

COMPETITION COMMISSION OF INDIA

Case No 42/2010

Date: 16.12.2010

Information against: M/s .BPTP Ltd. & Ors.

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The present information has been filed under section 19 of the Competition Act, 2002 (the Act) against M/s. BPTP Ltd. (hereinafter referred as Party No.1) & Others, who are engaged in the business of developing Business Parks and Residential Townships, for the alleged abuse of dominant position. The Parties No.2 to 9 are the Directors of the Party No.1.

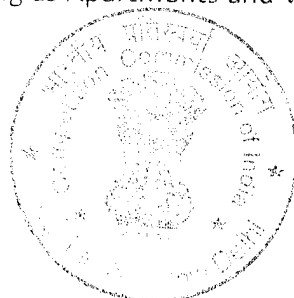
2. The facts of the case, in brief, are as under:

2.1 The Information provider has submitted that the Party No.1 is engaged in the construction of residential apartments and Villa and invites public to purchase the apartments and Villas constructed by it.

2.2 As per the information provider, on the basis of the representation made in the advertisement issued by the Party No.1 he applied for registration of Villa measuring 225 sq. yds. in the project of Party No.1, namely "Park Land" at Faridabad and had made an advance payment also to Party No.1. As per the information provider, he had made subsequent payments in respect thereof.

2.3 The information provider has alleged that the Party had delayed in handing over of the possession of Villa and the information provider on making an enquiry came to know that the Party has already abandoned the project. On enquiry, the Party No.1, vide letter dated 23.03.2010, provided to the information provider various options like exit option, re-allotment option etc.

2.4 It has been alleged by the Information provider that the Party No.1 was never the owner of the piece of land on which they were selling as Apartments and Villas.



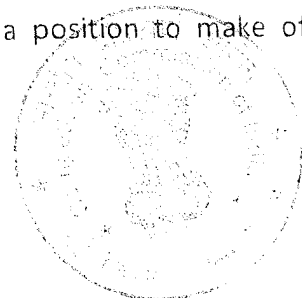
2.5 He alleges that the Parties are abusing their dominant position and imposing unfair and discriminatory condition on him for the return of the money deposited towards purchase of Villa from Party No.1.

2.6 The information provider, in support of his allegation regarding dominant position of Party No.1, had filed with Commission Draft Red Herring Prospectus on 22.11.2010 and submitted that the BPTP Limited, in its Draft Red Herring Prospectus, has claimed itself being the largest Real Estate Company in Faridabad. The information provider has emphasized that the Party No.1 being the largest Real Estate Company in Faridabad is in dominant position in Faridabad. He has also filed written submissions dated 13.12.2010 in which he has, with reference to the Red Herring Prospectus of BPTP, reiterated that the claim of BPTP Ltd. regarding it being the largest Real Estate Company in Faridabad be taken into account for its dominant position in Faridabad.

3. The Commission considered all the relevant material placed on record, oral submissions of the Counsel of the information provider and the written submissions dated 22.11.2010 filed by the Information provider in its meeting held on 16.12.2010.

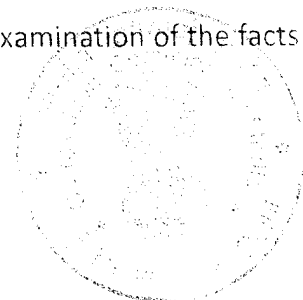
4. On going through the information and the submissions on behalf of the information provider it is noted that the main grievance of the information provider is that the BPTP Ltd. had advertised for the sale of residential Villas in Faridabad without acquiring the ownership of the land for said Villas. It is also admitted case of the Party which is reflected from the reply submitted on behalf of Party BPTP Ltd. to the legal notice served by the information provider. The project which is subject of information could not materialize due to BPTP's inability to procure the land from the land owners. The BPTP Ltd., on its inability to acquire the land for the construction of the Villas, had offered exit plan, re-allotment option to the information providers.

5. The perusal of the terms and conditions of the application submitted by the information provider reveals that if Party No.1, BPTP Ltd. is not in a position to make offer of



allotment for any reason, the applicant/information provider is entitled to a refund of the advance for provisional registration amount paid along with a simple interest @ 9% per annum from the date of such payment. According to the information provider, the possession of the Villa was not handed over to him due to inability of the Party No.1, BPTP Ltd., to procure the land. However Party No.1, BPTP Ltd., made a claim that the construction of the proposed Villa is going on. According to this claim, the construction linked payment from the information provider was demanded by BPTP Ltd.

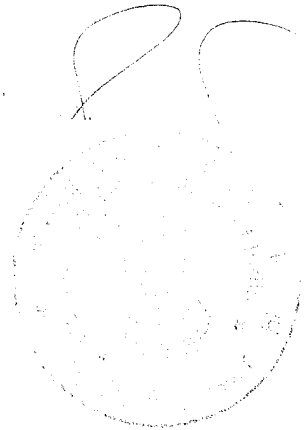
6. In the present information, neither a violation of Section 3 of the Act, in particular, has been claimed nor is any case of an agreement amongst competitors, either at the same level of or at different stages of the production chain, made out. Therefore, Section 3 of the Act is not attracted on the facts of the case.
7. As per the information available on public domain, it is evident that Party No.1 BPTP is a well known name in the Real Estate Market and one of the prominent players in Faridabad. From the various websites, like www.99acres.com, www.magicbricks.com and www.makaan.com, which account for most of the organized players, it is seen that there are many players of the size of BPTP in the geographic area of Faridabad in the same line of business. BPTP Ltd, though having a brand value in the market, cannot operate independently of the competitive forces prevailing in the market. Also it is not in a position to affect the competitors in the market in its favour. There is no material on record to indicate that BPTP can be considered to be in a dominant position, irrespective of the way in which the market is defined. *Prima facie* it does not appear to possess sufficient market power in terms of explanation (a) Section 4 of the Act. So *prima facie* there is no contravention of Section 4 in this case.
8. In view of the above, and after considering the entire material and submissions of authorized representative of the information provider, the Commission is of the opinion that the allegations as made in the information and the reliefs as prayed by the information provider do not fall within the ambit of Act. On examination of the facts and



circumstances of the present case, the Commission is also of the view that the case on these facts appears to be not a case of abuse of dominance. The Information provider has also not been able to place any credible or cogent evidence/material to show or establish the infringement of section 3 or 4 of the Act in this case and hence the allegations made by the information provider have remained unsubstantiated and uncorroborated. The Commission, therefore, is of the view that no prima facie case is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings relating to this information are required to be closed forthwith.

9. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.

10. Secretary is directed to inform the information provider accordingly.



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