

BEFORE THE
COMPETITION COMMISSION OF INDIA

Case No 7/2011

DATE OF DECISION 06.04.2011

1. Mr. Jyoti Swaroop Arora

Informant

1. M/s Tulip Infratech Pvt. Ltd.
2. Director of Town & Country Planning, Haryana
3. Haryana Urban Development Authority

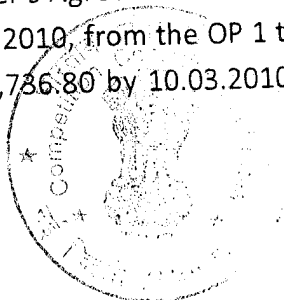
Opposite Parties

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

The present information has been filed on 18.02.2011 by Mr. Jyoti Swaroop Arora (hereinafter referred to as 'informant') under Section 19 of the Competition Act, 2002 (hereinafter referred to as the 'Act') against M/s. Tulip Infratech Pvt. Ltd. (hereinafter referred to as 'OP1'), Director of Town & Country Planning (DTCP), State of Haryana (hereinafter referred to as 'OP2') and Haryana Urban Development Authority (HUDA) (hereinafter referred to as 'OP3') alleging abuse of the dominant position by OP 1.

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

- 2.1 It has been stated by the informant that OP 1 is, *inter alia*, engaged in developing residential multi storey apartments in Gurgaon.
- 2.2 As per the informant, OP 1 advertised in newspaper the sale of residential apartments in its project "Tulip White" at a price of Rs.31.82 lakhs for 3 BHK flats.
- 2.3 The informant has submitted that he had booked one flat of 3 BHK, measuring 1,326 sq. ft. @ Rs. 2,268/- per sq. ft. in the above said project and paid a booking amount of Rs. 3,25,000/-. The OP 1 confirmed the registration and allotted the flat bearing no. A-1/803.
- 2.4 The Informant has further submitted that on demand of OP 1, he further paid an amount of Rs. 2,76,474/- on 22.02.2010. The total amount paid was 20% of the cost of the flat by that time. The informant received allotment letter alongwith two copies of draft Flat Buyer's Agreement sent by OP 1. The informant received a demand letter dated 23.2.2010, from the OP 1 to remit the next installment of 10% amounting to Rs. 3,00,736.80 by 10.03.2010 and it was also mentioned in

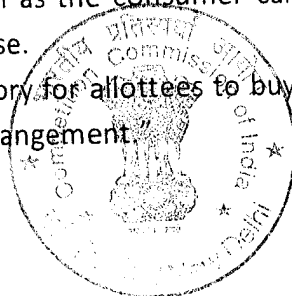


the letter that if he failed to pay the same by the due date it will attract the interest @ 24% per annum.

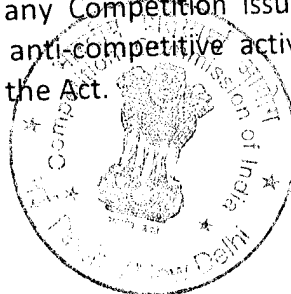
- 2.5 As per the informant, on finding the terms of clauses of 'Flat Buyer's Agreement' unreasonable, he sent a letter on 02.03.2010 to OP1 citing his concerns and requested OP-1 to send him a self-certified copy of the agreement dated 30.06.2009 executed by the OP1 with the Land Owners and a self-certified copy of the License No. 41 of 2009 received from OP-2.
- 2.6 As per the informant, when OP 1 did not respond to his requests, he filed a complaint before Delhi State Consumer Disputes Redressal Commission for directing the OP 1 to provide the documents referred above. After that OP1 cancelled the booking and sent a letter dated 18.05.2010 to the informant intimating that the booking has been cancelled and a refund cheque no. 238432 for Rs. 6, 01,474/- was credited directly to the informant's account.
- 2.7 The complaint before the Delhi State Consumer Disputes Redressal Commission was withdrawn by the informant believing that his case falls within the mischief of Section 3 & 4 of the Act.

3. The informant has made following allegations against OP 1:

- 3.1 The informant has alleged that OP-1 is abusing its dominant position by imposing unfair conditions in the price and sale of apartments.
- 3.2 The OP-1 advertised the project and issued allotment letters without even taking the necessary approval from OP-2.
- 3.3 Allottees were given no option but to sign on dotted lines of the flat buyer's agreement devised by OP-1 even though the clauses of that agreement were onerous and totally one sided.
- 3.4 The flats buyer's agreement unfairly exempts OP-1 from any liability in case of non performance or delay whereas it fastens onerous liability on the allottees on account of delay in performance.
- 3.5 OP-1 first locked in the consumers by extracting 20% of the cost of the flat and then imposed unfair and discriminatory conditions on them through flats buyer's agreement. Clause 6 (a) of the flat buyers agreement prescribes that in case any allottee refuses to sign on dotted line the OP-1 has power to cancel the allotment and forfeit entire 20% amount paid by the allottee. This clause forecloses the competition as the consumer cannot go to any other builder in view of this forfeiture clause.
- 3.6 Clause 4 makes it mandatory for allottees to buy one covered car parking which is an example of "tie-in arrangement."

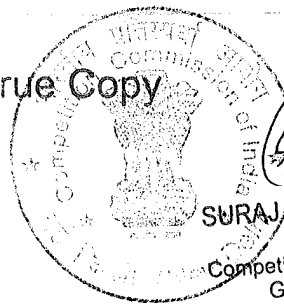


- 3.7 Clause 14 (b) of the Agreement gives OP-1 discretion to increase the number of floors and number of apartments arbitrarily.
- 3.8 Clause 14(2) of the agreement is gross violation of Section 6(1) & (2) of Haryana Apartment Ownership Act, 1983(HAOA). According to HAO Act, 1983, Act the common areas and facilities cannot be altered without the consent of all the apartment owners.
- 3.9 With Clause 19 (b), OP-1 has retained with itself the right to allot, sell or transfer any interests in the common areas and facilities to any flat buyer or to the maintenance agency.
- 3.10 With Clause 21, the liability of defaults and violations of provisions of HAOA are fastened on the apartment allottees, while OP-1 has absolved itself in this respect.
- 3.11 In view of clause 29, the buyer shall not be entitled to assail this agreement on the ground of want of mutuality even if any stipulations herein are held to be lacking mutuality. This clause is depriving the flat allottees of all the legal rights available to them.
- 3.12 Clause 11 provides that under exceptional and force majeure circumstances, the OP-1 may charge escalation in the cost of construction of the flat as per practice and norms adopted by PWD though it was never disclosed in its advertisement or application form.
- 3.13 The parameters framed for any building by HUDA (Execution of Building) Regulation, 1979 have been blatantly violated by OP1. No clearance has been taken from the necessary institutions with respect to the maximum height of the building and for the fire safety.
- 3.14 The Buyers Agreement is heavily weighted in favour of OP1. OP-1 is empowered to charge exorbitant rate of interest @ 24% per annum from the allottees in case of delay in payment whereas the liability of OP-1 has been restricted to a payment of Rs.5/- per sq.ft. in case of delay in completion of the project.
4. The matter was considered by the Commission in its meetings held on 08.03.2011, 22.03.2011 and 06.04.2011 and proper opportunities have been given to the informant to present his case.
5. The issues for consideration before the Commission are whether the allegations in the present matter involve any Competition issue. If so, whether the opposite parties are engaged in any anti-competitive activities which are in violation of Section 3 and/or Section 4 of the Act.



6. The Commission has considered the facts and averments furnished in the information and have scrutinized the entire materials submitted by the informant. The relevant market in the present case can be considered as "multistoried residential apartments in the geographical area of Gurgaon". From the information available on public domain it is noted that there are innumerable apartments built by many builders in the market. Prominent builders like DLF, Emaar MGF, Vatika, Tata Housing, Ireo, Unitech and Ramprastha etc., stand in the forefront of developing residential construction segment. As per the information available on the public domain there are about 115 residential areas in Gurgaon.
7. In view of the foregoing factual position, it can be inferred that OP-1 cannot operate independently of its competitive forces. The buyers have liberty to choose apartments constructed by other companies depending on price and quality of the residential apartments. OP-1 is also not in a position to affect its competitors as each of its competitors has its own credibility and financial sources.
8. The informant was also not able to put any cogent material to establish that OP-1 is in a dominant position in the relevant market in the present case. Therefore, in the absence of any material, *prima facie*, no violation of Section 4 is made out.
9. There is no allegation of any agreement between OP 1 and other enterprises engaged in similar or identical business or practice or decision adopted by any builders' association operating in the relevant market. Therefore, none of the clauses of Section 3(1) read with 3(3) or 3(4) is applicable to the facts of the case.
10. 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 an investigation into the matter under Section 26 (1) of the Act and matter deserves to be closed.
11. In view of the above discussion the matter relating to this information is hereby closed under Section 26 (2) of the Competition Act.
12. Secretary is directed to inform the informant accordingly.

Certified True Copy



S. Parkash
29/4/2011
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Office Manager
Competition Commission of India
Government of India
New Delhi