



**COMPETITION COMMISSION OF INDIA**

**Case No. 60 of 2016**

**In re:**

**M/s Oberoi Cars Pvt. Ltd.**

**B-47, Greater Kailash-I, New Delhi.**

**Informant**

**And**

**M/s Imperial Housing Ventures Pvt. Ltd.**

**11<sup>th</sup> Floor, Paras Twin Towers (Tower B),**

**Sector-54, Golf Course Road, Gurgaon.**

**Opposite Party**

**CORAM**

**Mr. Devender Kumar Sikri**

**Chairperson**

**Mr. S. L. Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. U.C. Nahta**

**Member**

**Dr. M. S. Sahoo**

**Member**

**Justice G. P. Mittal**

**Member**



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

1. The information in the present matter has been filed by M/s Oberoi Cars Pvt. Ltd. ('**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against M/s Imperial Housing Ventures Pvt. Ltd. ('**OP**') alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.
2. Briefly stated, OP is a company registered under the Companies Act, 1956 and has been engaged in the business of real estate development. The Informant is an allottee of two apartments, bearing nos. T28/1902 and T28/2006 admeasuring 1592 sq. ft. each, in the housing project 'Paras Tierra', developed by OP in Sector-137, Noida-Greater Noida Expressway ('**Project**').
3. It is averred that through false, baseless, concocted offers and fake assurances/promises OP induced the Informant to book the said apartments for a total sale consideration of Rs. 73,64,000/- each. The provisional allotment letters with respect to the said apartments were issued by OP *vide* letters dated 18.08.2012 and 29.08.2012. Thereafter, OP sent an unsigned 'Terms and Conditions of Allotment' to the Informant on 08.04.2013 ('**Allotment Letter**'). As per the allotment letter, the possession of the said apartments was to be handed over to the Informant within a period of 24 months with grace period of 12 months. However, it is averred that, OP has failed to complete the construction work till date and has not given any reply regarding the progress of construction inspite of repeated reminders. Further, it is averred that OP had sent letters dated 14.07.2014 and 24.09.2015 to the Informant demanding Rs. 27,91,506/- with respect to apartment no. T28/1902 and Rs. 32,20,500/- with respect to apartment no. T28/2006. The Informant also alleged that OP has cancelled the allotment of the said apartments unilaterally and forfeited the amount already paid.
4. Further, the Informant has alleged that the entire terms and conditions of the allotment letter are in favour of OP and there is no such provision in the



agreement by which the rights or interests of the Informant is protected. It is averred that the conditions in the allotment letter are unfair and arbitrary and there is no scope for the Informant to object the one-sided provisions. Furthermore, instead of completing the construction of the project OP is taking benefit of the one-sided terms and conditions of the allotment letter to cancel the allotment of the Informant.

5. It is also averred that OP and other real estate developers have an arrangement whereby they are luring the customers to book the flats through fake promises of giving possession of the same within an agreed timeline and once the consumers get trapped with the builder after payment of booking amount, they start exploiting the consumers by not giving possession as per the agreed time line. It is alleged that the flat buyers' agreement and application for allotment of flats of all real estate developers have similar terms and conditions.
6. Based on the above, the Informant has, *inter alia*, prayed the Commission to direct OP to refund the forfeited amount, discontinue from abusing its dominant position, refrain from entering into any anti-competitive agreement and impose such penalty on OP as the Commission deems appropriate.
7. The Commission has perused the information and other material available on record. It is observed that the Informant is aggrieved by the alleged conduct of OP in cancelling the allotment of the said apartments, forfeiting the amount already deposited and stipulating certain unfair and one-sided terms and conditions in the allotment letter. It is also alleged that OP and other real estate developers have an arrangement to lure customers with false offers. It is averred that OP and other real estate developers have similar terms and condition in the buyers' agreement and allotment application through which they trap the consumers once the payment is made by them. Hence, it is alleged that there is contravention of Section 3 of the Act.
8. To examine the allegations of abuse of dominance in terms of the provisions of Section 4 of the Act, it is essential to first determine the relevant market and



then to examine whether OP is dominant in that relevant market or not. The Commission observes that the allegations in the instant case relate to allotment of two apartments by OP to the Informant in its housing project ‘‘Paras Tierra’ developed at Sector -137, Noida-Greater Noida Expressway, Noida. Thus, the relevant product in this case is residential apartment/ flat which is different from plot of land or commercial space. It may be noted that a plot of land or a commercial space cannot be considered as substitutable with a residential unit by the consumers because of the difference in the characteristics of the product, difference in price and intended use. Therefore, the Commission considers the market for *‘‘the provision of services for development and sale of residential apartments/ flats’’* as the relevant product market in this case. With regard to delineation of the relevant geographic market, it is observed that the conditions of competition prevailing in the geographic region of Noida and Greater Noida are homogeneous and distinct from those prevailing in adjacent areas. Therefore, the relevant geographic market may be considered in this case as the geographic region of Noida and Greater Noida. Accordingly, the relevant market in this case may be considered as the market for *‘provision of services for development and sale of residential apartments/ flats in Noida and Greater Noida’*.

9. Now, it is to be examined whether OP is in a dominant position in the above defined relevant market. In this regard, it may be noted that the underlying principle for assessing dominance of an enterprise is linked to the concept of market power which allows an enterprise to act independently of competitive constraints. Further, such independence affords an enterprise with the capacity to affect the relevant market in its favour, to the detriment of its competitors and consumers. In this case, the Commission observes that other than OP, there are many other major real estate developers such as Amrapali, Supertech, Unitech, Jaypee Infratech, Eldeco *etc.* operating and competing with OP in the relevant market. The competitors of OP have projects with varying magnitudes and comparable size and resources as compared to OP. Presence of such players indicates that the buyers have options to choose from other developers in the relevant market. Accordingly, the Commission is of



the view that OP does not possess market power to act independently of competitive forces prevailing in the relevant market or to affect its competitors or consumers in its favour. Hence, OP does not appear to be dominant in the relevant market. In the absence of dominance, no case of contravention of the provisions of Section 4 of the Act is made out against the OP in this case.

10. Further, it is alleged by the Informant that OP and other real estate developers are acting in tandem in stipulating similar terms and conditions in the flat buyers' agreement/ application form and exploiting the consumers by not giving possession of flat as per the agreed timeline. In this regard, the Commission observes that even though the Informant has alleged existence of an arrangement amongst the real estate developers in relation to stipulation of similar terms and conditions in the flat buyers' agreement/ application form for booking flats, no cogent material evidences have been provided to substantiate the allegations. Moreover, similar terms and conditions in the flat buyers' agreement and other similar practices by the real estate developers may be common industry practices, not necessarily because of arrangement or understanding amongst the real estate developers.
11. Furthermore, the Commission in its order dated 03.02.2015 in case no. 59 of 2011 in the matter of '*Shri Jyoti Swaroop Arora Vs. M/s Tulip Infratech Ltd. & Ors.*' has observed that commonality of terms and conditions in the agreements executed between the builders and the buyers; in the absence of any evidence to establish understanding, arrangement or action in concert between the individual enterprises; cannot be held to be anti-competitive in terms of the provisions of Section 3(3) read with Section 3(1) of the Act and the said order of the Commission has been upheld by the Hon'ble Delhi High Court *vide* its order dated 16.05.2016 in W.P. (C) No. 6262/2015 in the matter of '*Jyoti Swaroop Arora Vs. Competition Commission of India & Ors.*'



12. Resultantly, the Commission finds that no case of contravention of the provisions of either Section 3 or 4 of the Act is made out against OP in the instant matter and the matter is closed under the provisions of Section 26(2) of the Act.
13. The Secretary is directed to inform all concerned accordingly.

**Sd/-  
(Devender Kumar Sikri)  
Chairperson**

**Sd/-  
(S. L. Bunker)  
Member**

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

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

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

**Sd/-  
(Dr. M. S. Sahoo)  
Member**

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

**New Delhi  
Dated: 31.08.2016  
Case No. 60 of 2016**

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