

COMPETITION COMMISSION OF INDIA

November 30, 2011

Case No. 22 of 2011

*In re:*

Brig. B.S. Perhar (Retd.)

Informant

v.

Hill View Infrastructure Pvt. Ltd.

Opposite Party

with

Case No. 23 of 2011

*In re:*

Pritam Perhar

Informant

v.

Hill View Infrastructure Pvt. Ltd.

Opposite Party

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

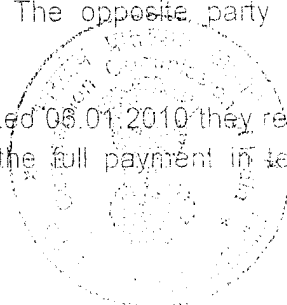
This order shall dispose of Case Nos. 22 and 23 of 2011, as common facts and issues are involved.

2. The informants who are husband and wife filed the instant informations under section 19(1)(a) of the Competition Act, 2002 ('the Act') against M/s Hill View Infrastructure Pvt. Ltd. ('the opposite party') alleging *inter alia* abuse of dominant position in contravention of the provisions of section 4 of the Act.

3. In Case No. 22 of 2011, the informant was allotted an apartment (No.103) on 01.08.2007 by the opposite party in a housing colony developed by it, viz., 'Ashray Studio Apartment' at Baddi, Tehsil-Nalagarh, District-Solan (HP). In Case No. 23 of 2011, the informant was allotted an apartment (No.102) in the same housing colony.

4. The informants averred that a total price for each apartment was agreed to be Rs.5,05,500 (Rupees Five Lakh Five Thousand Five Hundred only) of which a sum of Rs.25,025 (Rupees Twenty Five Thousand Twenty Five only) was payable at the time of possession and the balance was to be paid as per agreed schedule of payment. An amount of Rs.1,00,100 (Rupees One Lakh and One Hundred only) was paid by the informants towards the booking amount. The possession of the apartment was to be handed over to the purchasers within 18 months of allotment. The entire amount towards the price of the apartments (save and except a sum of Rs.25,025 which was to be paid at the time of the possession) has been paid by the informants. The opposite party failed to deliver the possession of the flats, despite reminders.

5. The informants claimed that *vide* letter dated 05.01.2010 they requested the opposite party to give a firm date of possession since the full payment in terms of the payment



schedule had already been made. The opposite party in response to the same intimated the informants *vide* letter dated 03.03.2010 that block No. I of the project (in which the informants had been allotted flats) has been abandoned and it offered alternative flats in block Nos. A, D & K, out of unallotted flats in these blocks. The informants immediately replied to the above letter of the opposite party *vide* letter dated 18.03.2010 calling upon the opposite party to refund the entire amount paid alongwith the interest. The informants also informed the opposite party that they were not interested in the apartments in the blocks now offered.

6. The informants have alleged that the Agreement of Sale signed by them was a standard form and one sided contract and it was wholly against fair competition in the market. It is also alleged that the opposite party abused its dominant position in the market.

7. Based on the above averments and allegations, the informants made following identical prayer:

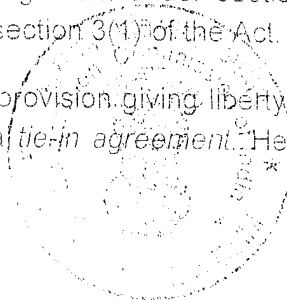
- a) *direct the respondent to refund the entire amount of Rs.4,80,475.00 paid by the petitioner to the respondent in instalments alongwith interest @24% per annum from the date of first instalment till the date of refund and payment of the entire amount with interest to the petitioner.*
- b) *to award such amount this Hon'ble Commission may deem fit.*
- c) *pass such other and further order/direction as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.*

8. We have carefully perused the informations and the material available on record.

9. It may be noted that the relevant market in the instant cases appears to be multi-storied residential apartments in the geographical area of Baddi, H.P. Except making bald assertions, the informants have not placed any material before us to establish the dominant position of the opposite party in the relevant market in terms of the factors enumerated in section 19(4) of the Act. However, the Commission of its own directed the Director, Town & Country Planning Department, H.P, to furnish information regarding issue of licences to different developers/ builders in the area. This information has been furnished. A perusal of the list of developers who were granted licences in the area would indicate that there were more than a dozen players in the relevant market of flats and therefore, the opposite party cannot be said to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. Thus, the opposite party cannot be said to enjoy dominant position in the relevant market and no case for abuse of dominant position by the opposite party in contravention of the provisions of section 4 of the Act is made out.

10. The informants in their additional affidavits dated 28.08.2011 took a plea that clause 12 of the Agreement amounted to a *tie-in arrangement* under section 3(4) of the Act and hence was in contravention of the provisions of section 3(1) of the Act.

11. The plea is thoroughly misconceived. A provision giving liberty to allot another space *in lieu* of booked space cannot be termed as a *tie-in agreement*. Hence, this plea is of no avail to the informants.



12. In the result, the Commission is of the opinion that there exists no *prima facie* case in the present matters and the same deserve to be closed forthwith. It is ordered accordingly. However, it is made clear that nothing stated herein shall preclude the informants from availing such other remedies which may be otherwise available in law.

13. The Secretary is directed to inform the parties accordingly.

Sd/-  
Member (G)

Sd/-  
Member (P)

Sd/-  
Member (GG)

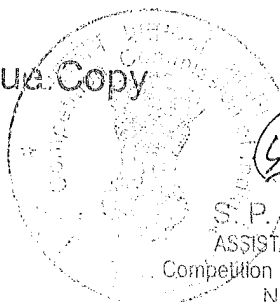
Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member ( )

Sd/-  
Chairperson

Certified True Copy



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