



COMPETITION COMMISSION OF INDIA

Case No. 50 of 2017

In Re:

**Cambridge Residents Welfare Association,
24, Prince Anwar Shah Road,
P.S. Charu Market,
Kolkata-700033.**

Informant No. 1

**Mr. Pradip Churiwal,
President of Cambridge Residents Welfare Association,
24, Prince Anwar Shah Road,
P.S. Charu Market,
Kolkata-700033.**

Informant No. 2

**Mr. Somnath Bhattacharjee,
Secretary of Cambridge Residents Welfare Association,
24, Prince Anwar Shah Road,
P.S. Charu Market,
Kolkata-700033.**

Informant No. 3

And

**Merlin Developers
79, Shambhunath Pandit Street,
Kolkata-700020.
Corporate office:
22, Prince Anwar Shah Road,
Kolkata-700033.**

Opposite Party No. 1

**Mr. Sushil Mohta,
Representative of Merlin Developers,
79, Shambhunath Pandit Street,
Kolkata-700020.**

Opposite Party No. 2

**Mr. Saket Mohta,
Representative of Merlin Developers
79, Shambhunath Pandit Street,
Kolkata-700020.**

Opposite Party No. 3

**Mr. Dinesh Singhvi,
Representative of Merlin Developers
79, Shambhunath Pandit Street,
Kolkata-700020.**

Opposite Party No. 4



Merlin Projects Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.
Corporate office at
22, Prince Anwar Shah Road,
Kolkata-700033.

Opposite Party No. 5

Nikhar Suppliers Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 6

Splended Marketing Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 7

Gautam Commercial Pvt. Ltd.,
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 8

Hesky Suppliers Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 9

Intregal Distributors Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 10

Lily Distributors Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020

Opposite Party No. 11

Muskan Commercial Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 12

Raina Marketing Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 13

Splended Suppliers Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 14

Colossus Suppliers Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 15



Sanket Agencies Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 16

Billenium Commercial Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 17

Sipra Suppliers Pvt. Ltd.
79, Shambhunath Pandit Street,
Kolkata-700020.

Opposite Party No. 18

Ms. Seema Mohta,
Director of M/s. Sipra Suppliers Pvt. Ltd.
Residing at 2/1A, Burwan Road, Alipore,
Kolkata-700027.

Opposite Party No. 19

Mr. Pradip Kumar Mehta,
Director of M/s. Sipra Suppliers Pvt. Ltd.
Residing at 3A, Bipin Pal Road,
2nd Floor, Flat No. 2,
Kolkata-700026.

Opposite Party No. 20

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. Justice G. P. Mittal
Member

Appearances:

For the Informant:

Mr. Animesh Kumar, Advocate

Mr. Sumit Kumar, Advocate



For Opposite Party: *Mr. Manas Kumar Chaudhuri, Advocate*
Mr. Ebaad Nawaz Khan, Advocate
Mr. Dinesh Sanghavi, Director, OP-4

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

1. The present information has been filed by Cambridge Residents Welfare Association (“**Informant No. 1**”), Mr. Pradip Churiwal, President of Informant No. 1 (“**Informant No. 2**”) and Mr. Somnath Bhattacharjee, Secretary of Informant No. 1 (“**Informant No. 3**”), under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against Merlin Developers Private Limited (“**MDPL/OP-1**”), Mr. Sushil Mohta, Office Bearer of MDPL, (“**OP-2**”), Mr. Saket Mohta, Office Bearer of MDPL, (“**OP-3**”), Mr. Dinesh Singhvi, Office Bearer of MDPL, (“**OP-4**”) and Merlin Projects Limited (“**OP-5**”) alleging contravention of the provisions of Section 4 of the Act. Apart from these, certain other entities and their office bearers, allegedly related to OP-1 by way of interlocutory directorships, are arrayed as OP-6 to OP-20, as exhibited in the present cause title.
2. The Informant No. 1 is a mutually formed association of persons registered under the West Bengal Apartment Ownership Act, 1972. The members of Informant No. 1 are owners of residential flats/apartments situated in the multistoried residential apartment building known as “Cambridge Residency” situated at 24, Prince Anwar Shah Road, Police Station - Charu Market, Kolkata -700 033 (**Merlin Cambridge**). The Informant No. 2 and Informant No. 3 are the President and Secretary, respectively of Informant No. 1.
3. OP-5 built and developed Merlin Cambridge, whereas OP-1 advertised and marketed this project. OP-2, OP-3 and OP-4 are office bearers of OP-1. OP-6 to OP-18 are stated to be the related entities of OP-1. Further, OP-19 and OP-20 are stated to be the office bearers of OP-18. In the conveyances, OP-1 was stated to be the vendor, OP-5 to OP-18 were stated to be the owners; and the owners and the vendor together were referred to as the transferor. It may be noted that though the information contains the names of family members/office bearers and related entities of OP-1 and OP-5 as the Opposite



Parties, the allegations mainly pertain to OP-1 and OP-5, which are stated to be the flagship companies of Merlin Group. Accordingly, in this case, the analysis under Section 4 of the Act is done with respect to Merlin Group, based on the oral and written submissions of OP-1 and OP-5 (hereinafter, OP-1 and OP-5, collectively referred to as the “OPs”).

4. The Informants have alleged that the OPs are dominant in the relevant market and have abused their dominant position by adopting one sided agreement/conveyance deed for sale of residential apartments in Merlin Cambridge, which are unfair, discriminatory and lopsided. These allegations are enumerated as follows:

4.1 The allegations pertaining to deviations from the conveyance deed/sale agreements and misrepresentation/false promises made by OPs are:

- a) Huge difference between the super built up area promised and provided by the OPs. This is also substantiated by a report of a joint surveyor which pointed out a deficit of eleven to twelve percent in the super built up area as promised by the OPs but not provided to the flat owners.
- b) Not honoring the undertaking made in the sale agreement with regard to maintenance of the building.
- c) Blocking the exit path at the bordering boundary between Merlin Cambridge and another project namely, Merlin Oxford, which is located at the south-west corner.
- d) Non-transferring of the corpus fund (which every flat owner provided at the time of purchase of the flat towards the welfare and maintenance of Merlin Cambridge) to Informant No. 1’s bank account.

4.2 The OPs have allegedly held with themselves the unilateral right to make further vertical and horizontal exploitation of Merlin Cambridge which includes planning for car parking, landscapes, pathways, *etc.* The Informants



have asserted that such alterations should be made prior to handing over the final possession to the flat buyers because such modifications may substantially alter the residential unit area and the flat buyers would be bound by the outcome.

- 4.3 Despite repeated requests, the OPs did not provide the sanction plans submitted to the Kolkata Municipal Corporation to the Informants.
- 4.4 The prospective buyers were made to pay huge amounts upfront, which constituted a significant part of the total sale consideration and which made exit of the flat buyers from the deal extremely difficult.
- 4.5 In another conveyance deed with *Integrated Owners' Association* involving unit holders of both Merlin Cambridge and Merlin Oxford, OP-1 has stated that all the common areas, driving ways, passage and the community hall of Merlin Cambridge would be treated as common area, for common use by all the apartment owners/occupants of both the buildings *i.e.* Merlin Cambridge and Merlin Oxford, in the said complex. However, the flat owners of Merlin Cambridge were not given the same right with respect to Merlin Oxford's common areas, driving ways, passage and the community hall. The Informants claimed that they are forced to share their common areas with the residents of Merlin Oxford who had not paid for such common area of Merlin Cambridge.
5. In light of the above allegations, the OPs are stated to have abused their dominant position by imposing unfair and discriminatory conditions in sale of flats, in contravention of Section 4 of the Act. Accordingly, the Informants have requested the Commission to initiate action against the OPs as per the provisions of the Act.
6. The Commission carefully considered the information and was of the view that the Informants had not provided relevant information required to determine the dominance of the Merlin Group in the geographic area of Kolkata. Accordingly, the Commission decided to seek additional information from the Informants and the OPs,



such as details of the land bank available for development, the number of residential projects including completed, ongoing and upcoming projects, number of units developed, rate per square feet, area in square feet, amount/rate of booking, amenities offered *etc.* by the entities engaged in residential estate development in Kolkata. Besides this, the Commission also decided to have preliminary conference with the parties on 08th May, 2018.

7. Accordingly, the Informants filed their written submissions on 28th November, 2017. The OPs filed their written submissions on 19th January, 2018, 24th April, 2018 and 08th May, 2018.
8. On 08th May, 2018, both the parties were present and the Commission heard the parties at length. Pursuant to hearing, the Commission directed the OPs to procure certain information from real estate database - *Prop Equity*, which is often relied upon by the parties in cases related to real estate. In response, the OPs submitted that there was substantial cost involved in procuring the requisite data from *Prop Equity* and requested the Commission to recover the cost from the Informants, in case the data so procured were to reveal absence of dominance of OPs in the relevant market. In the meanwhile, the Commission obtained the relevant information from the public domain. The Commission considered the submissions of the OP and was of the view that it would not be appropriate to burden the Informants with substantial cost involved in procuring this data, especially when the material available on record is adequate to take a *prima facie* view in the matter.
9. The Submissions of the Informants and the OPs are summarised hereunder:

Submissions of the Informants

- 9.1 Merlin group enjoys dominant position as it occupies top position in terms of total projects, including completed, ongoing and upcoming projects, followed by Eden Group and Fort Group, respectively. Merlin Group is part of consortiums like South City Projects and Elita Garden Vista projects



Limited for residential projects and malls. The share of OPs in these consortiums should also be included to determine its market share.

- 9.2 Based on the aggregate of land banks held by top fifty (50) developers in Kolkata, the total land bank is approximately four thousand four hundred (4400) acres, out of which OPs hold one hundred nine (109) acres. In terms of total land bank, OPs occupy twelfth position, whereas, Unitech, Ideal Group and Ambuja Neotia are stated to be the top three players.
- 9.3 The OPs occupy ninth position in terms of total number of units, and the top three players are Hiland, Siddha Group and Ideal Group.
- 9.4 Market share should not be the only factor to determine the dominance. OPs are able to charge a premium of twenty (20) percent over and above the market rate in all its projects across all locations, which shows that it occupies a position of strength and is able to operate independently of competitive forces.
- 9.5 The OPs have abused dominant position by means of unilateral, unfair, unreasonable and one-sided conditions in the agreement as reiterated in the earlier paras which are not reproduced here for the sake of brevity.

Submissions of the OPs

- 9.6 The name of OP-1 is Merlin Developers and not Merlin Developers Private Limited, as stated by the Informants in the information.
- 9.7 The data submitted by the Informant is incorrect and inflated and there is more land available in Kolkata for development of residential projects. The Informants have left out large developers in Kolkata like Sapporji Pallaonji, RDB Group, Heritage Group, Rose Valley Group *etc.* in its list of fifty (50) developers. There are at least seventeen (17) developers having developed



ninety-five (95) projects and more than one (1) lakh units (flats) and holding approximately one thousand four hundred (1400) acres of land, which are not included in the list supplied by the Informants.

- 9.8 The land bank of the OPs for developing residential projects in Kolkata, including the running and upcoming projects, since 1989 till date is approximately sixty-three (63) acres, and not one hundred nine (109) acres as claimed by the Informants. The OPs have claimed that the Informants may have included sixty (60) acres of land of a resort project held by Merlin Group located at a distance of thirty (30) kilometers from Kolkata, to wrongly arrive at this figure.
- 9.9 In terms of number of projects, including completed, ongoing and upcoming projects, P.S. Group, Eden and Srijan Reality are the top three players, whereas the OPs occupy fifth position. In terms of total land bank, OPs hold twenty-seventh position whereas, Kolkata West International City (KWIC), Rose Valley Group and Unitech hold the top three positions. Moreover, in terms of number of units, KWIC, Rose valley and Ideal Group are the lead players and the OPs occupy thirteenth position.
- 9.10 Notwithstanding the fact that the share in the joint ventures should not be included in the assessment as the incumbent does not have absolute control over them, the above assessment does include the joint venture shares of the OPs, and still it is way behind the top position.
- 9.11 The total number of projects is not a good indicator of establishing dominance, as there are large developers in Kolkata having lesser number of residential projects, but ranked much higher in terms of land bank and total number of residential dwelling units. For instance, Unitech, occupies third position in terms of land bank but has developed only eight (8) projects in Kolkata, similarly, Sapporji Palonji has only one project but it comprises of



twenty thousand (20000) units, which shows that it is way ahead of the other players.

- 9.12 There were almost seventy one (71) projects being developed by thirty-four (34) developers within twenty (20) kilometers of Merlin Cambridge at/during the time when Informants were booking flats developed under Merlin Cambridge project and, thus, there existed sufficient and wider choice with the Informants to purchase flats in those projects.
- 9.13 A premium of twenty (20) percent is charged in a transparent manner, over prevailing market rates as it is directly related to offering better quality facilities and services to customers who prefer quality products over inferior products.
- 9.14 The Informants have indulged in forum shopping. They had filed a consumer case against the OPs before the Hon'ble State Consumer Dispute Redressal Commission, which has been dismissed. Further, the OPs recently came to know about a criminal complaint filed by the Informants against OP-2.
- 9.15 The Informant No. 2 is also the President of *'Merlin Cambridge Apartment Owners Association'* which consists of seventy-eight (78) members representing all the flat owners of Merlin Cambridge. However, the present case has been filed by Informant No. 1 which comprises of only twenty-six (26) members, and represents a small group of flat-owners in Merlin Cambridge. Thus, Informant No. 1 is not acting in bonafide interests of all the flat owners of Merlin Cambridge.
10. The Commission has perused all the material available on record. Considering the oral and written submissions of the parties and taking into account all other material on record, the Commission observes as under:



- 10.1 Based on the averment made by OP-1, the Commission takes the correct name of OP-1 i.e. ‘Merlin Developers’ on record for all future purposes.
- 10.2 The gravamen of allegations of the Informants is that the OPs have imposed one-sided terms and conditions in the agreements with the flat owners of Merlin Cambridge including the Informants, which are heavily loaded in favor of the OPs. For instance, the OPs allegedly have an unfettered right to horizontal and vertical expansion, have provided less super built up area than what was committed to the Informants, the access of common areas of Merlin Cambridge is given to the flat owners of adjoining residency namely Merlin Oxford but not *vice-a-versa etc.*
- 10.3 In order to deal with the allegations of abuse of dominance, first step is to delineate the relevant market. On the basis of the information provided by the parties and the information available in public domain, the Commission notes that the allegations in the instant case relate to purchase of residential apartments in the project ‘Merlin Cambridge’. Therefore, the Commission is of the opinion that the relevant product market in the present case would be market for “*provision of services for development and sale of residential flats*”, as held by the Commission in earlier cases, such as Case No.60 of 2014 XYZ Vs. Bengal Ambuja Housing Development Limited. Further, the Commission notes that the said project ‘Merlin Cambridge’ is located at 24, Prince Anwar Shah Road in Kolkata. The conditions of competition for supply and demand for development and sale of residential flats in Kolkata seem to be homogenous and can be distinguished from other neighboring regions. Therefore, in the instant case, the relevant geographic market would be Kolkata. Accordingly, the relevant market in the instant case would be delineated as the market for ‘*provision of services for development and sale of residential flats in Kolkata*’.
- 10.4 After delineating the relevant market, the next step is to ascertain the dominance of the OPs which develops projects in the name of Merlin Group.



To determine dominance, a number of factors such as market share, size and resources of the incumbent as well as the competitors are to be examined. Accordingly, the Commission proceeds to assess the position of Merlin Group *qua* its competitors in respect of various parameters such as land bank, number of projects, number of units, rate per square feet, area of the units, amenities offered *etc.*

- 10.5 In terms of land bank available with various developers, Merlin Group holds twelfth Position out of fifty (50) developers as per the list submitted by the Informant. The OPs claimed that the list is not exhaustive and the Informants have not reported seventeen (17) other developers who operate in the relevant geographic market. The OPs further stated that Informants have included the land held by the OPs outside Kolkata in their submission of land bank held by Merlin group in Kolkata. The Commission observes that the OPs are not dominant in terms of land bank even as per the Informants. The Commission further observes that real estate players like Unitech, Ideal Group, Ambuja Neotia, Siddha Group *etc.* hold substantial land bank in Kolkata and Merlin Group (OPs) lags behind in this respect.
- 10.6 With respect to the number of projects, the Informants claimed Merlin Group to be the leader, whereas, the OPs submitted that P.S. Group, Eden group and Srijan Reality are ahead of it. Further, the Commission agrees with the contention of the OPs that the number of projects alone is not an appropriate criterion to assess dominance because a developer may have one large scale project that could be equivalent to five small projects of another developer in terms of size of the project, number of residential units *etc.*
- 10.7 Furthermore, in terms of the number of units developed, Merlin Group is not a dominant player either as per the information provided by the Informants or the OPs; and in this respect developers like Ideal Group, Rose Valley Group, Hiland, Siddha Group *etc.* are ahead of the OPs.



- 10.8 With regard to the contention of the Informants that the OPs are able to operate independently of the market forces as it is charging twenty (20) percent premium, the Commission agrees with the contention of the OPs that such a premium may be related to offering better quality products and services and the same cannot, on its own, be accepted as a factor signifying the ability to operate independent of market forces.
11. Based on the submissions of the OPs, the Commission further notes that in the instant project, where the Informants have purchased flats, the OPs offered three, four and five bedroom flats with a community hall and children's play area. The area of flats ranged from approximately one thousand four hundred (1400) square feet to two thousand nine hundred (2900) square feet at the rate of approximately Rupees four thousand two hundred (4200) to Rupees sixteen thousand (16000) per square feet during 2008 till 2017. The per square feet rate varied based on booking period, number of car parkings, level of floor, open terrace *etc.* The Commission further observes that during the period when Merlin Cambridge was launched/developed and the flats were booked by the Informants, a number of projects having similar area, rate per square feet and amenities, within a radius of ten (10) kilometers were also launched by various other developers like Belani Moore Heights, Belani Metro Towers, Belani Unicorn and Belani Convent Corner by Belani Group; Ideal Regency, Ideal Exotica and Ideal legacy by Ideal Group; Manisri, Tirumani and Mani Vista by Mani Group.
12. Although the Commission has *prima facie* found the relevant market as *provision of services for development and sale of residential flats in Kolkata*, there existed ample choice for projects of similar kind as offered by the OPs, in close vicinity of the OPs' project.
13. Based on above observations, the Commission finds that there existed significant number of resourceful and well established developers in relevant market to constrain the OPs. The said position does not change even when the market is segmented further based on square feet area, rate per square feet or amenities offered. The Commission is, therefore, of the *prima facie* view that the OPs are not found to be dominant in the



relevant market during the relevant period and in the absence of dominance, the conduct of the OPs is not required to be assessed for alleged abuse within the meaning of Section 4 of the Act.

14. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of Sections 4 of the Act is made out against the OPs in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
15. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi
Dated: 09/07/2018