 days from the date of offer of possession of the said apartment; whichever is earlier. It has been alleged by the Informant that the opposite party has unilaterally, arbitrarily and wrongly claimed Rs.15,484/- as interest on delayed payments cost. The Informant has stated that when the letter of possession was given by the opposite party, there was no delay in the past-payment and therefore, the question of levying interest on the same does not arise.
7. The Informant sent an e-mail dated 18<sup>th</sup> July, 2015 to the opposite party requesting for an appointment to visit the construction site and preview the apartment so that the final payment, registration and possession of the apartment could be made accordingly. The opposite party responded back *vide* e-mail on 19<sup>th</sup> July 2015 wherein, it had stated that only after 20 days from the date of making the entire payment the Informant will be allowed to inspect the apartment.
8. It is averred that the Informant again received an e-mail dated 21<sup>st</sup> July, 2015 from the opposite party stating that inspection of the apartment shall be arranged post 20 days from the date of receipt of payment from the Informant. The said e-mail also contained few photographs of the site and apartment without showing the interiors of the Informant's apartment. On 28<sup>th</sup> of August 2015, the Informant sent an e-mail to the opposite party and informed that he



had issued three cheques dated 20<sup>th</sup> August, 2015 in favour of the opposite party drawn on IDBI Bank against the possession letter. However, subsequently, the realization of said cheques was stopped by the Informant because of the reluctant attitude of the opposite party in allowing inspection of the apartment thereof.

9. It is further averred that the Informant had visited the office of the opposite party to inspect his apartment. However, instead of showing the apartment for which the payment was made by the Informant, the opposite party offered to show the Informant similar apartment in some other tower but not apartment no. T-26/1405 which was allotted to him. The Informant has submitted that the opposite Party sent an e-mail dated 28<sup>th</sup> August, 2015 to the Informant wherein incomplete pictures of the said apartment were enclosed and it was wrongly stated that the records of the Informant reflects default in payments/instalments at various stages, whereas the Informant has stated that actually there has been no default and the Informant has complied with the payment schedule. On 10<sup>th</sup> of September 2015, the Informant sent a detailed letter to the opposite party requesting for site inspection of the said apartment once again or appointing any neutral agency to inspect the same before claiming for the final payment, which in fact was ready with the Informant and for which three cheques were also issued in favour of the opposite party, but the payment was stopped because there was a genuine apprehension about the construction of the apartment which according to the Informant was still incomplete including the interiors, fixtures and fittings, actual area of apartment and specifications thereof.

10. It has been submitted by the Informant that the opposite party finally served a pre-cancellation letter *vide* email dated 4<sup>th</sup> October, 2015 threatening to cancel the allotment dated 21<sup>st</sup> January, 2011 if the arrears of instalment along with interest on delayed payment were not paid latest by 15<sup>th</sup> October, 2015. Being



aggrieved with these allegedly abusive conducts of the opposite party, the Informant has approached this Commission.

11. The Informant has alleged that the denial of permission by the opposite party to inspect and preview the apartment before asking the Informant to make the entire payment is totally arbitrary, unilateral, illegal and against all commercial practice which only raises doubt in the mind of the Informant about the completion, actual area and specification of the apartment. Further, not allowing the Informant to inspect the apartment before payment of the entire dues is not only unfair but demonstrates abuse of the dominant position held by the opposite party whereby, unfair and discriminatory trade practices and conditions are imposed and are in direct violation of section 4 of the Act. It has been alleged that the opposite party is enjoying a dominant position and abusing the same by not delivering the possession and not allowing inspection of the apartment without payment of the entire consideration in advance.
12. Based on the above allegations, the Informant prayed for, *inter- alia*, reliefs in terms of initiation of enquiry into the alleged contraventions of the provision of section 4 of the Act and setting-aside the email dated 4<sup>th</sup> October, 2015 threatening to terminate the agreement dated 21<sup>st</sup> January, 2011 for non-payments of installments along with interest and holding charges. The Informant has also prayed that a direction may be issued to the opposite party to allow the Informant to inspect the building and apartment allotted to him and not to levy any interest/penalty on the due amount as shown in the statement of account dated 7<sup>th</sup> July, 2015 and to pass such other and/or further relief, direction or order as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.
13. The Commission has perused the information and considered the material available on record and in public domain.



14. The Commission observes that the Informant mainly appears to be aggrieved by conduct of the opposite party which includes delay in handing over the possession, not allowing the Informant to preview/inspect the residential unit before making the final payment and un-due claim of interest on delayed payments etc. apart from the email sent by the opposite party to cancel the allotment of the apartment.
15. It is noted that the allegations of the Informant relate to the contravention of the provisions of section 4 of the Act by the opposite party. Examination of allegation arising out of abuse under section 4 of the Act requires the determination/delineation of relevant market in terms of relevant product market or relevant geographic market or both. 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 'relevant geographic market' or with reference to both the market. It is only when the opposite party is found to be dominant in the relevant market then the alleged conduct needs further examination to ascertain the abuse.
16. The Informant had applied for the allotment of an apartment in a residential project of the opposite party in Noida sector-137, Uttar Pradesh which is adjacent to the Greater Noida Expressway. 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. As such, the relevant product market in the instant matter appears to be the *'provision of services relating to the development and sale of residential apartment'*.



17. The relevant geographic market in the instant case appears to be the region of Noida and Greater Noida because the condition of competition in Noida and Greater Noida region exhibit similar characteristics from a buyer's point of view and is distinct from the neighbouring areas such as Delhi, Gurgaon and Ghaziabad in the National Capital Region. Accordingly, the relevant market in the instant case is delineated as *"provision of services relating to the development and sale of residential apartment in Noida and Greater Noida"*.
18. In the present case, based on the information available in the public domain, it appears that many other real estate developers such as Amrapali, Jaiprakash Associates Ltd., Jaypee Infratech Limited, Supertech Limited, The 3C Company, Unitech, Ansal Properties, KV Developers, Saha Infratech, KRasa International Private Limited, Keltech Infrastructure Limited, Lotus Greens, Prateek Group, ATS Greens, Himalaya Real Estate etc., are operating in the above relevant market and competing with each other. These developers appear to pose competitive constraints on the opposite party in the relevant market. Presence of other players with comparable projects in the relevant market indicates that the buyers have options to choose from other developers also in the relevant market. Available information does not indicate that the opposite party is in a position to operate independently of competitive forces prevailing in the relevant market.
19. In view of the above, the opposite party does not appear to have dominant position in the relevant market. Since, the dominance of the opposite party in the relevant market is not established, the question of examining the abusive conduct does not arise. The Commission has also examined the case from the perspective of section 3 of the Act and found no violation of the same.
20. In light of the above analysis, the Commission is of the opinion that no case has been made out against the opposite party in violation of either section 3 or





4 of the Act. Accordingly, the matter is closed under the provision of section 26(2) of the Act. The Secretary is directed to inform all concerned accordingly.

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

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

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

**Sd/-**  
**(M. S. Sahoo)**  
**Member**

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

**New Delhi**  
**Dated: 17.12.2015**