

COMPETITION COMMISSION OF INDIA

21st December, 2011

Case No.62/2011

Filed by : Ms. Neelam Sood, Mr. Prateek Sood ... Informants

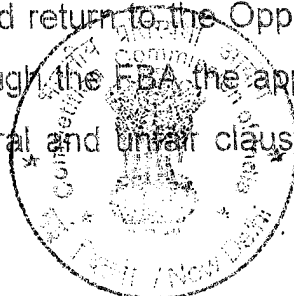
Against : M/s Raheja Developers Pvt. Ltd. :- ... Opp. Parties

- i) Mr. N. Behal, Head Marketing
- ii) Ms. Jyoti Anand, VP Customer relationship Department

ORDER UNDER SECTION 26(2) OF THE ACT

ORDER

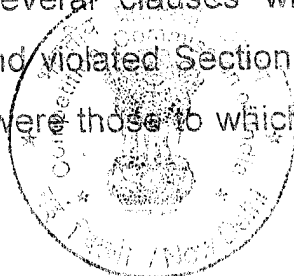
The applicant had booked a Flat with Opposite Party No.1 in a Residential Complex called SAMPADA RESIDENTIAL COMPLEX in Sector 92-95, MIT, Gurgaon. The applicant had initially signed a "Terms & Condition for Registration and Allotment of Apartment" for booking a flat ; and made 10% payment of basic sale price as booking amount together with 15% of basic sale price as earnest money and booked the apartment. After about 3.1/2 months from booking the flat, he was sent a 'Flat Buyers' Agreement' (FBA) for signature and return to the Opposite Party within 30 days of its receipt. On going through the FBA the applicant contends that he found several arbitrary, unilateral and unfair clauses in the Agreement



like a clause for (i) 'Appointment of Sole Arbitrator for deciding all the Disputes' (ii) Unilateral right of Opposite Party to shift the apartment from one Tower to another, (iii) Unilateral right of opposite party to alter the building lay out plan, specifications and super area of the apartment etc. etc.

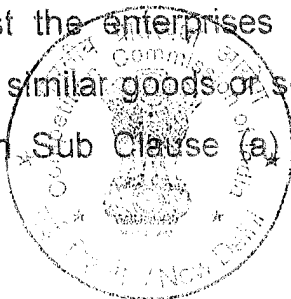
2. The applicant signed this FBA conditionally putting his objections to several unilateral unfair clauses and asking the opposite party No.1 to modify / reword FBA by deleting the clauses not acceptable to the applicant. It is submitted by the applicant that despite the applicant's insistence on deleting such clauses, the same were not deleted, rather the applicant was asked repeatedly to withdraw from the project and lose his earnest money. It is submitted that the applicant also later on learnt that opposite party No.1 had not disclosed the correct status of its ownership of the Plot of land and ownership of license issued for development of site. Ultimately the applicant was forced to withdraw from the project by opposite party No.1, making reference to and use of unfair conditions which were not agreed by the applicant. The opposite party returned the amount deposited by the applicant after deducting 15% of the total sale price of the apartment as earnest money.

3. It is submitted that the opposite party had violated the terms & conditions of the allotment of apartment by not disclosing true facts and later on returning only part of the deposit amount after deducting earnest money of 15%. This was totally arbitrary and unjustified. It is submitted that the FBA contained several clauses which were contrary to the Competition Act & Policy and violated Section 3 and 4 of the Competition Act. The violative clauses were those to which the applicant had objected



and had not agreed to. It is also submitted that the Opposite Party abused its dominant position by cancelling the allotment instead of correcting the 'Agreement' and by forfeiting 15% earnest money. A request was made to the Commission that investigation may be done into the issue whether the opposite party No.1 was having ownership of Plot of land in Sector 92 & 95 as claimed by the Opposite party No.1 and whether the opposite party No.1 was issued license by Statutory Authority for development of SAMPADA RESIDENTIAL COMPLEX and whether opposite party No.1 had disclosed to the intending allottees the true facts at the time of booking and collecting the booking money. A prayer was further made to the Commission, by way of interim relief to issue (a) Writ of certiorari, quashing the action of OP-1 forfeiting Rs.7,55,105/- (Rupees Seven Lacs Fifty Five Thousand One Hundred Five Only) deducted as earnest money and (b) to issue an order directing opposite party No.1 to pay interest @ 18% on the entire deposit amount and also to issue an appropriate direction to compensate the applicant towards 'opportunity cost' of financial loss caused to him due to inappropriate and false claim made by opposite party No.1. It was also prayed that a direction should be issued to opposite party No.1 for allotting the Flat to the applicant and removing of all unfair clauses.

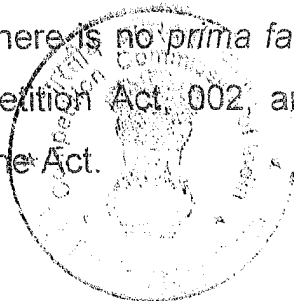
4. We have to examine if there is a *prima-facie* violation of Section 3 or Section 4 of the Competition Act, 2002 in the present case. The conditions under which Section 3(3) of the Act is attracted have been clearly delineated therein. It is observed that these, inter alia, are applicable when there is an agreement amongst the enterprises which are engaged in production/supply of identical or similar goods or services which results in any of the effects mentioned in Sub Clause (a) to (d) of Section 3(3).



Facts in this case do not satisfy these conditions, nor do they satisfy any of the other conditions laid down in Section 3(3). Section 3(4) is attracted only when there is an agreement amongst enterprises which are at different stages or levels of the production chain, which causes or is likely to cause an appreciable adverse effect on competition, while in the present matter there is no such agreement. As such, the facts on record do not disclose any violation of Section 3, or any of the sub-sections thereof, of the Competition Act, 2002.

5. There can be a violation of Section 4 only when an enterprise is dominant in the relevant market in terms of the provisions of Section 4 read with Section 19(4) of the Act. In the present case, *prima facie*, the relevant market appears to be the provision of services of housing in Gurgaon. As per the information provided by the informant and the facts available in the public domain there is no evidence to suggest that M/s Raheja Developers (P) Ltd. are in any way dominant in the real estate sector either in Gurgaon or for that matter on an All India basis. In fact there are large number of players in the real estate sector and many of them are bigger operators in real estate sector than M/s Raheja Developers (P) Ltd. In view of this the question of violation of Section 4 does not arise.

6. We, therefore, find that there is no *prima facie* case for proceeding under the provisions of Competition Act, 2002, and it is a fit case to be closed under Section 26(2) of the Act.



7. Secretary is directed to inform the parties accordingly.

Sd/-
Member (E)

Sd/-
Member (R)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

