

**COMPETITION COMMISSION OF INDIA**

**[Case No 27/2011]**

**Dated: 08.11.2011**

**1. Mr. Jagmohan Chhabra**

**Flat No. 560, Mount Kailash Tower No. III  
East of Kailash, New Delhi – 110065**

**2. Mrs. Shalini Chhabra**

**Flat No. 560, Mount Kailash Tower No. III  
East of Kailash, New Delhi – 110065**

**Informants**

**M/s. Unitech Ltd.**

**GF, Signatures Towers,  
South City 1,  
NH 8, Gurgaon - 122001**

**Opposite party**

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

1. The present information has been filed by Mr. Jagmohan Chhabra and Mrs. Shalini Chhabra (hereinafter referred to as the "Informants") under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act") against M/s.

Unitech Ltd. (hereinafter referred to as "Unitech") for its alleged abuse of dominant position in the market of development of multi-storied residential apartments in city of Gurgaon, Haryana.

2. The brief facts and allegations of the case, as stated in the information, are as follows:

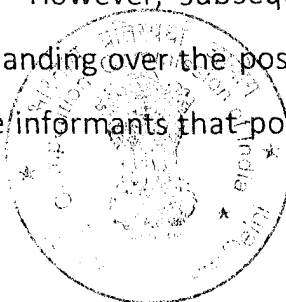
2.1 As per the information, the informants are the residents of Flat No. 560, Mount Kailash Tower No. III East of Kailash, New Delhi. The Opposite Party, M/s. Unitech Ltd. is a public limited company incorporated under the Companies Act, 1956 and is engaged in the business of real estate development in India.

2.2 It has been submitted that the informants booked an apartment in the project "FRESCO" launched by Unitech during 2006 in Sector 50, Gurgaon, Haryana. Accordingly, the 'Buyers Agreement' (hereinafter referred to as the "Agreement") was signed between the informants and Unitech on 18.05.2006.

2.3 As per the informants, they have already made payment of about 96% of the cost of the flat to Unitech as on the date of submission of information. The said payments are made on time-linked basis instead of construction linked basis.

2.4 As per the terms and conditions of the agreement the possession of apartment was to be delivered to the informants by June, 2008 i.e. within two years from the date of agreement. However, there has already been delay of about three years in giving possession of flat.

2.5 In this regard the informants had sent many letters to Unitech mentioning about dismal progress of work at the site. Initially Unitech assured them to hand over the possession of the flat in scheduled time. However, subsequently, on several occasion, it kept on extending the date of handing over the possession of the flat. In June, 2010 Unitech communicated to the informants that possession of the flat

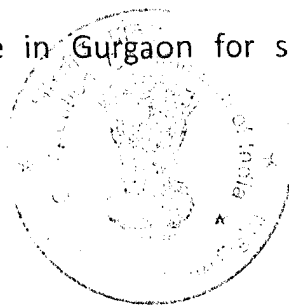


would be handed over during the fourth quarter of 2010. On 11.04.11 it further extended the date of giving possession of the flat till the 3<sup>rd</sup> Quarter of 2011.

- 2.6 As per the informants the terms and conditions of the agreement are one sided and favourable to Unitech. For instance, for delay in delivery of the apartments to the buyers, Unitech is to compensate Rs.5 per Sq ft/ per month, while if there is a delay in installment payments towards the cost of the apartments, the buyers have to pay at the rate of 18% per annum on quarterly compounded basis.
- 2.7 The informants have submitted that such one sided terms and condition are not acceptable to them and have also claimed that the compensation for delay in delivery from Unitech should be same at the rate of 18% per annum.
- 2.8 The informants have alleged that because of its dominant position Unitech is diverting/misusing the funds collected from the buyers for the construction projects because of which the project has not been completed in due time. It has also been submitted that Unitech had malafide intentions right since the inception of the project and for this very reason it compelled the buyers to make payment on the basis of time period *i.e.* calendar basis rather than the "construction linked basis" which is a normal industry practice.
- 2.9 The informants have alleged that the above acts of Unitech amount to abuse of dominant position which is anti-competitive as per Section 4 of the Act.
3. The Commission considered the matter in its meetings held on 14.06.2011, 12.07.2011, 03.08.2011, 24.08.2011 and 04.10.2011.
4. After carefully considering all the facts and allegations mentioned in the information together with all the relevant materials available on record, the Commission notes that the Unitech is a company registered under the Companies Act, 1956 and is engaged in providing services for the development of real estate in

India. Therefore, the activities being performed by the Unitech are covered under the definition of “enterprise” provided in Section 2(h) of the Act.

5. The Commission observes that the fundamental allegations of the informants in the matter are that Unitech has abused its dominant position by imposing one sided and unfair terms and conditions and by not giving possession of apartments within the agreed time to the buyers including the informants.
6. The Commission is of view that in order to determine whether any enterprise is abusing its position of dominance, it is necessary to first find out the relevant product and relevant geographic market with reference to which that enterprise is alleged to be dominant. If it is found that the enterprise is indeed enjoying a position of dominance in that relevant market, then the second issue would be whether it is abusing its dominant position in any manner in that market in terms of Section 4 of the Act.
7. On examination of the information submitted by the informants and materials available in the public domain, the Commission notes that relevant product market in this case is the services provided by the developers for providing residential apartments to the customers.
8. As regards relevant geographic market, the Commission notes that the decision of “investment” in a residential unit centres on locational preference of the purchaser and this preference is not interchangeable or substitutable. A better apartment for lesser price may be available elsewhere but that would have no value for the customer who has decided to buy a house in Gurgaon for some reason or consideration.



9. In view of aforesaid, the Commission considers that the relevant market in this case is market of the services provided by the developers for providing residential apartments to the customers in geographical area of Gurgaon in Haryana.
10. The Commission observes that the value of the residential units in this case is about Rs.50 Lakh. Although Unitech is one of the known builders, there are other big developers and builders, having superior economic resources and strength, who are providing their services in development of residential units in this range in the relevant geographic market. It cannot also be held that Unitech can operate itself independently of the competitive forces prevailing in the relevant market and can affect the competitors in its favour.
11. Considering above, the Commission is of the opinion that, *prima facie*, Unitech cannot be said to be a dominant enterprise in the relevant market. Since Unitech is not in a dominant position in the relevant market, any question of abuse within the meaning of provisions of Section 4 will also not arise in this case.
12. On a careful consideration of the entire matter, the Commission accordingly holds that *prima facie* no case is made out for making a reference to the Director General (DG) for conducting investigation into this matter under Section 26 (1) of the Act.
13. In view of foregoing, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.



14. The Secretary is directed to communicate the decision of the Commission to the informants accordingly.

Sd/-  
Member (GG)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member (G)

