

COMPETITION COMMISSION OF INDIA

Case No 62/2010

Date: 24.01.2011

- Against:**
- 1. Cdr. Kuldeepak Mittal (Retd.)**
 - 2. Ms. Babita Khanduja**
 - 3. Mrs. Dimple**
 - 4. Commodore Udai Bhaskar (Retd.)**
 - 5. Col. Sushil Prasad**
 - 6. Mrs. Prema Priyadarshani**
 - 7. Col. Akash Ghosh (Retd.)**
 - 8. Adm. K.V. Bhartan (Retd.)**
 - 9. Col. S. Lakhanpal (Retd.)**
 - 10. Mr. R.M. Garg**
 - 11. Mr. Jagminder Gupta**
 - 12. Town & Country Planning Dept., Haryana**

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 Mr. Kuldeepak Mittal and others, who are engaged in the business of developing residential apartments for government officials in Noida and Gurgaon, in the name of Government Officials Welfare Organisations (GOWO) which is a trust.

2. The facts of the case, in brief, as provided by the information provider are as follows:

2.1 As per the information provider, the Party Nos. 1 to 8 are the trustees of GOWO. The information provider has submitted that the Party No 1 to 8 claim to have formed a welfare Trust to serve the Central & State Government employees in particular, by creating a Public Trust (Non-Government Organization) under the provisions of Charitable and Religious Trusts Act, 1920. Party No. 9 is the Director of Gurgaon Projects of GOWO. Party No 10 and Party No 11 are the principal officers of a company in the name and style of Corona Housing Pvt. Ltd., which is constructing apartments in the Gurgaon projects of GOWO. Party No 12 is the statutory body authorizing and granting licenses to builders and colonizers to construct building in the state of Haryana.

- 2.2 The information provider has submitted that he had applied for allotment of a residential flat measuring 2696 Sq Ft for the total sale consideration of Rs.65,90,000 and apartment bearing No. KG 06 at Sector 37-C, Gurgaon, Near Sector 9 &10, GOWO project, Phase-II was allotted to him against the advance payment of Rs. 10,30,000.
- 2.3 It has been alleged by the information provider that Party No 1 has unilaterally increased the cost of the flat on the pretext of increased area and Preferential Location Charges (PLC).
- 2.4 As per the information provider, on receipt of communication for submission of necessary documents to complete the execution of the Flat Buyer's Agreement, he submitted the same within the given time. Despite the documents having been submitted, the information provider again received a letter from the Party No 1 to submit the documents to execute the Agreement and thereafter Party No 1, on the assertion of non submission of documents refunded the initial down payment to the information provider.
- 2.5 It has been alleged by the information provider that Party No 1 to 8 have created a Trust which has neither been allotted any land nor do they have any sanctions or permissions to book flats for government servants. The information provider alleged that they are merely property dealers who book flats with private builders but claim that they are societies created for the welfare of retired or serving central government servants.
- 2.6 It has also been alleged by the information provider that GOWO is enjoying a dominant position and is not abiding by its initial commitments to the information provider. They have been collecting 10% advance payment from the allottees based on unscrupulous and misleading advertisements and are forcing the allottees to accept the terms and conditions which are heavily loaded against the allottees.
3. The Commission considered all the relevant material placed on the record and heard the learned counsel for the information provider in the ordinary meeting of the Commission held on 21.12.2010. The Commission directed to the learned counsel to file written submissionS explaining the case by 31.12.2010. However, no written submission has been filed. Thereafter, the matter has been again placed for consideration of the Commission in its meeting held on 05.01.2011.
4. On perusal of the material on record, it is noted that main grievance of the information provider is that Party No.1 to 8, who are mere property dealers, are claiming to have formed societies for the welfare of the retired and serving central government servants. They are collecting advance payments from the prospective buyers based on misleading advertisements though they have been neither allotted any land nor have any sanction

for booking flats for government servants and later on on the assertion of non submission of documents, refunded the advance amount.

5. The issue for consideration before the Commission arises as to whether the GOWO is in the dominant position in the real estate market of Gurgaon. The explanation to Section 4 defines "dominant position", as a position of strength enjoyed by an enterprise in the relevant market in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.
6. On the basis of the information available on public domain, it is noted that the residential real estate market in the area of Gurgaon is catered to by numerous builders. There are innumerable apartments built by various builders in the market. These builders are mainly into construction and sale of independent houses, Independent Villas, Duplex houses, Plots, Group Housing and Residential Apartments in multi storied buildings.
7. It is evident that the GOWO is one of the several builders in the relevant market. In the unstructured market of real estate in Gurgaon, GOWO cannot operate in itself independently of the competitive forces prevailing in the relevant market. Also it is not in a position to affect the competitors in the relevant market in its favour.
8. GOWO may be one of the known builders in the relevant market, however there is nothing substantial in terms of its size and resource capabilities. GOWO is one of many builders operating in the relevant market. There is no significant chunk of land bank holdings with it in the relevant geographic area. By no standards it has any definite advantage in terms of market knowledge, economies of scale and experience. Gurgaon is one of the reputed commercial and residential centres. There is nothing to support that the dependence of consumers on GOWO is higher than any other builders in the relevant market. GOWO has no significant land bank or developed/underdevelopment projects in the relevant market, and therefore, it cannot be said that it has prominence in the market structure and size of the market.
9. There is no prima facie violation of Section 4 of the Act by the very fact that GOWO is by no standard is in a dominant position in the relevant market.
10. There is no prima facie case of any agreement between parties or practice adopted by any builders' association operating in the relevant market. Therefore, none of the clauses of Section 3(1), 3(3) or 3(4) is attracted to the facts of the case.
11. It appears that the present case is an individual consumer dispute arising out of unfair trade practices adopted by GOWO and does not fall in the ambit of the Competition Act.

12. In view of the above, and after considering the entire material and submissions of authorized representative of the informant, the Commission is of the opinion that the allegations as made in the information by the information provider do not fall within the ambit of the Act.
13. The Commission is also of the view that the case on these facts appears to be not a case of abuse of dominant position. 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.
14. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.
15. Secretary is directed to inform the information provider accordingly.

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Member (G)

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Member (R)

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Member (P)

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Member (G)

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Member (A)

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