



COMPETITION COMMISSION OF INDIA

Case No. 05 of 2016 & Case No. 06 of 2016

Case No. 05 of 2016

In Re

Mr. Mukul Kumar Govil

Mrs. Kiran Govil

Informants

And

ET Infra Developers Pvt. Ltd.

Opposite Party No. 1

Noida Development Authority

Opposite Party No. 2

With

Case No. 06 of 2016

In Re

Mrs. Anshoo Bansal

Mr. Amit Bansal

Informants

And

ET Infra Developers Pvt. Ltd.

Opposite Party No. 1

Noida Development Authority

Opposite Party No. 2



CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Mr. Justice G. P. Mittal
Member

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

1. The information bearing Case No. 05 of 2016 has been filed under Section 19(1)(a) of the Competition Act, 2002 (**hereinafter, the ‘Act’**) by Mr. Mukul Kumar Govil & Mrs. Kiran Govil against ET Infra Developers Pvt. Ltd. (**hereinafter, ‘OP 1’**) and Noida Development Authority (**hereinafter, ‘OP 2’**) alleging, *inter alia*, contravention of the provisions of Sections 3 & 4 of the Act.
2. Another information bearing Case No. 06 of 2016 has been filed under Section 19(1)(a) of the Act by Mrs. Anshoo Bansal & Mr. Amit Bansal against OP 1 and OP 2 alleging, *inter alia*, contravention of the provisions of Sections 3 & 4 of the Act.
3. The Commission considered both the information and found that though these information have been filed separately by different Informants, they are against the same opposite parties, relate to same project and bring out similar allegations.



As the facts & allegation raised therein are substantially similar, the Commission is satisfied that these can be clubbed together. Therefore, this common order shall dispose of both the information.

4. OP 1 is stated to be a private limited company, engaged in the development of residential and commercial space. It has been stated that both the Informants had booked single office unit each in the “World Trade Tower – Business Avenue” (WTT) project developed by OP 1 at Noida. In this regard, OP 1 has also issued allotment letters to both the Informants.
5. Both the Informants have identified OP 2 as Noida Development Authority but as such no such authority exist. It appears that both the Informants are referring to New Okhla Industrial Development Authority (**OP 2**). OP 2 is constituted under the U.P. Industrial Area Development Act, 1976, *inter alia*, to acquire land in the notified area through Govt. of UP under Land Acquisition Act, 1894 or by way of agreement; to prepare Master Plan for development of the area; to demarcate and develop sites for various land uses; to allot plot/properties as per regulations; to regulate the erection of buildings and setting up industries; and to provide infrastructure and amenities.
6. Both the Informants have alleged that OP 1, in collusion with OP 2, to avoid pressure from allottees, had issued an illegal/exorbitant demand notice for a certain amount to be deposited; but had not handed over the possession within the stipulated period as committed in the allotment letters.
7. As per clause 19 of the allotment letter, OP 1 had to deliver the fully completed office space within 36 months from the date of allotment letter. However, allegedly OP 1 has not offered possession even after the expiry of more than 5 years.



8. In terms of clause 21 of the allotment letter, OP 1 is liable to pay compensation at the rate of Rs.40/- per sq. ft. per month for the period of delay in possession. Both the Informants have alleged that OP 1 has failed to pay the said compensation and interest thereon at the rate of 18% p.a. for delay in payment of compensation. Further, as a result of delay in handing over possession, both the Informants could not operate their businesses through the said offices which according to them has also resulted in loss of goodwill.
9. Both the Informants have further alleged that OP 1 *vide* demand notices dated 19th September, 2015 had intimated them to pay the remaining amount, actually due only at the time of possession. However, allegedly the said office units are not yet ready for possession as flooring is incomplete, electric wiring and water connection are yet to be done and public utility is not in existence. It has also been averred that no objection certificate (NOC) and permissions have also not been obtained by OP 1 from various government agencies.
10. It has been alleged that OP 1 had also issued demand letters on 28th November, 2015 requiring both the Informants to pay various exorbitant and illegal charges such as one time lease rent, annual lease rent for period prior to the execution of lease deed, LEED Pre-certified Gold Rated Green Building Charges and electrification charges.
11. Both the Informants have also stated that since OP 1 has already received around 95% of sale consideration for the said office units from them, their purchasing power has been curtailed and as a result, they have been denied market access to purchase other office units.
12. With regard to dominance, both the Informants have stated that OP 1 is the only developer for whom OP 2 has allotted land for development of commercial project in a prime location. Hence, OP 1 has been alleged to enjoy a dominant position.



13. Both the Informants have prayed to the Commission, *inter alia*, to restrain OP 1 from demanding various unfair and exorbitant charges; to direct OP 1 to pay compensation for delay in possession; and initiate enquiry under Section 26(1) of the Act.
14. The Commission has given a careful consideration to the material available on record. Since the allegations pertain to violation of the provisions of Section 4 of the Act, the relevant market in terms of Section 2(r) of the Act is required to be delineated before examining the alleged abusive conduct of OP 1.
15. The Commission notes that the matter relates to sale of commercial/office units in a project developed by OP 1. The real estate market can be broadly classified into two main segment: residential and commercial. Residential segment can be further sub-categorized into residential apartment/ flat and plots. The Commission observes that sale of commercial units form a separate relevant product market in terms of the provisions of the Act, because the intention and factors considered while buying a commercial/office unit are different from buying a residential flat or plot. Further, the requirements and prospects of a consumer buying a commercial/office unit are also different from those of a consumer buying a residential flat or plot. Thus, taking into account factors such as substitutability, characteristics of service offered, price and intended use "*provision of services for development and sale of commercial space*" appears to be the relevant product market in the present case.
16. With regard to the relevant geographic market, the Commission is of the view that the consumers, looking for a commercial/office unit in 'Noida & Greater Noida', may not prefer other areas. Various factors like availability of office space, location of business establishment, transport connectivity *etc.* play a decisive role



in a potential buyer's decision making process while choosing a commercial/office unit in a particular area. Further, the geographic region of 'Noida & Greater Noida' exhibits homogenous and distinct market conditions as compared to other regions of NCR such as Faridabad, Delhi and Gurgaon *etc.* Considering these aspects, the Commission opines that the relevant geographic market in the instant case would be 'Noida & Greater Noida'. Thus, the relevant market would be the market of "*provision of services for development and sale of commercial space in Noida & Greater Noida*".

17. As regards dominance, the Commission notes that the underlying principle for assessing dominance of an enterprise is linked to the market power enjoyed by the enterprise. An enterprise could be regarded as dominant if it enjoys/possesses a position of strength in the relevant market, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour. It is observed that no data has been provided by both the Informants in support of their assertion of dominance of OP 1 in the relevant market. The Commission, however, observes that other than OP 1, there are many other real estate developers such as Jaypee Green, Omaxe, Supertech Limited, AIRWIL, Wave City Center, Lotus Greens and Saviour Builders Pvt. Ltd. *etc.*, rendering similar services in the relevant market. The competitors of OP 1 are found to have projects of varying magnitude and are comparable with OP 1 in terms of size and resources. The presence of other players indicates that the buyers have various options. Accordingly, OP 1 does not appear to enjoy a dominant position in the relevant market. In the absence of dominance, the examination of alleged abusive conduct does not arise. Therefore, the Commission is of the view that there is no contravention of provisions of Section 4 of the Act in the instant matter.
18. The Commission observes that both the Informants have also alleged collusion between OP 1 and OP 2. It has been stated that OP 1 is the only developer for



whom OP 2 has allotted land for such commercial project in prime location. The Commission observes that other builder have also been allotted lands for development of commercial space as discussed supra and there does not exist any information as such to support the contention that there exists an agreement between OP 1 and OP 2 which is in violation of the provisions of Section 3 of the Act.

19. In view of above, no case of contravention is made out against the opposite parties under Sections 3 or 4 of the Act. Accordingly, these cases are hereby directed to be closed under Section 26(2) of the Act.
20. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

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

New Delhi
Date: 29.03.2016