

COMPETITION COMMISSION OF INDIA

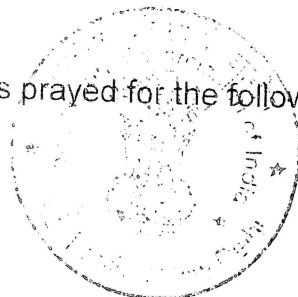
Case No 51/2010

Informant : Shri Naresh Grover

Opposite party: M/s. Parsvnath Developers Pvt. Ltd.

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

1. The present information has been filed under section 19 of the Competition Act by informant Shri. Naresh Grover (hereinafter referred as Informant). The opposite party M/s. Parsvnath Developers Pvt. Ltd., (hereinafter referred as opposite party) is engaged in the business of Developing Residential Apartments
2. The brief facts of the case are as follows:
 - 2.1 As per the information, the informant made an application on 18.07.2007 with the opposite party Parsvnath Developers pvt Ltd for the allotment of a flat in Parsvnath "Privilege Project" on Plot No. 11, Sector Pi, Corrosia Estate, Greater Noida, UP. The informant had also delivered 3 cheques total amounting to Rs.8,81,496/- drawn in favour of the Parsvnath as a booking amount for the proposed flat.
 - 2.2 The main allegation against the Parsvnath is that it had deceived the informant through its pamphlet and clauses of application form {clause 10(a) and (b)} by misrepresenting itself as the owner of the proposed flat and land on which the flats were to be constructed i.e. Parsvnath Privilege Project on Plot No. 11 Sector Pi, Corrosia Estate, Greater Noida. Later, on enquiry from the authorities it was revealed that the Parsvnath is only the lessee of the land for 90 years and not the owner as misrepresented by it.
 - 2.3 The other allegation is that the Parsvnath has unilaterally and materially altered the terms of the application form with an intention to deceive and also delayed the project. There are certain other unfair conditions in the application form alleged by the informant such as forfeiture of earnest money in case failure by the intended allottee to sign the flat buyer agreement within 30 days, alteration of terms and conditions in the flat buyer agreement etc.
 - 2.4 It is also the allegation that despite the demand of the informant to return his money the opposite party refused to return the same and asked further payment of Rs.40,09,279.60 Further the informant was allegedly forced to sign the flat buyer agreement.
3. The informant has prayed for the following reliefs



Direct Parsvnath Developers Limited to restrain from carrying on Unfair/Discriminatory practices through their standard unilateral abusive agreements containing misleading, unreasonable and unfair terms and direct them to discontinue and not to re-enter such abusive agreement or abuse of their dominant position

4. The informant appeared in person and made his submissions in favour of the information and has also filed his written submissions. The informant in his written submissions has raised the following points:

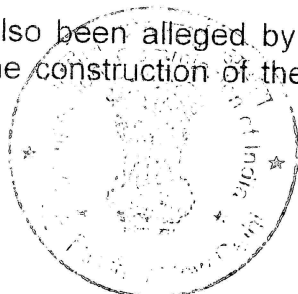
(i). It has been submitted by the informant that the opposite party has been in the real estate developer business for over 2 decades and has completed 39 projects comprising an area of 11.82 mn sq ft. The current project portfolio of opposite party encompasses 54 projects with a total area of 81.83 mn sq ft under development/construction. Out of which opposite party has sold 39.93 mn sq ft of area. The opposite party company has a land reserve of 194.74 Mn Sq Ft. and having projects in 45 major cities in 16 states across the country

(ii). It has further been submitted that the opposite party has a market share of 27% in the residential sector and 67% share in the integrated township. The said data has been reproduced by the informant on the basis of the annual report of opposite party annexed with the informant as annexure and annexed to information as annexure N2. It has also been alleged that the opposite party has a market share of 38% in Delhi/NCR region and the company has pan India presence and is not influenced by the geographic market fluctuations.

(iii). It has also been alleged that the income of the opposite party as per its profit and loss account statement is Rs.76,261.84 lacs in 2009 and Rs.81,717.56 Lacs in year ending 2010. It has also been alleged that opposite party can operate independently of competitive forces prevailing in the real estate market.

(iv). It has also been alleged that the opposite party is enjoying a dominant position and is abusing its dominant position. The initial amount of Rs.8,81,496/- paid by him was unfairly and arbitrarily treated as earnest money by the opposite party and opposite party had refused to refund the said amount on the repeated request of the Informant. It has also been alleged that the opposite party is demanding a further payment of Rs. 40,09,279.60/- vide its letter dated 02.07.2009 with a penal interest @24%. It has also been alleged that way the opposite party is abusing its dominant position which is contravention of Section 4(1) and 4(2)(a)(i) of the Competition Act.

(v). It has also been alleged by the Informant that the opposite party has delayed the construction of the project beyond the stipulated time of



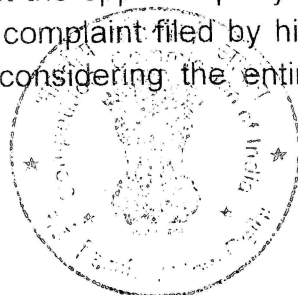
36 month and still demanding the further payment from the flat buyers. It has also been alleged that the opposite party is imposing unfair and discriminatory conditions on the flat buyers by way of terms and condition of the flat buyer agreement which is the contravention of Section 3(1) of the Competition Act.

(vi). It has also been alleged that as per clause 2(c) of the flat buyer agreement, the flat buyers has to mandatory purchase covered car parking area for Rs. 2,00,000/- over and above the price of the flat. The opposite party has thus contravene Section 3(4)(a) of the Act by entering into vertical agreement with consumers in respect of sale of flats and is providing the service with the 'tie-in arrangement' by mandatory purchase of car parking area.

5. The Commission considered all the relevant material placed on the record and the written submissions filed by the informant, in the ordinary meeting of the Commission held on 03.11.2010.

5.1 As per the information available on the public domain, it is evident that the opposite party is one of the known builders in different product lines. As per the information available on public domain or from the information filed by the informant there is no prima facie indication that Parsvnath can be considered to be in a dominant position in the relevant market. According to several public portals, there are many developers in the relevant geographic market of Greater Noida who are developing various residential projects and Parsvnath is only one of such developers. Prima facie it does not appear to possess sufficient market power in terms of Explanation (a) to section 4 of the Competition Act, 2002. So, prima facie there can be no contravention of Section 4 in the case.

5.2 On going through the information as well as the additional submissions and other material filed on behalf of the informant, it is found that the main grievance of the informant is that the opposite party, by misrepresentation and false advertisements etc. cheated him and induced him to pay an amount of Rs.8,81,496 vide cheque dated 18.7.2007. It is contended that the opposite party suppressed vital information and tried to procure original receipts and the 'flat buyer agreement' from him by adopting deceitful and fraudulent methods. These and other allegations have been repeated in the information. It is further stated that against the fraudulent, unfair and unreasonable acts of the opposite party, the informant issued letters and legal notices to the opposite party. According to the informant, he also approached the police but even the police submitted a biased report to protect the opposite party. As per the informant, a recovery suit and a criminal complaint filed by him against the opposite party are also pending. On considering the entire relevant material in the context of



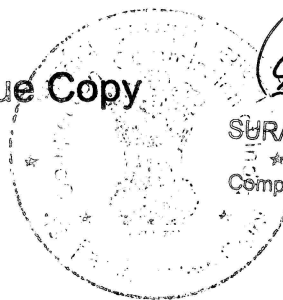
allegations detailed in the information, the Commission finds that no prima facie case regarding anti competitive agreement as envisaged under Section 3(1) of the Act is made out in the instant case. As per Section 19(3) of the Act also for determining appreciable adverse effect of an agreement on competition in the relevant market under Section 3 of the Act, certain negative factors are to be looked at and are to be satisfied. Some of the relevant factors are:

- (a) Creation of barriers to new entrants in the market;
- (b) Driving existing competitors out of the market; and
- (c) Foreclosure of competition by hindering entry into the market.

The informant has not even tried to satisfy the applicable^{time} of these factors in this matter. Thus the material adduced before the Commission by the informant does not even prima facie, establish the breach or contravention of Section 3 of the Act in any manner.

6. In view of the above discussion and after considering the entire material and submissions of authorized representative of the informant, the Commission is of the opinion that there is no prima facie evidence/material to indicate infringement of section 3 or 4 of the Act. 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.
7. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.
8. Secretary is directed to inform the informant accordingly.

Certified True Copy



SP Gahlaut
12/12/2016
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New Delhi