



COMPETITION COMMISSION OF INDIA

Case No. 09 of 2018

In Re:

**Shri Masood Raza
151, Gyan Khand - III, Indirapuram,
Ghaziabad – 201010, Uttar Pradesh**

Informant

And

**Uttar Pradesh Avas Avam Vikas Parishad (UPAVP)
(Through its Housing Commissioner)
104, Mahtma Gandhi Marg,
Lucknow – 226001, Uttar Pradesh**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**



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

1. The information in the present matter was filed by Shri Masood Raza (hereinafter, '**Informant**') under Section 19(1) (a) of the Competition Act, 2002 (hereinafter, the '**Act**') against Uttar Pradesh Avas Avam Vikas Parishad (UPAVP) (hereinafter, '**OP**') alleging contravention of the provisions of Section 4 of the Act.
2. The Informant is stated to be an allottee of a flat in Brahmaputra Enclave Residential Housing project developed by the OP under its Sidharth Vihar Yojna in Sector-7, Siddharth Vihar, Ghaziabad, Uttar Pradesh (hereinafter, the '**Scheme**'). The OP is an entity of the Government of Uttar Pradesh established under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 with the objectives to frame and execute housing and improvement schemes and other projects, plan and co-ordinate various housing activities in the State, ensure expeditious and efficient implementation of housing and improvement schemes in the State of Uttar Pradesh *etc.*
3. As per the information, in response to the advertisement of the OP in different newspapers for allotment of flats under the Scheme, the Informant had applied for allotment of a one bedroom flat for a total price of Rs. 13,90,000/- in April, 2013 under OBC/ senior citizen category. Along with the filled in application form for allotment of flat, the Informant had also deposited Rs. 1,40,000/- as the registration amount as per the terms of the Scheme. As per the Informant, based on a draw of lots in October, 2013 he was allotted a one bedroom flat with 41.54 square meter built up area. Subsequently, flat no. 10/ B- 71/104 on the ground floor was allotted to him through a draw of lots in March, 2016 for allotment of flat numbers. It is stated that based on the demand letter dated 26. 12. 2013 of the OP, the Informant has paid a total amount of Rs. 14,32,000/- towards the price of the flat along with applicable tax.



4. It is averred that the OP has issued a letter dated 16.02.2018 to the Informant intimating him the revised price of the said flat as Rs. 20,53,831/- (including other charges) in place of the initial price of Rs. 13,90,000/-, as intimated *vide* its demand letter dated 26.12.2013. Further, the Informant was asked to deposit the balance amount of Rs. 6,64,323/- by 31. 03.2018, failing which a penal interest @13.5 % per annum will be levied. It is alleged that OP has arbitrarily increased the price of the said flat by almost 50% without any justification, which is illegal.
5. It is also averred that as per the terms of allotment, the flats under the Scheme were to be delivered to the respective allottees within two years from the date of allotment, but the Informant is still waiting for getting possession of the flat allotted to him.
6. Based on the above submissions, the Informant has alleged that the OP has indulged in unfair and arbitrary practices and misused its dominant position in the market in contravention of the provisions of Section 4 of the Act.
7. Accordingly, the Informant has prayed the Commission to direct the OP to hand over possession of the flat allotted to him at the initial price as intimated *vide* its demand letter dated 26.12.2013 and to pass any other order as it deems just and proper to the facts the case.
8. Having perused the information available on record the Commission observes that grievances of the Informant relate to the alleged arbitrary and illegal increase in the price of the flat allotted to him by the OP in its Brahmaputra Enclave Residential Housing Project under Sidharth Vihar Yojna. It is alleged that OP has indulged in unfair practices and abused its dominant position in contravention of the provisions of Section 4 of the Act.



9. Before delving into the matter, the Commission would like to examine whether the OP, being an entity created by the Government of Uttar Pradesh, is an “enterprise” in terms of provisions of the Act. As per Section 2(h) of the Act, “a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.”
10. It is observed that OP is constituted under Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. The objectives of the OP include framing and executing housing and improvement schemes and other projects; planning and coordinating various housing activities; ensure expeditious and efficient implementation of housing and improvement schemes; maintain, use, allot, lease, or otherwise transfer plots, buildings and other properties; provide roads, electricity, sanitation, water supply and other civic amenities and essential services in areas developed by it *etc.* The activities performed by OP are economic activities and several of them are being carried on for a commercial consideration. In the present matter, OP is rendering services of development and sale of flats for a charge. This is not an inalienable function of the Government of Uttar Pradesh. Thus, the Commission is of the view that, by virtue of its functions, OP falls within the definition of the term ‘enterprise’ as stated above.



11. To examine the alleged abuse of dominance by the OP first, relevant market is to be delineated and then, it is to be determined whether the OP is in a dominant position in the relevant market or not.
12. As per 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. As per the information, Informant applied for allotment of a one bedroom flat developed by the OP in its Brahmputra Enclave Residential Housing Project under Sidharth Vihar Yojna. The residential unit in question is a flat constructed by OP under the Scheme for allotment to the public and flats were under self-financed category. The Commission takes note of the fact that requirement, scope and prospect of a residential unit *viz.* flat will be different from that of a commercial unit/ commercial space since the motive of buying and factors considered are different in both the cases. Thereby, residential unit/ flat forms a separate relevant product market. Accordingly, the relevant product market in the instant case appears to be the market for the "*provision of services of development and sale of residential flats*".
13. With regard to the geographic market, it may be noted that a person intending to buy a residential flat in Ghaziabad may not prefer to purchase the same in other adjacent areas of Ghaziabad because of factors such as prices, distance to locations frequently commuted, regional or personal preferences, transport facilities, connectivity *etc.* The conditions of competition for demand and supply for development and sale for residential flats within Ghaziabad can be considered as homogeneous and can be distinguished from other neighbouring areas such as Noida and Delhi. Thus, the relevant geographic market in this case may be considered as "*Ghaziabad district of Uttar Pradesh*".



14. Based on the relevant product and relevant geographic market defined above, the relevant market to be considered in this case as “*provision of services of development and sale of residential flats in Ghaziabad district of Uttar Pradesh*”.
15. The Commission notes that the Informant has not submitted any cogent material regarding the position of dominance of the OP in the relevant market, except making a bald allegation that, being in a dominant position, OP has violated the provisions of Section 4 of the Act.
16. As per the information available in the public domain, there are many developers such as Parsvanath, Mahagun, Ajnara, Supertech, Gour Sons *etc.* competing with the OP in the relevant market with projects of varying magnitudes and having comparable sizes and resources. Moreover, another entity of the Government of Uttar Pradesh *i.e.* Ghaziabad Development Authority (GDA) is operating in the relevant market and competing with the OP. Like the OP, GDA is also developing residential flats of varying size in Ghaziabad and allotting the same to the public under different schemes. It may be noted that GDA has exclusive power to undertake development work in Ghaziabad and in terms of size and resources, it is larger than the OP. With such a large number of players in the relevant market, it does not appear that OP enjoys a position of strength which enables it to operate independently of competitive forces prevailing in the relevant market or to affect its competitors or consumers or the relevant market in its favour. Since OP is not in a dominant position in the relevant market, question of abuse of dominant position by it within the meaning of the provisions of Section 4 of the Act does not arise.
17. Even otherwise, allegation of the Informant that OP has unilaterally increased the price of the flat does not disclose any case of abuse of dominance in terms of Section 4 of the Act. Further, on perusal of the information it appears that the



price of the flat as intimated by OP to the Informant *vide* its letter dated 26.12.2013 was an estimated price whereas the revised price intimated by the OP to the Informant *vide* letter dated 16.02.2018 was the final price. The Informant has also not submitted any material evidence indicating that price demanded by OP *vide* its initial demand letter dated 26.12.2013 was the final price of the said flat and the same was not subject to further revision.

18. Based on the above analysis, Commission is of the, *prima facie*, view that no case of contravention of the provisions of Section 4 of the Act is made out against the OP in the instant matter. Therefore, the matter is closed under the provisions of Section 26(2) of the Act.
19. The Secretary is directed to inform the Informant accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Dated: 11.05.2018

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