



COMPETITION COMMISSION OF INDIA

Case No. 14 of 2018

In Re:

**Shri Ashish Gupta,
R/o First Floor, House No. 38, Phase IV,
Mohali, Punjab – 160059**

Informant

And

1. **Panchsheel Buildtech Private Limited**
[Through its Board of Directors and Mr.
Manoj Indoria, Sales Head] **Opposite Party 1/ OP-1**
H – 169, Sector – 63,
NOIDA–201301, Uttar Pradesh.
2. **Tata Capital Housing Finance Limited**
[Through Mr. Vineet Sahdev] **Opposite Party 2/ OP-2**
A – 282, Ground Floor,
Defence Colony, New Delhi – 110024.

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

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

**Justice G.P. Mittal
Member**

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

1. The present information was filed by Shri Ashish Gupta (**the Informant**), an individual, under Section 19 (1) (a) of the Competition Act, 2002 (**the Act**) against Panchsheel Buildtech Private Limited (**Opposite Party No. 1/ OP-1**), a private limited company registered under the provisions of the erstwhile Companies Act, 1956 and Tata Capital Housing Finance Limited (**Opposite Party No. 2/ OP-2**), a limited company registered under the provisions of the erstwhile Companies Act, 1956, alleging contravention of the provisions of the Act.



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2. As per the information, the Informant booked an apartment (2bhk + study) *admeasuring* 1350 sq. ft. *i.e.* Flat No. 1004 on the 10th Floor of Block B-2, in one of the residential projects of OP-1 *i.e.* Panchsheel Greens 2, Greater Noida, Uttar Pradesh, on 18.10.2014 for a total consideration of Rs. 46.86 lacs (Rupees Forty Six Lacs Eighty Six Thousand Only). The possession of the apartment was promised to be given in 24 + 6 months from the date of booking.
3. The basic cost of the apartment was Rs. 44.59 lacs (Rupees Forty Four Lacs Fifty Nine Thousand Only) and the Informant allegedly made an initial payment of Rs. 3,55,664/- (Rupees Three Lacs Fifty Five Thousand Six Hundred and Sixty Four Only) to OP-1. Certain amount, as per the Informant, was to be paid at the time of taking over the possession of the apartment and for the remaining amount of consideration, the Informant got two loans sanctioned from OP-2 in his name, one is for Rs. 34 lacs (Rupees Thirty Four Lacs Only) and the other is for Rs. 1.6 lacs (Rupees One Lac Sixty Thousand Only).
4. As per the Informant, the Tripartite Agreement dated 17.12.2014 entered into between the Informant, OP-1 and OP-2 states that till the offer of possession is given by OP-1, the loan instalments of the apartment *i.e.* EMIs, have to be paid to OP-2 by OP-1. However, the Informant alleges that OP-1 stopped paying the same to OP-2. The Informant rather received an e-mail from OP-1 in December, 2016 whereby he was asked to bear the further EMIs and at the time of offer of possession, the amount paid by the Informant to OP-2 would be adjusted by OP-1 from the remaining 20% consideration amount to be paid by the Informant to OP-1.
5. The Informant asserts that despite repeated communications by the Informant to OP-1, it refused to pay the EMIs to OP-2. As per the Informant, according to the Tripartite Agreement dated 17.12.2014, it was the responsibility of OP-2 to collect the EMIs from OP-1, but OP-2 also did not discharge such duty. Such non-payment of EMIs to OP-2 spoiled the CIBIL score of the Informant. Under mental pressure, in January 2017, the Informant sent an e-mail to OP-1 asking it to cancel the allotment of his apartment and based on the said e-mail, OP-1



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cancelled the allotment of the apartment on 20.06.2017. It is averred that the said conduct of OP-1 is arbitrary and illegal.

6. The Informant further alleges that post such illegal cancellation, when the Informant, *via* e-mail, demanded from OP-1 the refund of the initial booking amount of Rs. 3,55,664/- (Rupees Three Lacs Fifty Five Thousand Six Hundred and Sixty Four Only) alongwith due interest and penalty, OP-1 refused to pay back the same as well.
7. Hence, the Informant avers that there is some nexus between OP-1 and OP-2 and they have indulged in illegal and unfair trade practices. This, as per the Informant, amounts to violation of the provisions of the Act. The OPs are working in a planned manner and have ulterior motives which has caused the Informant mental pain and agony. It is also stated that due to such type of anti-competitive agreements by the OPs, a large number of apartment buyers are suffering.
8. Based on the above averments and allegations, the Informant has filed the present information against the OPs, alleging contravention of the provisions of the Act.
9. The Commission has perused the information filed and the documents annexed therewith, as well as considered the information available in the public domain. The Informant has primarily made two allegations:
 - (i) OP-1 and OP-2 have entered into an anti-competitive agreement whereby OP-1 did not pay to OP-2 and OP-2 did not demand from OP-1, the loan instalments payable by the Informant to OP-2, which as per the agreement between the Informant and OP-1 and OP-2, were to be payable by OP-1 to OP-2 till the time the possession of the booked apartment was handed over to the Informant by OP-1; and
 - (ii) Anti-competitive conduct of OP-1 whereby due to non-payment of EMIs by OP-1 to OP-2, the instalments of the Informant were not paid and his CIBIL score was spoiled, allotment of the apartment of the Informant was cancelled by OP-1 in an illegal and arbitrary manner,



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and OP-1 even refused to pay back the booking amount to the Informant.

10. Regarding the first allegation of existence of an anti-competitive agreement between OP-1 and OP-2, the Commission, at the outset, notes that under Section 3 of the Act, to prove an anti-competitive agreement as has been alleged by the Informant, the basic requirement to be fulfilled is existence of an ‘agreement’. In the present case, the Informant has placed no evidence on record which can even remotely suggest the existence of any agreement between OP-1 and OP-2.
11. Even otherwise, the Commission notes that OP-1 is a real estate developer while OP-2 is a loan service provider. The two are not “*engaged in identical or similar trade of goods or provision of services*” or “*at different stages or levels of the production chain in different markets*”. They both deal in providing completely separate services and are neither horizontal competitors or vertically integrated. As such, their conduct can neither be examined under Section 3 (3) of the Act nor Section 3 (4) of the Act as well.
12. Hence, in view of the Commission, no contravention of the provisions of Section 3 of the Act is made out against the OPs.
13. With regard to the second allegation against OP-1, since the same pertains to unilateral conduct of OP-1, the Commission proceeds to analyse the same under Section 4 of the Act. To assess a case under Section 4 of the Act, first of all, a relevant market needs to be delineated; thereafter, the position of dominance of the Opposite Party in such delineated relevant market needs to be ascertained; and only if dominance is found, analysis of abuse of dominance is made.
14. In the present case, it is noted that OP-1 is engaged in the business of providing real estate services (development and sale of real estate). As per its website¹, it develops and sells residential as well as commercial units. The Commission observes that the requirement, scope and prospect of buying a residential unit is different from that of a commercial unit because of the products’ characteristics and intended use. Further, even within the residential segment, the market may be

¹ www.panchsheelgroup.com



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further sub-divided into a plot of land or a residential unit/ apartment/ flat. While residential plots of land allow the buyers to decide the floor plan, number of floors, structure and other specifications as per their own choice, the same is not the case with a residential apartment/ flat. Since present Informant has purchased a residential apartment from OP-1, and from buyer's perspective/ demand-side, residential apartment/ flat is a distinct product which is not substitutable or interchangeable with a plot of land, the Commission is of the view that the relevant product market in the instant matter would be "*provision of services relating to development and sale of residential apartments/ flats*".

15. With regard to the relevant geographic market, the Commission notes that the project in question of OP-1 is located in Greater Noida. A buyer who decides to buy a residential unit in Noida or Greater Noida as per his needs, requirements and willingness or otherwise, would not opt for any other location in Uttar Pradesh or National Capital Region such as Delhi, Ghaziabad, Gurugram, Faridabad *etc.* because of factors like differences in price of land, commuting facilities, different regulatory bodies/ authorities for approval, quality of essential services *etc.* Geographic region of Noida and Greater Noida exhibits homogenous and distinct market conditions. Therefore, the Commission is of the opinion that the relevant geographic market in the present case would be "*Noida and Greater Noida*". Based on the above, the Commission delineates the relevant market in the present case as "*provision of services relating to development and sale of residential apartments/ flats in Noida and Greater Noida*".
16. In the defined relevant market, the Commission observes that from the information gathered from the public domain² that the top builders who have the maximum number of projects (completed and ongoing) in the defined relevant market are Ace Group, Godrej Properties, Eldeco Group, Tata Value Homes, Unitech, Omaxe, Parsvnath, Amrapali Group, Ansal API, Jaypee Greens, ATS Greens, Gaursons, Supertech, *etc.* In contrast, from the website of OP-1, it is seen that OP-1 has only 5-6 residential projects in the defined relevant market. In view of the Commission, such variation is evident of the fact that OP-1 is not a

² [http:// proptiger.com/](http://proptiger.com/); <http://makaan.com/>



dominant player in the relevant market of provision of services relating to development and sale of residential apartments/ flats in Noida and Greater Noida. Consequently, in the absence of dominant position of OP-1 in the relevant market, any question of abuse of dominance by it would not arise.

17. Thus, in view of the Commission, no contravention by OP-1 of the provisions of Section 4 of the Act is also made out.
18. In view of the above analysis, the Commission is of the view that no case of contravention of either Section 3 or Section 4 of the Act is made out against the OPs in the present matter. Therefore, the matter is directed to be closed under the provisions of Section 26 (2) of the Act.
19. The Secretary is directed to inform the Informant, accordingly.

Sd/-
(Mr. Devender Kumar Sikri)
Chairperson

Sd/-
(Mr. Sudhir Mital)
Member

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

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

New Delhi
Date: 11.06.2018