



**COMPETITION COMMISSION OF INDIA**

**Case No. 26 of 2018**

**In Re:**

**Shri D.K. Srivastava  
Chamber No. F-713  
Karkardooma Court Complex,  
Delhi-110032**

**Informant**

**And**

**UP Housing & Development Board  
104, Mahatma Gandhi Road  
Lucknow, Uttar Pradesh- 226001**

**Opposite Party**

**CORAM**

**Mr. Sudhir Mital  
Chairperson**

**Mr. Augustine Peter  
Member**

**Mr. U.C. Nahta  
Member**

**Mr. Justice G.P. Mittal  
Member**

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

1. The present information has been filed by Shri D.K. Srivastava ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against UP Housing & Development Board ('the Opposite Party'/ OP) alleging contravention of the provisions of Sections 3 and 4 of the Act.



2. The Informant is stated to have applied for a Lower Income Group (LIG) residential flat developed by the OP, located at Brahmputra Enclave in Sector-7, Siddharth Vihar, Ghaziabad, Uttar Pradesh.
3. It is stated that subsequently, the Informant was allotted through draw of lots, an LIG flat on the 3rd floor bearing number 07/B-11/401. The OP had in its project brochure dated 11.03.2013, estimated the cost of the LIG flat to be around Rs. 11.75 Lacs. However the OP, *vide* its demand letter dated 26.12.2013, with *mala fide* intention for extracting more money, increased the cost of the flat to Rs. 13.90 Lacs. The same was paid by the Informant with interest as per the schedule of payment mentioned in the said letter.
4. However, further, the OP again raised an additional demand for Rs. 2,07,067/- in the form of increase in the estimated cost of the flat, Rs. 28,000/- as restoration charges, Rs. 1748/- as Service Tax and Rs. 33,543/- on account of Goods and Services Tax (GST), threatening to cancel the allotment of the flat and non-delivery of its possession, in case this additional demand totaling to Rs. 2,70,358/- is not paid with an additional levy of 13.5% *per annum* penal interest, for the delayed period. Such additional demands by the OP alleged to be abuse of dominant position by directly or indirectly imposing unfair conditions.
5. Further, the direction of the OP to pay GST of Rs. 33,543/- itself is abuse of dominant position. The Informant has submitted that being a purchaser of a residential flat, he is not liable to pay any GST and the same has also been clarified by the NOIDA Authority *vide* its letter dated 18.01.2018. Similarly, the Informant has stated that direction of the OP to pay additional Service Tax of Rs. 1748/- is also not sustainable, as the Informant has already paid the same. The direction of the OP to pay restoration charges amounting to Rs. 28,000/- also amounts to abuse of dominant position as the allotment of the flat was never cancelled by the OP.



6. Lastly, it has been alleged that the OP failed to deliver the possession of the flat within 2 years from the date of draw *i.e.* 17.12.2013, as per the terms and conditions mentioned in the project brochure. Hence, on account of such failure, the Informant has prayed the Commission to direct the OP to repay the Informant the amount deposited till date by him *i.e.* Rs. 15,33,175/- along with interest @ 13.5 % p.a.
7. The Informant has claimed that the aforesaid arbitrary conduct of the OP has caused appreciable adverse effect on the competition within India in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act. The Informant has also alleged that the arbitrary determination of the sale price by the OP is in violation of the provisions of Section 4(1), Section 4(2)(a)(i) and Section 4(2)(a)(ii) of the Act.
8. Based on the above averments and allegations, the present information has been filed by the Informant against the OP, alleging contravention of the provisions of Sections 3 and 4 of the Act.
9. The Commission has perused the information and the documents filed therewith and also considered the material available in the public domain.
10. At the outset, the Commission notes that though the Informant has alleged contravention of the provisions of both Sections 3 and 4 of the Act, yet looking at the nature of the allegations, the provisions of Section 3(3)(a) read with Section 3(1) of the Act have no application to the present case as the nature of agreement entered into between the Informant and the OP, does not qualify as an agreement under Section 3(3) of the Act, as the two of them are not engaged in identical or similar trade of goods or provision of services. Thus, *prima facie* no contravention of the Act is made out against the OP under Section 3(3)(a) read with Section 3(1) of the Act .



11. Moving to assessment of Section 4 violation, it is first of all imperative to examine as to whether the OP being an entity constituted by the Government of Uttar Pradesh, is an 'enterprise' in terms Section 2(h) of the Act. It is observed that the OP has been constituted under the *Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965* with the objectives to include framing and executing housing and improvement schemes and other projects; planning and coordinating various housing activities; ensure expeditious and efficient implementation of housing and improvement schemes; and maintain, use, allot, lease, or otherwise transfer plots, buildings and other properties; provide roads, electricity, sanitation, water supply and other civic amenities and essential services in areas developed by it. The activities performed by the OP are economic activities and many of them are being carried on for commercial consideration. In the present matter, the OP is rendering the services of development and sale of flats against consideration. Thus, the Commission is of the view that by virtue of the activities performed by the OP, it falls within the definition of the term 'enterprise' as defined in Section 2(h) of the Act.
12. Further, for purpose of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter it is required to assess whether the OP enjoys a position of strength required to operate independently of the market forces in the relevant market. Only when such a position is established to be enjoyed by the OP, the Commission is required to examine whether the impugned conduct amounts to an abuse.
13. The Commission observes that the Informant had applied for allotment of an LIG flat developed by the OP in its Brahmputra Enclave Residential Housing Project under the Sidharth Vihar Yojna ('the Scheme'). The residential unit in question is a flat constructed by the OP



under the Scheme for allotment to public. As the characteristics and end use of a residential flat are different from that of a commercial unit, the motive for buying the same and the factors to be considered while purchasing the same are also different in both the cases. Moreover, the Commission is of the opinion that the provision of the services of development and sale of residential plot is a distinct product compared to the services of development and sale of residential flat in terms of end use. While plots allow buyers to decide based on their own discretion the floor plan, number of floors, structures and other specifics of dwelling unit subject to applicable regulations, no such discretion is available to the buyers of residential flats. Hence, residential flats form a separate relevant product market. Accordingly, the relevant product market in the instant case appears to be the *'market for provision of services of development and sale of residential flats'*.

14. In respect of the relevant geographical market, it may be noted that a person intending to buy a residential flat in Ghaziabad may not prefer to purchase the same in other adjacent areas of Ghaziabad because of factors such as price, distance to locations frequently commuted, locational preferences, availability of transport facilities *etc.* However the conditions of competition for demand and supply of development and sale of residential flats within Ghaziabad can be considered as homogeneous and the same can be distinguished from other neighbouring areas such as Noida and Delhi. Thus, the relevant geographic market in this case may be considered as *'Ghaziabad'*.
15. Thus, the relevant market in the present case is the *'market for provision of services of development and sale of residential flats in Ghaziabad'*.
16. On the issue of the dominance of the OP in the aforesaid relevant market, the Commission notes that in Case No. 09/2018, titled *Shri Masood Raza and Uttar Pradesh Avas Avam Vikas Parishad*, the Commission did not find the OP to be dominant in the relevant market as



defined *supra* and closed that matter *vide* order dated 11.05.2018 passed under Section 26(2) of the Act. The relevant extract from this order is reproduced below:

*“...As per the information available in the public domain, there are many developers such as Parsvanath, Mahagun, Ajnara, Supertech, Gour Sons etc. competing with the OP in the relevant market with projects of varying magnitudes and having comparable sizes and resources. Moreover, another entity of the Government of Uttar Pradesh i.e. Ghaziabad Development Authority (GDA) is operating in the relevant market and competing with the OP. Like the OP, GDA is also developing residential flats of varying size in Ghaziabad and allotting the same to the public under different schemes. It may be noted that GDA has exclusive power to undertake development work in Ghaziabad and in terms of size and resources, it is larger than the OP. With such a large number of players in the relevant market, it does not appear that OP enjoys a position of strength which enables it to operate independently of competitive forces prevailing in the relevant market or to affect its competitors or consumers or the relevant market in its favour. Since OP is not in a dominant position in the relevant market, question of abuse of dominant position by it within the meaning of the provisions of Section 4 of the Act does not arise...”*

17. Moreover, it is also observed that there are a large number of private real estate service providers developing residential flats in Ghaziabad indicating that consumers are not dependent on the OP alone for provision of real estate services. Thus, the Commission observes that the OP cannot be said to be dominant in the above- defined relevant market.



18. In view of the above assessment, the Commission is of the view that the OP does not appear to be dominant in terms of the provisions of Section 4 of the Act.
19. In view of the foregoing, the Commission is of the opinion that no case of contravention of the provisions of Sections 3 and 4 of the Act is made out against the OP and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
20. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-**  
**(Sudhir Mital)**  
**Chairperson**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U.C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G.P. Mittal)**  
**Member**

**New Delhi**  
**Date: 14/08/2018**