

**COMPETITION COMMISSION OF INDIA**

9<sup>th</sup> February, 2012

**Case No. 67/2011**

Filed by

Mr. George Kuruvilla,  
HF1, Navratna,  
#286, Anna Street, Kottivakkam, OMR,  
Near SRP & YMCA, Chennai-600 041

Informant

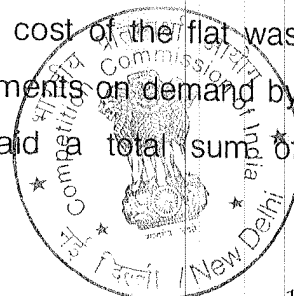
Against

Hiranandani Palace Gardens Pvt.Ltd.,  
Olympia, Central Avenue,  
Hiranandani Gardens, Powai,  
Mumbai-400 676.

Opposite Party

**ORDER UNDER SECTION 26(2) OF THE ACT**

The informant filed an information under section 19(1) of the Competition Act stating therein that the opposite party floated a housing project in the name of Hirco Hiranandani Palace Gardens Project in the suburban Chennai called White House. The informant and his wife booked a unit in this project. A provisional allotment letter was issued to them on 2<sup>nd</sup> July, 2008. In pursuance of the same, the informant and his wife paid Rs.1,00,000/- on 14<sup>th</sup> July, 2008 and flat number 304 was allotted to them. The formal allotment letter was issued on 27<sup>th</sup> August, 2008. This allotment letter contained a schedule of payment and other terms & conditions. As per these terms & conditions, the opposite party was to complete building within 2 years and handover the possession to the informant some time in year 2011. The total cost of the flat was Rs.50,55,250/-. The informant had made part payments on demand by the opposite party for some time and had paid a total sum of



Rs.9,20,875/-. However, when that the project was not even started, the informant contacted 'Dedicated Consumer Relations Manager' of the OP in February, 2009 and thereafter and had been consistently seeking information from customer services officials Mr. Tarun Mukherjee and Firdos Vandrewala about the construction plan and approval status of the project. No information was given to the informant despite several e-mails sent by the informant. The informant made independent inquiries and came to know that the opposite party had in fact duped the informant and others by obtaining advance payments without their being an approval from planning authorities of the project. After learning this, the informant requested for refund of the advance amount paid by him. The informant also sent a legal notice. However, reply to the legal notice was given by the opposite party but the refund of the entire amount was not made.

The informant has alleged that the opposite party was a dominant player in the market of suburban Chennai and has abused its dominant position in the following manner:-

- i) By commencement of the project without sanction/approval of the project from competent authorities;
- ii) By midway increasing the number of floors for several buildings at Palace Gardens. The initial outlay plan when the booking was made in favour of the informant was of construction of a 15 storey building. This was later increased to 27 storey in one tower and 29 storey in other tower without any consultation with the informant in a manner prejudicial to the informant.
- iii) Instead of building its existing project, the opposite party started bookings of similar two new projects namely Modena (1 BHK) and Valencia (2 BHK) and 20% of the cost was being collected as advance from the flat bookers.



- iv) The conditions put in the allotment letter were highly favourable to the opposite party. The amount paid by the informant was to be treated as interest free deposit in case the approval from the relevant authority was not given in respect of the project.

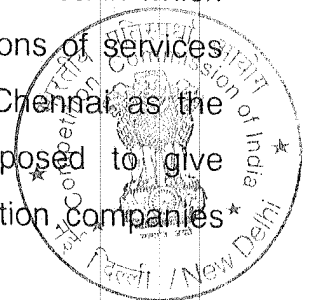
The informant made following prayers :

- i) Direct further investigation of the present case by the Hon'ble Director General;
- ii) Hold that Hirco has abused its dominant position in the relevant market;
- iii) Direct Hirco to cease and desist from abusing its dominant position;
- iv) Impose appropriate penalty on Hirco for abusing its dominant position; and
- v) Direct refund of the entire sum advanced by the informant to Hirco along with 18% interest and compensatory damages.

The relevant geographic market in this case has been stated by the informant as suburban Chennai. However, the informant has failed to come out with the information as to who were the other players in the field in that area, what was their market share, what other projects were launched by different players and how the opposite party was a dominant player vis-à-vis other players in the market. The relevant product market has been stated by informant to be residential houses.

Section 2(r) of the Competition Act defines relevant market and it provides that the relevant market is to be determined by the Commission with reference to relevant product market or relevant geographic market or with reference to both the markets.

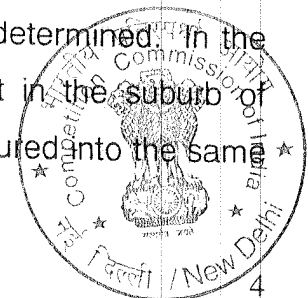
A geographic market is a market comprised in an area in which conditions of competition for supply of goods or provisions of services are distinctly homogenous. If we consider suburban Chennai as the relevant geographic market, the informant was supposed to give information as to who were the other builders/construction companies



active in the market, what were the different housing projects launched by these companies and what substitutability was available to the applicant out of the housing projects being taken up by other builders. Without this information, the dominant position of an enterprise in a geographic area cannot be determined. The petitioner in this case has relied upon the information given by the opposite party in its brochure and other literature and a report by CRISIL to bring it to the notice of the Commission as to how many projects were launched by the opposite party, what was the annual profit of the opposite party, how the OP had been increasing its profit year over year. Even as per the report of CRISIL relied upon by the informant, the OP was in the business of real estate development and was focusing mainly on development of house township projects in Mumbai and surrounding areas. There is no mention that the OP was a dominant player in suburbs of Chennai.

While the informant has identified relevant geographic market as suburb of Chennai, merely because an enterprise was having good amount of revenue or profits and was having several projects running in Mumbai and few at Chennai would not make the enterprise a dominant enterprise in suburbs of Chennai.

Dominance has to be looked upon from the view that the enterprise was in a position to operate in the field independent of the competitors and could dictate terms unmindful of all other competitors because of its dominance. In realty sector, in different areas unless it is shown that the market share of the enterprise was so huge that the consumer has no other choice but to go for the product of the enterprise and the enterprise was in a position to dictate the terms, the dominance, merely on the basis its revenue & profits, cannot be determined. In the present case, the informant has failed to show that in the suburb of Chennai, there was no other enterprise who had ventured into the same



kind of activity of providing residential flats and has also failed to show as to what was the market share of the OP.

The information in public domain also does not reveal that Hiranandani Palace Gardens Pvt. Ltd. was a dominant player in the relevant market of Chennai. The property under consideration is located in Chennai. There are several builders like Maruthi Builders, KG Builders, JKB Housing Private Limited, Jain Housing and Construction Limited, Paramount Builders, Elegant Constructions, Navin Housings, Mahalaxmi Builders and host of other builders who are active in Chennai. Even DLF, who claims itself to be the largest real estate builder of India has projects like Commander's Court and Garden City in Chennai, which are very big residential projects.

Therefore, it cannot be concluded that Hiranandani group enjoyed a position of dominance and was capable to affect competitors, market forces or consumers in its favour in the relevant market of provision of services for residential units in Chennai in terms of section 4 of the Act.

It is quite possible that injustice has been done to the informant at the hands of the OP. However, for every injustice done by a builder to the consumer, remedy does not lie under section 3 or section 4 of the Competition Act neither section 4 would be attracted for each and every building project howsoever small or big that may be started by an enterprise. The intent of section 4 of the Competition Act is to curb anti competitiveness arising in the market because of a dominant player's adopting such tactics and practices which kill competition and to prevent the abuse of its dominant position.

We consider that the informant has failed to make out a case for investigation by DG. The relevant product and relevant geographic



market as sought to be made out by the informant did not exist. The informant has failed to make out a prima facie case for. The matter is closed under section 26(2) of the Competition Act.

The Secretary is directed to inform the parties accordingly.

Sd/-  
Member (C)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member (D)

Sd/-  
Chairperson

Certified True Copy

