



COMPETITION COMMISSION OF INDIA

Case No. 97 of 2014

In Re:

**Dr. (Col.) Subhash Chandra Talwar
F-803, Ambience Lagoon Apartments,
NH-8, Gurgaon-122002, Haryana**

Informant

And

**Chief Secretary, Govt. of Haryana
4th Floor, Haryana Civil Secretariat, Chandigarh**

Opposite Party No. 1

**Mr. K. P. Singh, DLF Chief
DLF Centre, Sansad Marg, New Delhi – 110001**

Opposite Party No. 2

**Mr. Raj Singh Gehlot,
Proprietor of HLF Enterprises and its Subsidiaries
L-4, Green Park Extension, New Delhi - 110016**

Opposite Party No. 3

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Augustine Peter
Member**



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Mr. Sudhir Mital

Member

Mr. U. C. Nahta

Member

Appearances: The Informant in person.

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

1. The information in the present case has been filed by Dr. (Col.) Subhash Chandra Talwar (hereinafter, the '**Informant**') under section 19(1) (a) of the Competition Act, 2002 (hereinafter, the '**Act**') against the Government of Haryana (hereinafter, '**OP 1**'), DLF Chief Mr. K. P. Singh (hereinafter, '**OP 2**') and the Proprietor of HLS Enterprise and its subsidiaries Mr. Raj Singh Gehlot (hereinafter, '**OP 3**') [collectively hereinafter, the '**Opposite Parties**'/'**OPs**'] alleging contravention of the provisions of sections 3 and 4 of the Act in the matter.
2. As per the information, OP 1 is the Government of Haryana and OP 2 and OP 3 are the chief of the two renowned real estate companies in Gurgaon. The Informant, a social activist, has filed the instant information to bring to the notice of the Commission regarding the alleged anti-competitive conduct of OP 2 and OP 3 under the aegis of OP 1 that adversely affected the lives of residents of the Group Housing Societies formed for condominiums in Gurgaon.
3. The Informant is stated to be a resident of a condominium in Ambience Lagoon Apartments, Gurgaon, developed by OP 3. It is the case of the Informant that OP 1 has failed to provide a separate set of rules/enactment for condominiums as a



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result of which they are governed by general regulations meant for cooperative societies or commercial complexes. The Department of Town & Country Planning, Haryana ('DTCP'), the nodal department of the Government of Haryana, responsible for regulated development of real estate sector in the State, has also failed to incorporate new set of rules for high rise condominiums. It is averred in the information that by borrowing the same set of rules which were framed for cooperative societies or commercial complexes, DTCP has allowed projects entailing condominiums.

4. It is alleged that prospective buyers were enticed to purchase property on misleading representations which were altered after payment of advance. The illegal conveyance deeds were handed over to the buyers which were neither questioned by the registration authority nor by DTCP, thereby perpetuating the fraud played by OP 2 and OP 3. The Informant averred that the practice of issuing illegal documents was initially set in motion by OP 2 with an intention to exploit residents of group housing societies which was further followed by all the real estate developers/colonisers who moved as a lobby against the best interest of the residents. It is alleged that OP 1 tweaked the rules and laws from time to time in order to facilitate the real estate developers against the basic rights of the owners.
5. The Informant alleged that OP 3, with the aid of OP 1, managed to get 08 acres out of 18.98 acres of land de-licensed and then re-licensed the same for the purpose of constructing a mall which is impermissible without an explicit consent of those who purchased the property. It is averred that OP 3 failed to form a genuine society for the residents of Lagoon Apartments and formed a fake society in the name of Lagoon Apartments Residential Apartment Complex Association (LRACA) in which none of the members of the management are the legitimate residents of the apartment. Thereafter, the residents of Lagoon Apartments formed their own association in the name of Ambience Lagoon Apartments Residential Welfare Association (hereinafter, '**ALARWA**') in March 2003.



6. It is stated that ALARWA was formed by the residents from the very inception of the condominium with a view to run its own affairs. However, OP 3 designated its own maintenance agency, namely APMS (Ambience Property Management Services), for maintenance services in order to extract illegitimate sums of moneys from the residents. The Informant also submitted that as per the norms set for the group housing, OP 3 should have provided a community centre as an independent structure on one acre of land but, it failed to do so.
7. Further, the Informant averred that OP 3 illegally utilised part of the two basements within the perimeters of the main building structure of the condominium itself. It is alleged that OP 3 has the intention of not only encircling the condominium through the proposed commercial building from its south-end but also to encircle the condominium through its north-end by attempting to raise yet another illegal structure. Thus, OP 3, in his capacity as a licensee, misused the management entrusted upon him by misusing the areas earmarked for specific purposes.
8. The Informant also alleged that OP 3 demolished the accommodation shown as a nursery school and utilised it as a small shopping complex to make way for flats at a belated stage by obtaining illegitimate approvals under the support of OP 1. It is averred that clubbing standalone projects built for residents as integrated township in order to divest ownership of residents is a *cardinal sin* committed by OP 1 and OP 3. Further, OPs, because of their direct access to the then Chief Minister of Haryana, were able to manipulate things in their favour in complete disregard to the interest of the residents.
9. Based on the above, the Informant prayed before the Commission to constitute an independent body governing real estate sector in India with its representation in each State including Haryana. It is also prayed that DTCP should be assigned advisory role and its executive role should be assigned to HUDA which already



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has a functioning wing of Town & Country Planning. It is further prayed that OP 2 and OP 3 should be debarred from issuing any licenses for housing including group housing colonies and be confined to construction in commercial sector alone.

10. The Commission perused the material available on record including the information and the written submission of the Informant. The Commission also heard the Informant in person on 24.02.2014.

11. The Commission observes that though the grievances of the Informant largely directed towards OP 3 (in relation to its residential project Ambience Lagoon Apartments, Gurgaon), the same has been camouflaged by allegations of fraud against OP 1, OP 2 and OP 3. The information highlights the alleged flagrant misuse of power by OP 2 and OP 3 under the aegis of OP 1. However, it appears that OP 1 and OP 2 have been added as parties to give more weightage to the allegations raised in the information. It is pertinent to note here that the Informant has not specifically stated whether he is aggrieved by alleged abuse of dominant position by OP 3 or OP 2 within the meaning of section 4 of the Act or collusive action by all the Opposite Parties to manipulate the market to the disadvantage of the residents of condominiums under section 3 of the Act. Moreover, the reliefs sought by the Informant such as to constitute an independent body governing real estate sector in India, DTCP should be assigned advisory role and its executive role should be assigned to HUDA, *etc.* do not fall under the purview of the Commission.

12. Further, considering the facts of the case, the Commission is of the, *prima facie*, opinion that no case of collusive practice under section 3 of the Act is made out against the Opposite Parties in the instant case. Existence of an anti-competitive agreement is a *sine-qua-non* for applicability of section 3 of the Act which does not seem to exist in the present case. Moreover, OP 1 does not operate in the



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same market as OP 2 and OP 3 and there is no material on record to show that the Opposite Parties have acted in collusion to perpetuate the fraud as highlighted in the information. The Informant appears to be aggrieved by the fact that OP 3 and OP 2 were using political connections to seek approvals from OP 1 to legitimise their otherwise illegal actions which cannot come within the purview of section 3 of the Act.

13. With regard to violation of the provisions of section 4 of the Act, the Commission notes that the Informant's basic grievance is that OP 3 has acted in a malafide manner by seeking illegitimate approvals and by usurping the rights of the residents of the condominium developed by it. OP 2 has been included in the array of parties for the simple reason that OP 2 first started such alleged fraudulent practices which were later followed by all real estate developers in Haryana. It may be noted that the Informant has not made any specific allegations against OP 2 which can be considered as anti-competitive in terms of section 4 of the Act.

14. With regards to allegations against OP 3, the Commission is of the view that OP 3 is not in a dominant position in any segment of real estate market in Gurgaon including the market of 'development and sale of residential apartments in the geographic region of Gurgaon' which is considered as the relevant market in the instant case. It may be noted that in the said relevant market the presence of OP 3 is minuscule and the Commission in some of the previous cases (Case nos. 19/2010, 35 of 2010, etc) has already held the view that OP 2 is a dominant enterprise in the same relevant market. Since, OP 3 is not in dominant position in the relevant market defined above, its conduct cannot be examined under the provisions of section 4 of the Act. Accordingly, the Commission is of the, *prima facie*, view that OP 3 has not contravened any of the provisions of section 4 of the Act.



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15. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of any 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 provisions of section 26(2) of the Act.
16. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Date: 24.03.2015