



In re:

Mr. Ajit Mishra Informant
603, Alankar Apartments, GH-48, Sector 56, Gurgaon-122001, Haryana
Through Mr. Neeraj Sood & Anand Kumar (Advocates)

And

Supertech Limited Opposite Party
1114, 11th Floor, Hemkunth Chamber, 89, Nehru Place, New Delhi-110019

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. H C Gupta
Member

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (retd.) S. N. Dhingra
Member

Mr. S.L.Bunker
Member

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

The informant is stated to be a resident of Gurgaon, Haryana.
The opposite party is a company engaged in the real estate business i.e. construction, development and sale and distribution of land and buildings for residential and commercial purposes etc.



2. As per the facts stated in the information, the informant booked a residential flat in the proposed advertised building, namely 'ECO VILLAGE—2' situated at GH-01, Sector-16 B, Greater Noida-201303, to be constructed by the opposite party. The informant paid 10% of the basic sale price at the time of booking the flat which was duly accepted by the opposite party and accordingly an allotment letter was executed between the informant and the opposite party on 15.04.2011. However, due to the agitations of the farmers in Greater Noida as well as the orders passed by the Hon'ble High Court of Allahabad and Hon'ble Supreme Court of India, the projects in Noida Extension were kept in abeyance by the opposite party as well as by other similar enterprises pending the resolution of dispute. Though the construction was started by the opposite party after the resolution of disputes with the farmers, the price escalation over the period of time led to an alarming increase in the construction price for opposite party and similarly placed real estate companies in Noida Extension.

3. The informant alleged that the opposite party abused its dominant position to deprive the original allottees of the flats allotted at the price duly agreed between them. Also, in order to achieve this motive, the opposite party arbitrarily and mischievously issued a cancellation letter to the informant (also other allottees) for cancellation of the flat on account of non-payment of a petty sum of Rs.3,293/-, which according to the informant was not due. This modus operandi, the informant alleged, was followed by OP and many other real estate companies operating in Noida and Greater Noida so that the cancelled flats could be re-sold to new buyers at higher prices. This was explicit from the brochures and advertisements made and issued by the opposite party (also the other similarly placed real estate companies). Hence, the informant pleaded that the enterprises (including the opposite party) being in a dominant position and having control on the production, supply and distribution of flats, arbitrarily, malafidely, mischievously, wrongly, deliberately and intentionally cancelled the allotment of the flat to the consumers, thereby contravening section 4 of the Act. The informant also alleged



contravention of section 3 of the Act stating that these enterprises colluded among themselves to act in a similar manner.

4. The Commission perused the information and heard the informant at length. Dealing with section 4 of the Act, the facts and circumstances of the matter suggests that the relevant market in the present case is the market of 'services for development and sale of residential apartments in the region of Noida and Greater Noida'. The informant alleged that the opposite party, being a dominant player in the relevant market, abused its dominant position by cancelling his allotted apartment without any reasonable basis. Before the contention of informant is analyzed, the dominance of opposite party needs to be established. It may be noted that the informant sought considerable time to supply data to substantiate his allegations of dominance but failed to bring on record any material to establish dominance of the opposite party in the relevant market. On the basis of information available in public domain of the opposite party does not appear to be a dominant player in the relevant market. In the relevant market of 'development and sale of residential apartments in Greater Noida' there were many well known real estate developers such as Jaypee, Omaxe, DLF, Unitech, etc; operating and competing with each other. Though the Opposite Party was one of the known builders in the relevant market, that fact in itself is not decisive for establishing dominance. Further, the presence of other well known builders in the relevant market negates the contention that informant or any other consumer was dependent on the opposite party to purchase an apartment. Presence of other builders of repute also shows prevalence of competition. In cannot be a case where opposite party could operate independent of competitive forces. Moreover, it may be noted that the facts and circumstances of the present case are more or less similar to case no. 28/2012, in which the Commission vide order under Section 26 (2) of the Act dated 04.10.12 held that M/s Supertech Ltd. (the opposite party) was not in a dominant position in the relevant market as defined above.

5. Since the Opposite Party, *prima facie*, does not appear to be in a dominant position in the relevant market, there seems to be no question



of abuse of its dominant position within the meaning of the provisions of Section 4 of the Act. The allegation against the opposite party under section 3 of the Act also seems to be mis-conceived as the real estate enterprises (including the opposite party) were not shown to have agreed/colluded to adopt similar practice of cancelling prior allotments with the objective to fetch higher prices.

6. For the reasons stated above, the case deserves to be closed down under section 26(2) of the Act. The Secretary is directed to send a copy of the order to all concerned.

New Delhi

Dated: 31/05/2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(H C Gupta)
Member

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