

COMPETITION COMMISSION OF INDIA

Case No.77 of 2011

Dated : 12th January, 2012

In re:

Eastman Cast & Forge Ltd.

...

Informant

Vs.

Exact Developers & Promoters Pvt. Ltd. ...

Opposite Party No.1

Vipul Ltd.

...

Opposite Party No.2

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

M/s Eastman Cast & Forge Ltd., the Informant had booked commercial space / units in a project called "THE ACE" developed by OP-1 and marketed by OP-2. It is alleged by the Informant that OP-1 and 2 were dominant players in the market and they have abused their dominant position in several ways like (i) Asking the respondent to sign pre-prepared "Unit Buyers Agreement" containing several clauses which were in favor of the opposite parties and against the consumer (ii) By not handing over the possession within the stipulated time and not executing the titled documents (iii) By charging 18% compound interest over delayed payments and making no stipulation for payment of any cost / compensation in case of failure to deliver the possession within the stipulated time, etc. etc.



2. The Informant made following prayers to the Commission :-

- i) Initiate appropriate inquiry against respondents including but not limited to the abuse of dominant position by respondents ;
- ii) Pass appropriate directions to the respondents to hand over the possession of the 6 commercial units, i.e. 703, 704, 705, 710, 711 and 712 at "The Ace" and execute documents of transfer of ownership in favor of the petitioner ;
- iii) Pass directions thereby deleting one-sided and unilateral terms and conditions from the Unit Buyers Agreement and consequently from the sale deed to be executed in future ;
- iv) Pass order imposing penalty on the respondents ;
- v) Pass order awarding the cost and expenses in favor of the petitioner

3. After receipt of the information the informant was given oral hearing. The perusal of information and material filed by the informant shows that the informant though alleged that OP-1 and OP-2 were dominant players but the informant has not brought forward any fact or material to establish the dominance of the respondents OP-1 & OP-2.

4. The project launched by the opposite party No.1 was located at Manesar, Gurgaon. The Opposite Party No.1 was not the only developer who launched a project in Manesar, Gurgaon. Various other builders and real estate companies are active in Manesar and are building different commercial projects in Manesar, Gurgaon. Manesar is an industrial area and with coming up of industries, a lot of builders / real estate companies are in business in that area for developing commercial space to capture the emerging market. The informant has failed to state who were the other builders in the area, what were the market share of opposite party and why he did not book space with other developers. The



informant had wide choice of booking commercial space with any of the builders. Most of these builders compete with each other for attracting customers by offering competitive prices and making the project attractive by providing several "state-of-the-art" facilities.

5. Unless an informant submits before the Commission as to how many players were there in the field, what was their market share and how the opposite party was the dominant player and in a position to operate unaffected by the presence of other players or how no substitute product was available to the informant in the market, mere allegations made by the informant that the opposite parties enjoyed dominance would not suffice. The informant's submission that considering the market size and the resources of the opposite parties, they be considered as dominant enterprises is of no avail.

6. There could have been a case for examination under the provisions of section 4 of the Act, if prima-facie there had been some evidence about the dominance of the Opposite Party in terms of market share and other factors mentioned in section 19(4) of the Act in the relevant market of 'provision of services for development of commercial properties, in Gurgaon. However, the information in public domain reveals that there are a number of developers e.g. DLF and Unitech, having a large number of projects in commercial segment of real estate in Gurgaon. In size and resources also, these players appear to be superior in size and strength as compared to the Opposite Party. Therefore, prima-facie, based upon facts of the case, the Opposite Party does not appear to be dominant in the relevant market. Once the Opposite Party is prima-facie not dominant, question of abuse under section 4 also does not arise.*

7. The complaints made by the informant are regarding unfair trade practices and do not concern with competition issues in the area of providing commercial



space. The relief sought also falls within the contractual obligations of the parties and do not raise an issue of competition. The Commission therefore considers that the informant has failed to establish prima facie case of opposite parties being dominant players. This case ought to be closed under section 26(2) of the Competition Act and is hereby closed as such.

8. Secretary may inform the parties accordingly.

Sd/-
Member (G)

Sd/-
Member (T)

Sd/-
Member (R)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy

