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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 23 of 2018

In Re:

Mr. Ranjit Singh Gujral
WZ-434, 2nd Floor, Gali No. 23,
Shiv Nagar, Jail Road,
New Delhi – 110 058.

Informant

And

1. Vatika Limited
Vatika Triangle, 7th Floor,
Sushant Lok, Phase-I,
Mehrauli, Gurugram – 122 002,
Haryana.

Opposite Party No. 1

**2. Confederation of Real Estate Developers' Associations
of India**
5th Floor, PHD House,
4/2 Siri Institutional Area,
August Kranti Marg,
New Delhi – 110 016.

Opposite Party No. 2

CORAM

Mr. Sudhir Mital
Chairperson

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member



Appearance: For Informant: Mr. K. K. Sharma, Sr. Advocate; Mr. Shri Bunmeet Singh Grover, Advocate; Mr. Rohit Arora, Advocate and Informant in person

For OP-1: Mr. Ramji Srinivasan, Sr. Advocate; Mr. G. R. Bhatia, Advocate; Mr. Abdullah Hussain, Advocate; Ms. Nidhi Singh Prakash, Advocate and Mr. Arjun Nihal Singh, Advocate

For OP-2: Mr. Rajiv Shukla, Advocate; Ms. Shivani Kapoor, Advocate and Mr. Atul Kumar Rai, Director General

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

1. The present information is filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter the 'Act') by Mr. Ranjit Singh Gujral (hereinafter the 'Informant') against Vatika Limited (hereinafter the 'OP-1') and Confederation of Real Estate Developers' Associations of India (CREDAI) (hereinafter the 'OP-2') alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the Information, the Informant is a retired bank manager and currently residing at Jail Road, Delhi. OP-1 is engaged in real estate business and has completed various residential and commercial complexes in Faridabad, Ambala and Jaipur. OP-2 is the apex body for private real estate developers in India. It is stated that any association of promoters and builders of real estate as well as of real estate developers anywhere in India can become members of OP-2.
3. It is stated that the Informant had decided to purchase a residential plot in a township, named, Vatika India Next, being developed by OP-1 at Sector 82, 82-A, 83, 84 and 85 in Gurugram, Haryana. The Informant had opted for construction linked payment plan, which are plans where instalments are paid according to the progress of the ongoing infrastructure development. According to the payment plan total money had to be paid within a span of three years out of which initial payment of Rs. 11,71,500/- (*vide* cheque



dated 30.06.2011) was duly paid as earnest money. Subsequently, a residential plot no. 6 at St. No. 84-E-4 was allotted to the Informant. Thereafter, Agni Property Pvt. Ltd., the agent through whom the Informant had bought the plot from OP-1, asked him to sign the Buyer's Agreement.

4. It is averred that after considering that the terms of the Agreement were lopsided and drawn heavily in favour of OP-1, the Informant requested the said agent to modify the same. The Informant was informed that the Agreement was a standard agreement and hence, non-negotiable. Therefore, the Informant had no choice but to sign the Agreement or to have the earnest money forfeited. Accordingly, the Informant and his son jointly entered into the Buyer's Agreement with OP-1 on 07.09.2011.
5. It is stated that as per the payment plan, the Informant had deposited the second instalment of Rs. 17, 57, 250/- on 28.09.2011. Thereafter, he was asked by OP-1 *vide* letter dated 10.11.2011 to make the third instalment within 15 days. It is further pointed out by the Informant that the agent and OP-1 had assured, at the time of making application for the plot, that the third instalment would be payable in 8 to 9 months from the date of booking and the rest of the instalments were to be paid over a period of three years.
6. It is alleged that OP-1 was demanding the instalment money without completing its contractual obligations as per the Agreement and further threatened to impose penal interest at the rate of 18% on non-payment of instalment amount.
7. It is further stated that the Informant inquired from OP-1 about the demand letters being served by it without completing its contractual obligations. In response, OP-1, *vide* email dated 19.10.2011, stated that the demand letters were being issued because the construction work upto the 5th instalment plan had been completed.
8. It is stated that ignoring the communication of the Informant, OP-1 sent demand letters dated 03.11.2011, 22.11.2011 and 24.09.2012, seeking payment due in respect of 3rd, 4th and 5th instalments.



9. The Informant, feeling helpless and locked into the services of OP-1, sent another email/ letter dated 06.10.2012 to OP-1 seeking clarifications regarding the layout plans, ownership record of the land and the documents relating to title and all other relevant details relating to the Township. Further, as per the Informant, several other letters were sent thereafter but no response was received from OP-1.
10. It is stated that a letter dated 09.05.2013 was sent by OP-1 to the Informant stating that there had been a revision in the master layout of the Township due to certain fine tunings and amendments in master layout necessitated due to architectural and other related considerations. The Informant was asked to visit the office of OP-1 for discussions regarding reallocation of the plot. Again on 13.05.2013, OP-1 sent another email reiterating the same. Subsequently, the Informant sought explanation regarding the same as well as on letters previously sent by him, but no reply was received in this regard. The Informant submits that without even taking his consent, OP-1 was considering reallocating another plot to the Informant.
11. It is further averred that the Informant received two more e-mails from OP-1 on the same subject. After, having sent several letters without any response from OP-1, the Informant sent a Legal Notice dated 27.05.2016 reiterating the details of the one-sided communication and sought a refund of the instalments deposited by him. OP-1 responded to the said Legal Notice *vide* reply dated 27.07.2016 which stated that the Informant defaulted in payment of instalments for the said plot and as a consequence OP-1 had forfeited the amount paid by the Informant hence, the Informant was not liable for any refund.
12. The Informant served OP-1 with another Legal Notice dated 14.11.2017 under the Regulations of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, reiterating the same facts and sought a refund of Rs. 29,28,750/-, i.e. the amount paid to OP-1, along with interest at the rate of 24% per annum.
13. OP-1, in its reply dated 28.11.2017 to the said notice, stated that the claims and demand raised by the Informant were time barred and that the Informant did not fall under the



definition of 'operational creditor' as defined under the provisions of Insolvency and Bankruptcy Code, 2016.

14. It is also alleged that OP-1 did not allow the Informant to visit the plot and therefore, the Informant did not pay the instalment money as per the demand letter. Thereafter, it is stated that several letters and e-mails were sent to OP-1 with regard to his grievances as stated above. However, no response was received from OP-1.
15. The Informant has alleged that refusal of OP-1 to let him visit the site, the unfair terms of the Buyers Agreement, unreasonable demand of instalment payments and not responding to his queries/grievances amounts to abuse of dominance in the relevant market of *residential plots in residential plotted colonies in the Northern Peripheral Road Corridor* thereby in violation of Section 4(2)(a)(i) of the Act.
16. The Informant has further alleged that OP-1 has abused its dominant position in the aftermarket that comes into existence the moment Buyer's Agreement is signed between OP-1 and the buyer.
17. The Informant has also alleged formation of cartel by OP-2 and its members, including OP-1 as they have indulged in common practices by incorporating standard clauses in their Agreements. The Informant has referred to *Jyoti Swaroop Arora v. M/s Tulip Infratech Ltd.* (Case No. 59 of 2011) to substantiate his contention on the same. He has further cited several clauses in the Agreement dealt in previous cases like DLF to show that all the real estate companies still use standard clauses everywhere. Finally the Informant alleged that members of OP-2 are indirectly limiting or controlling the real estate market in contravention of Section 3(3)(b) read with Section 3(1) of the Act. The Informant has therefore, prayed that the Commission institute an inquiry into the matter and direct the OPs to cease and desist from such anti-competitive practices.
18. The Commission has carefully perused the information and submissions of the parties. It also heard the arguments made by the respective counsel of the Informant and Opposite Parties. It is noted that the Informant has alleged the conduct of OP-1 of imposing unfair terms and conditions in the Agreement, demanding instalment money



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without performing its own contractual obligations and its refusal to let the Informant visit the site amounts to contravention of Section 4 of the Act. The Informant has further alleged cartelisation by OP-2 and its members, including OP-1, thereby contravening the provisions of Section 3 of the Act.

19. Section 4 of the Act provides that no enterprise or group shall abuse its dominant position; The term 'dominant position' has been defined as a position of strength, enjoyed by an enterprise, in the relevant market in India, which enables it to operate independently of the competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. In order to assess whether an enterprise or group is abusing its dominant position under Section 4 of the Act, it is necessary to first delineate relevant market(s). Subsequently, it needs to be assessed whether the enterprise or group is dominant in the relevant market. If dominance of the enterprise or group is established, then the Commission proceeds to examine the allegations regarding abuse of dominance against it.
20. As per Section 2 (r) of the Act, the relevant market may be defined either in terms of relevant product market or relevant geographic market or both.
21. The Informant has submitted that the relevant market would be the market of *residential plots in residential plotted colonies in the Northern Peripheral Road Corridor*. The Informant has stated that residential plotted colony is not substitutable with group housing or commercial or cyber city on the basis of their physical characteristics and intended use. He further submits that with respect to price, consumer preference, affordability and intended use, residential plots are non-substitutable with group housing society.
22. The Commission observes that the allegations of the Informant in the present matter relates to purchase of a residential plot in '*Vatika India Next*', a residential plotted township project of OP-1 located at Gurugram. The Commission agrees with the Informant in respect of relevant product market that residential plots would form a separate relevant product market since the motive of buying and factors considered for buying a residential plot by the consumers are different from that of a residential



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apartment / units. Unlike residential apartment where the real estate developer completes the construction of the apartment before the possession is given to the allottee, the buyer of a residential plot has the freedom to decide the floor plan, the structure, and other specificities subject to applicable regulations. Thus, the buyers wishing to purchase a residential plot may not prefer to substitute it with a residential apartment and *vice versa*.

23. Accordingly, keeping in view the substitutability and characteristics of services, their prices and intended use, the relevant product market in this case is '*market for the provision of services for development and sale of residential plots*'.
24. The Commission, however, disagrees with the Informant's submission that the relevant geographic market should be delineated as '*Northern Peripheral Road Corridor*'. It appears that this geographic area has been selectively identified by the Informant at his convenience so as to establish OP-1 as a dominant player in the said relevant geographic market. There are various residential projects in Gurugram other than the projects in Northern Peripheral Road Corridor which could have been considered by consumers desirous of purchasing a residential plot. Further, it is noted that the consumers have the option of purchasing residential plots in and around Northern Peripheral Road Corridor in the area of Gurugram. Hence, the relevant geographic market cannot be restricted to the one suggested by the Informant. Besides, in several cases, Gurugram has been delineated as a separate market area owing to its unique circumstances and proximity to Delhi, Airports, golf courses, world class malls, etc. Therefore, the Commission is of the considered view that the relevant geographic market in the instant case would be '*Gurugram*' and consequently, the relevant market for the purpose of present case is '*market for the provision of services for development and sale of residential plots in Gurugram*'.
25. With respect to the position of dominance of OP-1, the Informant has referred to Department of Town and Country Planning (DTCP) website and compared the land banks of nine real estate players for developing residential plotted colonies and has stated that OP-1 has the largest land bank of 578.08 acres. Out of 578.08 acres, OP-1 has the largest plotting area of 178.93 acres which amounts to 30.4% market share in



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the *Northern Peripheral Road Corridor*'. The Informant has also averred that OP-1, on its website, claims itself to be the market leader with 18.22% of all residential sales in New Gurugram. Further, the project, *Vatika India Next*, has the closest accessibility to intersection of National Highway-8 (NH-8) (Jaipur to Delhi) and Dwarka Expressway and that it is the largest township in the '*Northern Peripheral Road Corridor*'. Therefore, the Informant submits that OP-1 is dominant in the '*Northern Peripheral Road Corridor*'.

26. It is noted that the Informant has assessed the dominance of OP-1 as per the relevant geographic market defined by him. The Commission also observes that the Informant has submitted the aforesaid market share data and land bank details up to the year 2018.
27. It is pertinent to note that the Informant and his son had jointly entered into a Buyer's Agreement with OP-1 on 07.09.2011. Since the agreement was entered in the year 2011, the Commission is of the view that dominance of OP-1 has to be assessed during that period.
28. The Commission notes that OP-1 has submitted certain information in respect of the residential plotted area in Gurugram obtained from DTCP website. Based on the data, the Commission observes that OP-1 was allotted 111.78 acres of residential plotted area during the year 2011, whereas the competitors of OP-1 such as *Countrywide Promoters, DLF, Unitech and Emaar* were allotted 120.81 acres, 101.22 acres, 100.62 acres and 96.36 acres, respectively. Thus, OP-1 does not seem to be a dominant player as there were several competitive constraints faced by OP-1 in the relevant market during the said period. Having analysed the dominance of OP-1 in the year 2011, the Commission now proceeds to assess the dominance of OP-1 during the preceding and succeeding years also. During 2010, the Commission notes that OP-1 was granted license for developing residential plotted area for 98.78 acres out of total of 936.76 acres (accounting for about 10.5% market share) in the relevant market. The Commission also notes that there were at least five competitors in the same relevant market having market share more than that of OP-1. Further in the year 2012 no license was granted to OP-1 whereas the competitors of OP-1 were allotted 374.95 acres for developing residential plotted area. Even if the year 2013 is taken into account, OP-1 was allotted 100.88 acres



whereas its competitors such as *Northstar* and *Orris* were allotted 104.56 acres and 101.08 acres, respectively. The aforesaid submission of OP-1 in relation to the residential plotted area in the relevant market has not been disputed by the Informant.

29. In view of the above, , the Commission notes that OP-1 faces sufficient competitive constraints from various other competitors and would not be able to operate independently of the competitive forces prevailing in the aforesaid delineated relevant market or affect its competitors or consumers in its favour. Therefore, the Commission is of the opinion that OP-1 is not in a dominant position in the relevant market, as defined *supra*. Hence, the issue of alleged abuse of dominant position against the OP-1 does not survive.
30. With regard to the allegation of forming cartel by OP-2 and its members, the Commission notes that OP-2 has submitted an Affidavit dated 17.09.2018 containing the action taken report / copy of the minutes of the meeting of Executive Committee / Governing Council held on 09.10.2015 at Jaipur wherein the order passed by the Commission under Section 27 of the Act in Case No. 59 of 2011 titled *Shri Jyoti Swaroop Arora vs M/s Tulip Infratech Ltd. & Ors.* was discussed by the members of OP-2. In the said meeting, measures were taken by OP-2 to comply with the Act in terms of the order of the Commission in the abovementioned case. Further, as submitted by OP-2, the Commission notes that members of OP-2 were apprised of the competition issues in relation to real estate sector and awareness was created amongst them regarding non-compliance and infractions of the provisions of the Act. The Commission notes from this report that efforts are being made by OP-2 to not repeat the issues that had come before the Commission. Therefore, the allegation of OP-2 forming cartel with its members has no merit in the instant case.
31. In view of the foregoing, the Commission finds no case of contravention of the provisions of Sections 3 or 4 of the Act against the Opposite Parties.
32. The matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.



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33. The Secretary is directed to communicate the order to the parties, accordingly.

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

**Sd/-
(Augustine Peter)
Member**

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

**Date: 16/10/ 2018
New Delhi**