



**COMPETITION COMMISSION OF INDIA**  
**Case Nos. 10, 17, 18, 25, 26 and 27 of 2015**

**C. No. 10 of 2015**

**In Re:**

- |                                     |                        |
|-------------------------------------|------------------------|
| <b>1. Nitin Radheyshyam Agarwal</b> | <b>Informant No. 1</b> |
| <b>2. Nikita Nitin Agarwal</b>      | <b>Informant No. 2</b> |

**And**

- |  |                             |
|--|-----------------------------|
| <b>1. Bombay Dyeing &amp; Manufacturing Company<br/>Limited</b>            | <b>Opposite Party No. 1</b> |
| <b>2. Confederation of Real Estate Developers<br/>Association of India</b> | <b>Opposite Party No. 2</b> |
| <b>3. Maharashtra Chamber of Housing Industries-<br/>CREDAI</b>            | <b>Opposite Party No. 3</b> |

**WITH**

**C. No. 17 of 2015**

**In Re:**

- |                                |                  |
|--------------------------------|------------------|
| <b>Shri Dharmendra M. Gada</b> | <b>Informant</b> |
|--------------------------------|------------------|

**And**

- |  |                             |
|--|-----------------------------|
| <b>1. Bombay Dyeing &amp; Manufacturing Company<br/>Limited</b>            | <b>Opposite Party No. 1</b> |
| <b>2. Confederation of Real Estate Developers<br/>Association of India</b> | <b>Opposite Party No. 2</b> |



**3. Maharashtra Chamber of Housing Industries-  
CREDAI**

**Opposite Party No. 3**

**WITH**

**C. No. 18 of 2015**

**In Re:**

**1. Shri Deepak Panchamia**

**Informant No. 1**

**2. Mrs. Bina Deepak Panchamia**

**Informant No. 2**

**And**

**1. Bombay Dyeing & Manufacturing Company  
Limited**

**Opposite Party No. 1**

**2. Confederation of Real Estate Developers  
Association of India**

**Opposite Party No. 2**

**3. Maharashtra Chamber of Housing Industries-  
CREDAI**

**Opposite Party No. 3**

**WITH**

**C. No. 25 of 2015**

**In Re:**

**Shri Dinesh Chand R Modi**

**Informant**

**And**

**1. Bombay Dyeing & Manufacturing Company  
Limited**

**Opposite Party No. 1**

**2. Confederation of Real Estate Developers  
Association of India**

**Opposite Party No. 2**



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**3. Maharashtra Chamber of Housing Industries-  
CREDAI**

**Opposite Party No. 3**

**WITH**

**C. No. 26 of 2015**

**In Re:**

**1. Shri Rajesh Mayani**

**Informant No. 1**

**2. Mrs. Sonal Mayani**

**Informant No. 2**

**And**

**1. Bombay Dyeing & Manufacturing Company  
Limited**

**Opposite Party No. 1**

**2. Confederation of Real Estate Developers  
Association of India**

**Opposite Party No. 2**

**3. Maharashtra Chamber of Housing Industries-  
CREDAI**

**Opposite Party No. 3**

**WITH**

**C. No. 27 of 2015**

**In Re:**

**M/s Malhar Traders Private Limited**

**Informant**

**And**

**1. Bombay Dyeing & Manufacturing Company  
Limited**

**Opposite Party No. 1**

**2. Confederation of Real Estate Developers**



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**Association of India**  
**3. Maharashtra Chamber of Housing Industries-  
CREDAI**

**Opposite Party No. 2**  
**Opposite Party No. 3**

**CORAM**

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

**Mr. Sudhir Mital**  
**Member**

**Mr. M. S. Sahoo**  
**Member**

**Appearances:** S/ Shri K. K. Sharma, Danish Khan and Inderpreet Singh,  
Advocates for the Informants.

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

This common order shall dispose of the informations filed in Case Nos. 10, 17, 18, 25, 26 and 27 of 2015 as these have raised similar issues against the same Opposite Parties.

2. Illustratively, the facts are observed from Case No. 10 of 2015 where the information has been filed by Shri Nitin Radheyshyam Agarwal ('the Informant No. 1') and Ms. Nikita Nitin Agarwal ('the Informant No. 2') under section 19(1)(a) of the Competition Act, 2002 ('the Act') against Bombay Dyeing & Manufacturing Company Limited ('the Opposite Party No. 1'/ OP-1), Confederation of Real Estate Developers Association of India ('the Opposite Party No. 2'/ OP-2/ CREDAI) and Maharashtra Chamber of Housing Industries-CREDAI ('the Opposite Party No. 3'/ OP-3/ MCHI-CREDAI) alleging *inter alia* contravention of the provisions of section 3 of the Act.



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3. As claimed by the Informants in Case No. 10 / 2015,
- (i) The Informant No. 1 is a businessman and the Informant No. 2 is the wife of the Informant No. 1; both are based at Mumbai.
  - (ii) The Opposite Party No. 1 is a public limited company with its registered office at Mumbai. It is engaged in business of *inter alia* textile, and real estate development.
  - (iii) The Opposite Party 2, namely, CREDAI, is the apex body for private real estate developers in India, representing over 9,000 developers from 23 States and 152 city level member associations across the country.
  - (iv) The Opposite Party 3, namely, MCHI-CREDAI, is the most prominent and the only recognized body of real estate developers in Mumbai and the Mumbai Metropolitan Region (MMR). Members of OP-3 account for 80% of the organized development of new residential and commercial properties in Mumbai and MMR.
  - (v) OP-1 is a member of OP-3, which, in turn, is a member of OP-2.
4. It has been claimed by the Informants in Case No. 10 / 2015 that OP-1 launched a residential accommodation scheme by the name of 'ICC Springs' ("the project") in 2006. The apartments in the Project were available for purchase only through invitations issued by OP-1. On 25.09.2006, OP-1 sent an invitation through e-mail to the Informants drawing attention to its upcoming project. The invitation contained features of the project and the terms of offer. The Informants, *vide* letter dated 29.09.2006, conveyed their interest to purchase a residential apartment in the Project of OP-1. As required by OP-1, the Informants paid money from time to time. Upon payment of Earnest Money Deposit (EMD) of 20% of the sale price of the apartment amounting to Rs.8,401,132, the OP-1 sent a non-negotiable apartment buyers' agreement ('Agreement') to the Informants. The said Agreement was executed between the Informants and OP-1 on 23.05.2008. Subsequent to this execution, Apartment Nos. 2104A, 2104B and 2104C were allotted to the



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Informants in the said project. The Agreement carried the terms of sale, some of which were different from those stated in the invitation. They also entered into a separate car parking agreement on 21.11.2009 for sale of three parking slots. After rescheduling possession of apartments a few times by the OP-1, the Informants finally received possession on 28.01.2012.

5. It has been alleged by the Informants that the Opposite Parties have been indulging in the practice of standard clauses in their respective apartment buyers' agreement. The standard clauses include: charging of earnest money deposit (EMD) before revealing detailed terms of agreements, mandatory club house membership, mandatory purchase of parking spaces, unilateral increase in number of floors in a residential building, negligible compensation by developers for delay in delivery of possession of apartments as opposed to onerous penalties for delay in payment of installments by purchasers, etc. It has been stated that a clause may have been started by a developer, but it has become standardized as an industry norm over time. While the existing players are already practising it, every new developer consciously incorporates such standard clauses in their respective agreements. The existence of an all-India association of private developers, *i.e.*, CREDAI, provides a platform for such trade practices to flourish. The Informants have pointed out that to be a member of OP-2, one needs to adhere to the "code of conduct" stipulated by OP-2.
6. The Commission heard the Counsel for the Informants on 30.04.2015. The Counsel submitted that the practice of having standard clauses in Agreements across the industry is anti-competitive *per se* and *void* under section 3(3) read with section 3(1) of the Act, as it results in directly or indirectly determining purchase or sale price of goods or services. He further submitted that "agreement entered into between enterprises" and "practices carried on by association of persons/ enterprises" are covered separately under section 3(3) of the Act. It was submitted that the same



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should be accorded literal interpretation by the Commission and the need to establish an “agreement” should not be read into this part of section 3(3) of the Act.

7. Based on the above, the Informants have sought an investigation under section 26(1) of the Act into the alleged anti-competitive practices carried on by the Opposite Parties and various other directions.
8. The Commission has examined the submissions made by the learned Counsel appearing for all the Informants, the informations and other material available on record.
9. For the sake of convenience, the relevant provisions from the Act are reproduced as under:

*“Section 3.(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-*

*(a) directly or indirectly determines purchase or sale prices;*

*(b) limits or controls production, supply, markets, technical development, investment or provision of services;*

*(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;*



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*(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:*

.....”

10. Assuming what has been stated by the Informants and the Counsel appearing on their behalf to be fully correct, section 3(3) of the Act would be attracted only if: (i) there is a practice carried on by an association of enterprises or association of persons, and (ii) that such practice determines, directly or indirectly, purchase or sale prices of apartments. In the instant case, nothing has been brought indicating any kind of practice carried on by OP-2 or OP-3, who are associations. Nor is there any indication that any practice followed by the developers has been evolved, promoted or mandated by either of these two OPs. Every business has some customs or practices. These do not automatically attract section 3(3) of the Act or are *ipso facto* bad.
11. Further, nothing has been brought up indicating that these standard clauses in Agreements determine the prices of apartments. Every term of sale of any product has a bearing on price. That does not mean that every term determines the price and the same needs to be assessed in the factual circumstances of each case.
12. Recently, the Commission had an occasion to decide *inter alia* similar issues in *Shri Jyoti Swaroop Arora v. M/s Tulip Infratech Ltd.*, Case No. 59 of 2011 (*Tulip case*) wherein *inter alia* it was observed as follows:

*“Such commonality, in the absence of any evidence to establish role of CREDAI or understanding, arrangement or action in concert between the individual enterprises which are arrayed as opposite parties, cannot be held to be in*





*contravention of the provisions of section 3(3) read with section 3(1) of the Act in the present case.”*

13. In the said case, the Commission had also examined the Code of Conduct and did not find any contravention of the Act on this count. The Commission is of opinion that the issues and concerns raised by the Informants herein stand squarely covered with the decision of the Commission in *Tulip* Case. No new material or evidence has been brought or otherwise presented before the Commission which warrants a relook on the issues earlier decided by the Commission.
14. In view of the above, the Commission is of the view that no case is made out against the Opposite Parties for contravention of the provisions of section 3 of the Act and the informations are ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.
15. The Secretary is directed to inform the parties accordingly.

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

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

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

New Delhi  
Date: 19/05/2015