



COMPETITION COMMISSION OF INDIA

Case No. 03 of 2015

In Re:

**Shri Jitendra M. Malkan
401-A, Satyamev Complex,
Opp. Gujarat High Court, S.G. Highway,
Sola, Ahmedabad (Gujarat)**

Informant

And

**M/s Godrej Properties Ltd
4th floor, Godrej Bhavan,
4A, Home Stret, Fort Mumbai**

Opposite Party No. 1

**M/s Shree Siddhi Infrabuildcon Ltd
D-101, Ganesh Meridian,
Opp. Gujarat High Court,
S.G. Highway, Ahmedabad**

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. S L Bunker
Member**



Mr. Sudhir Mital
Member

Augustine Peter
Member

Mr. U.C Nahta
Member

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

1. The present information has been filed by Shri. Jitendra M. Malkan, (hereinafter referred to as the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (the "**Act**") against M/s Godrej Properties Limited (hereinafter referred to as the "**OP 1**") and Shree Siddhi Infrabuildcon Ltd., (hereinafter referred to as the "**OP 2**") alleging, *inter alia*, contravention of the provisions of the sections 3 & 4 of the Act by the Opposite Parties in the instant matter.
2. The Informant is a proprietorship firm engaged in the business of real estate development.
3. As submitted by the Informant, the project was proposed to accommodate a police station, fire station, world class educational institutes, hospitals, clinics and luxurious hotels. It was also to provide facilities like Malls, food courts and entertainment centers. It was averred that it is one of the two in India and 16th worldwide to be chosen by the Clinton Foundation with a goal of achieving climate positive development. The initiative seeks to



reduce the net greenhouse gas emission from the project to zero by incorporating cutting edge sustainable development taking into consideration all the aspects of development.

4. It is alleged by the Informant that after about seven months of booking the shop, the OP 1 unilaterally sought to amend terms and conditions by adding parking charges vide its communication dated 04.12.2013 through email. Subsequently, it is submitted that a revised payment plan, whereby the price of the shop was revised and enhanced from Rs.67 lakhs to Rs. 68.55 lakhs by adding Rs.1.55lakhs (inadvertently mentioned as Rs.1.56 lakhs) as car parking development charge. The Informant alleged to have, vide his email dated 02.01.2014, opposed unilateral change in the terms and conditions as not acceptable and requested OP 1 for holding a meeting to resolve the dispute. It is the Informant's submission that without responding to his requests dated 08.02.2014 and 27.03.2014, OP 1 issued a letter dated 29.06.2014 calling upon the Informant to make the payment of the balance amount by 15.07.2014 in order to avoid termination of his unit and forfeiture of the earnest money.
5. The Informant, vide his letter dated 16.07.2014, alleged to have stated that, inter alia, OP 1 was imposing the cost of the car parking in the name of car parking development charges. It is further stated that such demand has been prohibited by the Hon'ble Supreme Court of India in the case of Nehalchand Laichand Private Limited V/s Panchali Cooperative Housing Society Limited (AIR 2010 SC 3067).
6. It is alleged by the Informant that he received an Agreement to Sell from OP 1 and was told that he is bound to sign the same, failing which his booking will be cancelled and earnest money would be forfeited. It is submitted that



the Informant opposed the one sided, unfair and discriminatory conditions and refused to sign the agreement to sell unless such conditions are removed. The OP 1, as alleged by the Informant, did not pay any heed to his objections and was informed that he is bound to sign the agreement failing which the money deposited by him being earnest money shall be forfeited.

7. The Informant has cited the following terms and conditions in the Agreement to Sell to be one-sided, unfair and discriminatory:

"2.2" the purchaser hereby expressly, consents to any changes or alteration in structure described in the layout plans, design specification etc with respect to the said unit agreed to be purchased by him/her as well as to any changes or alterations in the structure of the said Building including the additional construction of upper floors and variations thereof as Enterprise and SIDDHI may be in law be entitled to or in future become entitled to with the approval of the concerned authorities and the purchaser shall not object or raise any dispute or contention whatsoever in future against alteration, modifications, the construction of such additions floors etc."

"3.5 the purchaser shall not raise any dispute or object to sale price that may be settled between the Enterprise and SIDDHI and other purchasers of flats/units in the township project"

"5.d at all times, use of the said unit or any other thereof or permit the same to be used only for the said purpose and shall not use it for, any other purpose(s) whatsoever for term of 2 years from the date of this agreement".



"5.i the purchaser shall not protest, object to or obstruct the execution of the construction work nor the purchaser shall be entitled to claim any compensation and/or damages and/or to complain for any inconvenience, hardship, disturbance or nuisance which may cause to him/her/it/them or any other person/s, for any inconvenience, hardship, disturbance of nuisance caused to the purchaser during the construction of the Township project by the enterprise"

"15.1 in the event a dispute arises in connection with the interpretation or implementation of the provision of this agreement, the parties shall attempt in the first instance to resolve such dispute through amicable discussion. If dispute is not resolved through amicable discussion within 30 days after commencement of discussions or such longer period as the parties agree in writing, then either party may refer the dispute for resolution before a sole Arbitrator as mutually appointed by the parties thereto. In case of the absence of the Sole Arbitrator, so appointed, for whatsoever reason, the Enterprise and SIDDHI shall appoint another Sole Arbitrator and the purchaser hereby gives his/her/its express consent for the same and will not raise any objection thereto. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996, as amended from time to time. The arbitration proceedings shall be in Ahmedabad. The fees of the Arbitrator shall be borne and paid equally between Enterprise and SIDDHI on one part and the purchaser on the second part".

"17.9 no failure or delay by the enterprise or SIDDHI in exercising any right or remedy provided by law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any



subsequent time and no single or partial exercise of it or the exercise of any other right or remedy".

8. The Informant has stated that he was ever ready and willing to perform his part of the contract by making timely payment of the invoices raised by the OP 1.
9. The Informant has determined the relevant market as the market of *"provision of service for sales of a shop in a mall which is right in the middle of a self-sufficient climate positive township within Ahmedabad Municipal Corporation area"* and has alleged that OP 1 has abused its dominance by imposing unfair conditions in its Agreements with the buyers.
10. To substantiate the delineation of the relevant market, the Informant has submitted that although several malls have come up in the city of Ahmedabad, like Alpha one Mall, Acropolis Mall, Gulmohar Park Mall, Ahmedabad Central Mall, Isckon Mega Mall, Himalaya Mall, all the above said malls are 'standalone' malls.
11. The Informant has further submitted that they are different from a mall which is right in the middle of a self-sufficient township as for a resident, it is just a walking distance to the mall whereas in case of a standalone mall, distance from one's residence to the mall may be up to 10 kms. Therefore, according to the submissions of the Informant, the main differentiating factor between a standalone mall in the city and a mall which is a part of self-sufficient township is cost of transportation and distance as it would not be possible for a resident to visit a standalone mall without vehicle whereas a resident of township can just walk down to the mall. Therefore, it is the Informant's submission that it must be held that the condition of competition



for sales of a shop in a mall which is right in the middle of a self-sufficient township is distinctly homogenous and different and can be distinguished from the conditions prevailing in shops available in the standalone mall.

12. The Informant has submitted that the project is the only self-sufficient township which has come up in the geographical area covered by Ahmedabad Municipal Corporation (AMC).
13. The Informant has further submitted that although there are other townships in the relevant market apart from the project developed by the OP 1 like Sahara City Homes, Tata SShubh Griha, Adani's Shantigram, Apple Wood, etc., no township allegedly exerts a competitive constraint on the project of OP 1. It is stated that with respect to the Sahara City Homes - the project is stalled, Tata Shubh Griha – the township does not have a shopping mall, Adani's Shantigram – there is no booking of shops at present and Apple Wood – there is no mall in the middle of township.
14. According to the Informant's submission, considering market share for a shop in a mall for a township, OP 1 enjoys 100% market share and it drops to 83% in case all the townships including townships in Ahmadabad district that too outside outer ring road (S.P Ring Road) are taken into consideration.
15. The Informant has stated that the project developed by OP 1 is one of the two projects in India and 16th worldwide chosen by the Clinton Foundation with a goal of achieving a climate positive development, which makes it different from all other townships in the country except the one township



coming up in the state of Rajasthan.

16. The Informant has further submitted that the OP 1 has clear early mover's advantage and occupies a leadership position as real estate is a sector with natural entry barrier due to high cost of land and brand value of incumbent market leaders and due to its level of vertical integration, presence in real estate sector and financial strength is way ahead of its competitors. It is also the Informant's submission that the fact of booking of 880 flats of phase-1 within just one week as against average monthly sale of 20 to 30 flats per month of its competitors establishes beyond province of doubt that the OP 1 is in a position of strength and is having dominant position in market.
17. The Informant has also submitted that the agreement would be covered by the provisions of section 3 of the Act irrespective of whether any OP is holding a dominant position in the market or not.
18. The Commission has perused the material placed on record. It is noted that the allegations of the Informant primarily pertain to contravention of section 4 of the Act by OP 1. Section 4 of the Act prohibits abuse of dominance by a dominant enterprise in a relevant market. Accordingly, determination of relevant market is must in order to examine the alleged abusive conduct of OP 1.
19. As per the provisions of section 2(r) the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. The Commission has identified the relevant product market as the market for "*market for commercial space in shopping malls*".



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20. With respect to the view of the Informant, the Commission opines that shop/commercial space in shopping mall situated in an integrated township is not a separate product market. This is because no shopping mall can cover all the needs of the customers situated in the township (with varied tastes and preferences). It cannot be held that those customers will shop for all their needs from the shops situated in the shopping malls of those townships. This is because preferences of customers arise in terms of basic needs and beyond. The shops in shopping malls of integrated townships can at best cover basic needs fully but cannot claim to fulfill all the demands of the customer. Thus, it seems that shops/commercial spaces situated in shopping malls outside the integrated townships can compete with those situated inside the integrated townships.
21. According to the Commission, the relevant geographic market would be Ahmedabad as the conditions of competition in Ahmedabad is peculiar in itself. The consumers looking for a commercial space in Ahmedabad may not prefer other neighbouring areas considering the location of business establishment, the market condition, returns, transportation costs, etc. Therefore, the relevant market in this case would be the market for *“commercial space in shopping malls in Ahmedabad”*.
22. After demarcation of the relevant market, the next step in the analysis is to study whether the OP 1 is dominant or not in the relevant market.
23. As per the Informant, the project in question is the only project sanctioned under the Special Township Policy in AMC area and barely has any competitor in the market and its brand value, high cost of land, financial strength, presence in real estate sector, etc. make it a dominant player in the relevant market. It is further submitted that the said township is the only



township chosen by the Clinton Foundation for a goal of achieving a positive climate development and from a consumer's point of view, in such a case, the OP 1 hardly have any competition in the relevant market.

24. As per the information gathered from the websites of other real estate players in Ahmedabad, the Commission observes that there are many other organized real estate companies in the relevant market which have developed malls in Ahmedabad like Alpha One Mall by Alpha G Corp., Himalayan Mall by Himalyan Groups, Iscon Mega Mall by ISCON group, Ahmedabad Central Mall and Gulmohar Mall by Navratna Group and in addition to this there are proposed malls also to be developed by Applewoods, Adani Group, etc. in their respective proposed township projects. The Commission also notes from the website of OP 1 that it has only one project in the geographic area of Ahmedabad i.e. the Garden City project.
25. In view of the above, the Commission observes that OP 1 cannot operate independently of competitive forces prevailing in the relevant market and also cannot affect its competitors or consumers in the relevant market in its favour. Thus, it is the opinion of the Commission that OP 1 is not dominant in the relevant market.
26. In the absence of dominance of the OP 1 in the relevant market, it's conduct need not to be examined under the provisions of section 4 of the Act.
27. The Commission is of the opinion that the present case does not involve any issue which contravenes the provisions of the section 3 of the Act.
28. In the light of the above analysis, the Commission finds that, *prima facie*, no case of contravention of the provisions of section 4 of the Act is made out



against the Opposite Parties in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

29. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S.L.Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Dated: 23.04.2015