



**COMPETITION COMMISSION OF INDIA**

**Case Nos. 34, 37 & 38 of 2020**

**Case No. 34 of 2020**

**In Re:**

**Confederation of Real Estate Developers  
Association of India - Western Unity Promoters  
Gaur Biz Park Plot No 1, Abhay Khand II  
Indirapuram  
Ghaziabad-201014**

**Informant**

**And**

**Greater Noida Industrial Development Authority  
Plot No. 01, Knowledge Park-04  
Greater Noida  
Gautam Budh Nagar-201308**

**Opposite Party**

**WITH**

**Case No. 37 of 2020**

**In Re:**

**Confederation of Real Estate Developers  
Association of India - Western Unity Promoters  
Gaur Biz Park Plot No 1, Abhay Khand II  
Indirapuram  
Ghaziabad-201014**

**Informant**

**And**

**New Okhla Industrial Development Authority  
Administrative Complex  
Sector 6, Noida -201301  
District - Gautam Budh Nagar  
Uttar Pradesh, India**

**Opposite Party**



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Fair Competition  
For Greater Good

**WITH**

**Case No. 38 of 2020**

**In Re:**

**Supertech Limited  
1114, Hemkunt Chamber 89  
Nehru Place  
New Delhi – 110019**

**Informant**

**And**

**Greater Noida Industrial Development Authority  
Plot No. 01, Knowledge Park-04  
Greater Noida  
Gautam Budh Nagar-201308**

**Opposite Party**

**CORAM**

**Mr. Ashok Kumar Gupta  
Chairperson**

**Ms. Sangeeta Verma  
Member**

**Mr. Bhagwant Singh Bishnoi  
Member**

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

1. This common order shall govern the disposal of Case Nos. 34, 37 and 38 of 2020 as subject matter of all these Information(s) is substantially the same. In Case Nos. 34 and 38 of 2020, the Informations have been filed against Greater Noida Industrial Development Authority (GNIDA) whereas in Case No. 37 of 2020, the Information has been filed against New Okhla Industrial Development Authority (NOIDA). As such, facts have been noted from Case Nos. 34 and 38 of 2020 and a common analysis has been done in respect thereof in this order. In terms of penultimate order, the decision on these Informations shall also govern the



determination of Case No. 37 of 2020 as the issues are substantially similar and analogous.

**Facts:**

Case No. 34 of 2020:

2. The present Information has been filed by Confederation of Real Estate Developers Association of India - Western Utility Promoters ('CREDAI -WUP') on 18.09.2020 under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Greater Noida Industrial Development Authority ('the Opposite Party'/ 'OP'/ GNIDA) alleging abuse of dominant position in contravention of the provisions of Section 4 of the Act.
3. The Informant is Western Uttar Pradesh Chapter of CREDAI, which is stated to be the apex organization representing 20,000 real estate developers spread across 21 States since its inception in the year 1999.
4. GNIDA has been incorporated and established under the UP Industrial Area Development Act, 1976 and is the sole/ nodal authority responsible for development of Greater Noida region which is developed as a metropolitan centre providing for quality urban environment, to attract economic activities and population to decongest Delhi. Greater Noida region is stated to encompass 293 villages.
5. It has been submitted that GNIDA has abused its dominant position in contravention of the provisions of Section 4 of the Act by way of its conduct as well as imposition of one-sided conditions on the members of CREDAI through the lease deeds. The members of CREDAI have gravely suffered at the hands of GNIDA due to the practice followed/ actions as well as in- actions of the authority. The main grievances against GNIDA, as summarised by the CREDAI-WUP, are stated to be in relation to:



- Non-disclosure and allotment of encumbered land (riddled with disputes) to the developers and charging premium as well lease rent for the same;
  - Demanding additional farmer compensation from the developers even though no document- the scheme, allotment letter and the lease deed stipulated such payment obligations;
  - Demanding hefty sums of money and imposing interest and penal interest when the developers were not even given peaceful possession of the land;
  - Non- grant of zero period when (a) the project land was not handed over to the developers; (b) failure on GNIDA's part to execute external developmental works.
  - Complete in- action on the multiple representations by the developers
  - One sided clauses in the lease deed such as (a) no liability on GNIDA of providing clear land to the developers, whereas the developers have to adhere to strict timelines; (b) no clause which grants the developer any choice to opt for cancellation and refund of the deposited amounts in the event of any deviation or breach on part of GNIDA.
6. It has been averred that the above is an inclusive list of abusive practices of GNIDA and the abuses have been detailed in the Information. The conduct of GNIDA warrants an investigation by the Commission as the practices being followed by GNIDA are clearly in contravention of the provisions of Section 4 of the Act and are causing irreparable losses to the developers as well as harming competition in the market. If the Commission does not intervene, grave prejudice will be caused to the members of CREDAI as well as other developers operating in the market. The abusive practices of GNIDA will lead to ousting of such developers and ultimately GNIDA itself becoming the sole developer itself in the Greater Noida region.



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7. Based on the above allegations and averments, CREDAI-WUP has prayed the Commission to pass an order under Section 26(1) of the Act directing investigation in the matter; pass cease and desist order against GNIDA; and direct it to discontinue the abusive practices.

Case No. 38 of 2020

8. The present Information has been filed by Supertech Limited ('Supertech') on 23.09.2020 under Section 19(1)(a) of the Act against GNIDA alleging abuse of dominant position in contravention of the provisions of Section 4 of the Act. It is averred in the Information that Supertech is a real estate developer in National Capital Region and is further stated to have created various landmark projects. GNIDA incorporated on 28.01.1991, is an Uttar Pradesh (UP) Government undertaking and has been established under Section 3 of the UP Industrial Area Development Act, 1976 (UP Development Act) as a body corporate. It is the sole/nodal authority responsible for the development of the Greater Noida region.
9. It has been stated in the Information that for the development of land parcels in the region, GNIDA floats various schemes which details land use, terms and conditions for development, eligibility details, bidding details etc. and basis these schemes, potential bidders (developers) submit bids for the development of the land parcel. Thereafter the successful bidder is given an allotment letter and then a lease deed is entered into between GNIDA and the proposed developer. A developer who proposes to develop any land parcel therefore must apply to GNIDA, since it is the sole authority which allots the land to the developers. The relationship between the parties is of a 'lessor' and 'lessee' and the land allotted to a developer is on 'leasehold' basis with only developmental rights.
10. Supertech being a real estate developer, applied for allotment of various land parcels by submitting bids to the schemes floated by GNIDA. For the purposes of the instant Information, Supertech has made reference to the alleged abusive



practices adopted by GNIDA *qua* the four projects allotted to it in the Greater Noida region, *viz.* Eco Village 1; Eco Village 2; Eco Village 3; and Sports City. It has been submitted that in relation to these projects, GNIDA has acted in a completely abusive manner and has exploited Supertech in violation of the provisions of Section 4 of the Act.

11. Supertech has stated that GNIDA is dominant in ‘the market for acquisition and allotment of land for development of group housing projects in Greater Noida’ as there is no other enterprise which has been empowered to carry out its functions.
12. On the alleged abusive conduct of GNIDA, it was submitted that GNIDA has abused its dominant position in contravention of the provisions of Section 4(2)(a)(i), 4(2)(a)(ii), Section 4(2)(c) and Section 4(2)(d) of the Act, consistently by acting in a completely abusive and arbitrary manner.
13. It was submitted that Supertech has gravely suffered by the practice followed/ actions as well as in- actions of GNIDA. The main grievances against GNIDA have been summarised by Supertech which are stated to be in relation to the following:
  - Non-disclosure and allotment of encumbered land (riddled with disputes) to the developers and charging premium as well lease rent for the same;
  - Demanding additional farmer compensation even though there is no clause in the lease deed which requires Supertech to undertake this obligation;
  - Demanding hefty sums of money and imposing interest and penal interest on Supertech despite not giving peaceful possession of the land;
  - Non-intervention despite several requests for solving of issues such as violence by villagers, obstruction due to unmoved objects from the allotted land;
  - Abusing the discretion as an authority by demanding inappropriate and arbitrary amounts of additional farmer compensation.



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- Non- grant of zero period despite the fact that the project land has not been handed over to Supertech.
14. It has been submitted that none of these facets were known to Supertech at the time of allotment. Furthermore, GNIDA continues to raise demands, sending coercive notices, levying interest and when Supertech attempts to settle issues, GNIDA resorts to arm twisting tactics and threatens cancellation of allotment, initiation of recovery proceedings and eventually to cancel the lease deed itself. Further, for all 4 projects, GNIDA uses its dominance as the sole authority in the region and arm twists developers to succumb to GNIDA's abusive demands.
  15. It was further submitted that GNIDA has included such patently one-sided clauses in the lease deed that the developer has no right but to succumb to the impositions by GNIDA. For instance, the lease deed does not contain any provision wherein (a) GNIDA has an obligation of providing clear land to the developers, whereas the developers have to adhere to strict timelines for payments; (b) no clause which grants the developer any choice to opt for cancellation and refund of the deposited amounts in the event of any deviation or breach on part of GNIDA. The projects could have been completed in 3-4 years from the date of allotment for handing over to buyers had there been no dispute on the allotted land, however, the unfair and abusive conduct of GNIDA, resulted in delay in construction of projects.
  16. It was also averred that Supertech as well as other developers in the market have gravely suffered as the disbursement of home loans from Banks started depleting; lack of sufficient cash flow and consequently the pace of construction slowing down; the overrun of the project cost started taking place; litigation by home buyers due to delay in construction has commenced. Due to these reasons, the projects have become almost commercially unviable. Generally, to complete the projects from the time of conception to handing over, the time period varies between 4-5 years, however in the present case because of the monopolistic conduct and unfair abusive policies of GNIDA the aforesaid projects were delayed and construction



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was stalled for years. GNIDA has failed to discharge its functions in a fair manner. It is incumbent on a dominant authority like GNIDA to allot unencumbered land with clean legal title, fit for the development. However, to the utter dismay of Supertech, GNIDA abused its dominant position by imposing such unfair terms and conditions that Supertech is on verge of being ousted from the market. Supertech had obtained loans from various banks and financial institutions/ market for meeting the initial financial requirement for the allotment of the plots of land. The agitation by the farmers, litigations at the behest of the farmers and the authorities, coupled with serious local administrative issues culminated into prolonged suspension/ slowing down of construction work. This slowing down in construction of the projects further resulted in default in payment dues (including interest and penalty thereof) to the authorities and various financial institutions including Banks by Supertech.

17. Based on the above allegations and averments, the Supertech has prayed the Commission to pass an order under Section 26(1) of the Act directing investigation in the matter; pass cease and desist order against GNIDA; and direct it to discontinue the abusive practices. Also, an application seeking interim relief under Section 33 of the Act has been moved by Supertech.
18. The Commission considered these Informations and decided to obtain reply of GNIDA thereon. The Informants in both the cases were also allowed to file their rejoinder(s) thereto. The replies and rejoinders have since been received.

### **Reply of GNIDA**

19. GNIDA filed its replies on similar lines in both the cases and a gist thereof is being noted.
20. At the outset, it was submitted by GNIDA that the lease deeds are private contracts entered into between the parties and as such the nature of disputes, is contractual in nature and the same ought to have been filed before the appropriate forum. It





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was also pointed out that the Information has been filed in a belated manner and in bad faith to evade financial obligations due by developers to GNIDA. Had the members of CREDAI believed that the terms of the agreements were unfair and arbitrary, they could have raised the concern at an appropriate forum much earlier. It was also stated that the real estate developers are undergoing financial stress and failing to fulfil their obligations towards homebuyers due to external factors such as increase in circle rates, amendments in real estate law and general reduction in real estate prices and demand for the same, *etc.* This is evident from the nature and number of disputes that the members of CREDAI are involved before various forums.

21. On the definition of relevant market, it was submitted that the relevant market definition given in the Information is misconstrued and unfairly narrowed. It should have been delineated as “*the market for transfer of land for development of Residential Projects in the territory of India.*” In respect of its dominant position, GNIDA stated that it is not a dominant player in this relevant market.
22. Adverting to the allegations pertaining to abuse of dominant position, GNIDA submitted that demand for additional farmer compensation has been made upon the developers in terms of a decision taken in a Board meeting which itself was taken pursuant to an order of the Hon’ble High Court granting GNIDA the right to determine the nature of appropriation. It was pointed out that the Informant(s) had been asked to undertake this obligation immediately after the decision was taken in 2013. If the Informant(s) were aggrieved of this policy decision, the same should have been challenged before an appropriate court.
23. With respect to undertaking external works, GNIDA submitted that the work of providing external infrastructure is a part of its obligations and it has been undertaking the external work of constructing approach roads, drains, culverts, electricity distribution facilities, transmission lines, water supply, sewerage *etc.* on a massive scale in the region.



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24. On the issue of granting of 'zero period', GNIDA stated that the grant of zero period is a policy decision and details of grant and non-grant of the same had been communicated to the lessees from time to time. Furthermore, if a developer disagrees with the non-grant of zero period - a policy decision - the same should be done at an appropriate forum.
25. On the allegation of allotment of encumbered land (riddled with disputes) to the developers, GNIDA denied that peaceful possession of the land was not transferred to the developers. It was pointed out that the developers had also consented to the same while signing the lease deeds. To buttress the point, GNIDA drew attention to the following clause in the lease deeds:

*“The total area of the sub-divided plot as per Lease Plan is 179557 sq m out of which an area of 174092 sqm are in possession of the Lessor of which Lease Deed presently executed and accordingly consideration is determined. Rest affected area i.e. 5465 sqm, which is not in possession of the lessor, the lessee do hereby commits that whenever lessor offers this affected areas possession, they will execute.”*

26. Further, GNIDA also refuted the allegations pertaining to clauses in the lease deed by again submitting that allegations raised are contractual in nature. It was pointed out that the parties to the lease deed enter into the agreement after the bidding process wherein the bid, which is a public document lays down all the necessary terms and conditions. This is followed by an acceptance letter and an allotment letter which signifies consent of both the parties.

### **Rejoinder of Informants**

27. In its rejoinder, CREDAI-WUP submitted that the Information does not pertain to any contractual dispute and the Commission has complete jurisdiction to examine the issues raised in the Information. It also refuted the delineation of relevant market by GNIDA and contended that it holds a dominant position in the relevant



market identified by CREDAI-WUP. It was alleged that in the garb of the decision of the Hon'ble Allahabad High Court, GNIDA has attempted to shift the entire burden of payment of additional compensation on the developers when the fault for the improper acquisition lies entirely with GNIDA.

28. On the issue of non-grant of 'zero period', the Informant reiterated that its members are suffering due to non-grant of 'zero period'. It was highlighted that the only defence that has been put forth by GNIDA in this regard is that these are policy decisions and the same should be challenged before the appropriate forum - which clearly expresses monopolistic conduct of GNIDA. It was also submitted that non-provision of external development works creates hardship for the ultimate consumers *i.e.* flat buyers as well.
29. Supertech in its rejoinder submitted that dispute is not contractual in nature and no *in personam* rights are sought to be adjudicated upon, instead *in rem* appreciable adverse effects on competition concerns are brought to the notice of the Commission. It was also stated that GNIDA is an indisputably dominant entity and relevant market definition given by GNIDA is misleading. Further, the Informant in the rejoinder reiterated that GNIDA has abused its dominant position by allocating land riddled with encroachments, demanding additional farmer compensation from developers without providing any justification, issuing notices for cancellation of lease deed and non-grant of Zero Period *etc.*

**Analysis:**

30. The Commission has carefully considered the Informations and other material available on record and based on the allegations levelled in the Information, it is observed that the Informant(s) are primarily aggrieved of the alleged abusive conduct of GNIDA on account of its dominant position whereby it has indulged in abusive conduct in contravention of the provisions of the Act, as detailed in the



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Informations, besides imposing one- sided conditions through lease deeds upon the developers such as the Informants. In sum, Informations allege violation of the provisions of Section 4 of the Act by the GNIDA.

31. Before advertng to the merits of the case, it would be appropriate to deal with the preliminary issues raised by GNIDA in its reply challenging the maintainability of the present proceeding.
32. It was submitted on behalf of GNIDA that acquisition and allotment of land takes place by operation of law based on the principle of *eminent domain* and the same is in exercise of a sovereign right. It is submitted that the exercise of sovereign functions of the State cannot be considered as an economic or commercial activity and hence does not fall within the ambit of the Act. In the instant case, it was pointed out that GNIDA is discharging statutory functions, which in the ordinary course, would have been discharged by the State, as a part of its sovereign function. Such activity of acquisition of land, especially in furtherance of exercise of *eminent domain* could never form the basis for determining a 'market'. There is no market possible for acquisition and allotment of land.
33. The Commission has examined the plea and is of the considered opinion that the same is not only misconceived but runs contrary to the scheme and intent of the Act. Before examining this plea, it is pertinent to clarify that in the present proceedings, the challenge is essentially directed at the manner in which land is being allotted to the potential developers for development of group housing projects and the consequent imposition of alleged abusive terms in the lease deeds executed pursuant to such allotments besides the other conduct emanating out of this process.
34. In this backdrop, it is apposite to note that Section 2(h) of the Act defines 'enterprise' *inter alia* as a person or a Department of the Government, which is engaged in *any* activity, relating to the production, storage, supply, distribution,



acquisition or control of articles or goods, or the provision of services, *of any kind*. The definition is very wide in its amplitude and covers all activities of specified nature of any kind. Further, as per Section 2(u) of the Act, ‘service’ means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

35. The thrust of the definition of the term ‘enterprise’ is on the economic nature of the activities discharged by the entities concerned. It is immaterial whether such economic activities were undertaken for profit making or for philanthropic purpose. Thus, even non-commercial economic activities would be subject to the discipline of the Act as the Act does not distinguish economic activities based on commercial or non-commercial nature thereof. In ascertaining as to whether an entity qualifies to be an ‘enterprise’, the Commission examines this aspect from a functional than a formal approach.
36. In this backdrop, when the Departments of the Government have been captured within the meaning of the term ‘enterprise’ as provided in the definition of ‘enterprise’ in Section 2(h) of the Act, it is futile for GNIDA to contend that the statutory functions discharged by it cannot fall within the jurisdiction of the Commission. It needs no emphasis that if an entity discharges the functions of the specified nature, it is irrelevant whether such functions are discharged in exercise of statutory powers or otherwise. The activities involved in the present case are indisputably economic in nature besides being commercial and, as such, the contention of GNIDA that the Commission does not have the jurisdiction to entertain the Informations, is thoroughly untenable and is accordingly rejected. It is held that the statutory functions discharged by GNIDA are within the purview and discipline of competition law and any deviation therefrom has to be dealt with



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as per the scheme of the Act. The only exception which is carved out in the definition of 'enterprise' relates to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space. As pointed out previously, the present case relates to allotment of land to developers for development of group housing societies and the alleged abusive conduct of GNIDA in imposing unfair terms upon the developers in the lease deeds executed in pursuance and furtherance thereof. It does not relate to acquisition of land by GNIDA and as such the issue whether action taken pursuant to *eminent domain* power of the State falls within the sovereign exceptions as carved out in the definition of 'enterprise' and thereby exempted from the purview of the Act, does not arise for determination in the present case and is left open to be decided in appropriate case.

37. The other ancillary jurisdictional plea of GNIDA contending that the lease deeds are private contracts entered into between the parties and as such the nature of disputes, is contractual in nature and the same ought to have been filed before the appropriate forum, is equally misplaced. To begin with, it is noticed that GNIDA has shifted its stance in taking this plea from contending that functions discharged by it are *statutory* in nature to argue that issues raised in the instant matters are *contractual* in nature. Be that as it may, the plea that issues are contractual in nature and therefore the disputes raised by the Informants ought to have been filed before appropriate forum and not before the Commission, is misdirected. The provisions of the Act which prohibit abuse of dominant position *inter alia* categorically envisage imposition of unfair or discriminatory condition/ price in purchase or sale of goods or service, as abusive conduct. That being so, entering into contractual arrangement between the parties is clearly implicit else the issue of purchase or sale of goods or service, would not arise. It cannot be gainsaid that more often than not a dominant undertaking, in abuse of its dominant position, would impose unfair or discriminatory conditions/ price upon the parties who are contracting with it



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besides indulging in other conduct relating to or surrounding/ neighbouring the contractual arrangement. If such a plea is accepted, the dominant undertakings would virtually acquire an immunity from anti-trust actions. This was neither the intent nor purport of the legislature and the same is clearly reflected and can be gleaned from the statutory scheme as engrafted in Section 4 of the Act. Resultantly, the Commission has no hesitation in holding that merely because disputes raised are contractual in nature and thereby Commission does not have the jurisdiction, is devoid of any force and the same is accordingly rejected.

38. The Commission also finds no force in the submission of GNIDA that the developers had entered into the lease deeds consensually and are thus barred from raising any objections to the same under the Act. The plea is not tenable as the scope of the Act empowers, rather obligates, the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants. In this statutory framework, estoppel does not have any bearing to the powers and scope of the Commission to investigate, assess and rectify any anti-competitive/ abusive practices of a dominant undertaking. Accepting this plea would render the powers of the Commission in regulating dominant firms, virtually redundant and nugatory. It cannot be disputed that given the dominant position of GNIDA, the developers have no alternative but to accept the terms of the lease deed. Moreover, the allegations as highlighted in the Informations, are not merely restricted to the nature of the clauses of the lease deed but also pertain to the conduct of GNIDA during and after the allotment process. Thus, merely because the developers may have entered into the lease deed with GNIDA consensually, does not imply that they cannot approach the Commission alleging contravention of the Act.
39. Having dealt with the jurisdictional pleas raised by GNIDA, the Commission proceeds to examine the issues projected by the Informants on merits within the framework of the Act.



40. In this regard, first the relevant market needs to be defined and thereafter the dominance of the enterprise or group concerned has to be ascertained therein before proceeding any further to examine the alleged abusive conduct.
41. As per Section 2(r) of 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 both. Further, the term 'relevant product market' has been defined in Section 2(t) of the Act as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, prices or intended use. The term 'relevant geographic market' has been defined in Section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.
42. For determining whether a market constitutes a 'relevant market' for the purposes of the Act, the Commission is required to have due regard to the 'relevant geographic market' and the 'relevant product market' by virtue of the provisions contained on Section 19(5) of the Act.
43. To determine the 'relevant geographic market', the Commission, in terms of the factors contained in Section 19(6) of the Act, is to have due regard to all or any of the following factors *viz.*, regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services.
44. Further, to determine the 'relevant product market', the Commission, in terms of the factors contained in Section 19(7) of the Act, is to have due regard to all or any of the following factors *viz.*, physical characteristics or end-use of goods, price of





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goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.

45. Thus, in any case of alleged abuse of dominant position, delineation of relevant market is important as it sets out the boundaries of competition analysis. Proper delineation of relevant market is necessary to identify in a systematic manner, the competing alternatives available to the consumers and accordingly the competitive constraints faced by the enterprise under scrutiny. The process of defining the relevant market is in essence a process of determining the substitutable goods or services as also to delineate the geographic scope within which such goods or services compete.
46. In light of the aforesaid statutory landscape, the Commission proceeds to determine the relevant market in the instant case.
47. With regard to relevant product market, as per the Information, the Informant is engaged in the development of real estate, particularly group housing colonies, which are thereafter sold to individual flat/ plot owners. The Informant has delineated the relevant market as '*market for acquisition and allotment of land for development of group housing projects in Greater Noida*'.
48. On the other hand, it was submitted on behalf of GNIDA that the developers of the Informant association are engaged in the business of construction and development work in the segments of residential, commercial, hospitality, townships and IT Parks. Thus, with regard to a developer, the demand for land for development is interchangeable. When considering demand substitutability, the test for price increase to be non-profitable is to consider whether the consumers will switch from the relevant product. In this particular case, it has been pointed out that if buying a particular kind of land for development, for instance residential, becomes non-profitable due to increased price, the Informant/ Developer would switch to development of land for commercial purposes. Thus, it was canvassed that it would



be appropriate to include development of all kinds of land (*i.e.* institutional, industrial, commercial and residential) in the same market since *vis-a-vis* a Real Estate Developer who is the consumer in this case, they are substitutable/ interchangeable products.

49. Having examined the issues and the pleas raised by the parties, the Commission is of the opinion that the alleged abusive conduct of GNIDA can be examined in the market for allotment of land for development of group housing projects in Greater Noida. The contention of GNIDA that relevant market should include development of all kinds of land (*i.e.* institutional, industrial, commercial and residential) is not tenable. The demand of developers is a derived demand which is nothing but a reflection of the choice of end-consumers, whom they will cater to. Clearly, a consumer looking for a property for residential purposes will not substitute it with a commercial property, if the prices of residential property were to increase. In any event, the plea is of no consequence and nothing turns upon this aspect in view of the unique position acquired by GNIDA under the statute across all the categories (*i.e.* institutional, industrial, commercial and residential), as detailed latter in this para. Moreover, looking at the issues projected in the Informations which relate to allotment of land for development for group housing projects, the relevant product market may be appropriately confined to allotment of land for development of group housing projects alone. As regards the geographic market also, the contention of GNIDA that pan-India should be taken as the relevant geographic market, is equally misplaced. The conditions of competition in Greater Noida region are distinctly homogeneous and different from the conditions obtaining and prevailing in other regions due to location and consumer preferences. In this market, GNIDA is the only department of the Government of UP empowered to regulate urban development in the Greater Noida region as being a statutory authority under the UP Development Act, 1976, it has the mandate to acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purposes of the Development Act; to prepare a plan for the development of the industrial development area; to demarcate and



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develop sites for industrial, commercial and residential purposes according to the plan; to provide infrastructure for industrial, commercial and residential purposes; to provide amenities; to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes; to regulate the erection of buildings and setting up of industries; and to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose of any other specified purpose in such area.

50. In this statutory backdrop, it cannot be denied that GNIDA has a decisive say in framing the terms and conditions of a scheme, allotment letter as well as the lease deed. Also, it has the commercial flexibility in fixing of land premium, lease rent, interest, penal interest. All developers who wish to participate in schemes and set-up projects in Greater Noida area are bound to abide by GNIDA's scheme documents and the policies. GNIDA not only decides on the viability of land and acquires it, but it also develops schemes for the development of the said land by private players. It is therefore indisputable that GNIDA operates independently in the relevant market without any competitive constraints and as such it is dominant in the market for allotment of land for development of group housing projects in Greater Noida.
51. In view of the above discussion, the Commission is of the considered opinion that not only GNIDA is squarely covered within the ambit of the Act but it also is dominant in the market for allotment of land for development of group housing projects in Greater Noida, and its alleged abusive conduct can be appropriately examined by the Commission within the statutory framework.
52. On abuse, the Informants have essentially alleged the following conduct/ terms to be anti-competitive: non-disclosure and allotment of encumbered land (riddled with disputes) to the developers and charging premium as well lease rent for the same; demanding additional farmer compensation from the developers even though



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no document- the scheme, allotment letter and the lease deed stipulated such payment obligations; demanding hefty sums of money and imposing interest and penal interest when the developers were not even given peaceful possession of the land; non- grant of zero period when the project land was not either handed over to the developers or failure on GNIDA's part to execute external developmental works; complete in- action on the multiple representations by the developers; one sided clauses in the lease deed such as (a) no liability on GNIDA of providing clear land to the developers, whereas the developers have to adhere to strict timelines; (b) no clause which grants the developer any choice to opt for cancellation and refund of the deposited amounts in the event of any deviation or breach on part of GNIDA.

53. At the outset, the Commission is of the view that the alleged abusive conduct of a dominant undertaking has to be examined within the framework of the Act which forbids abuse of dominant position whereby and whereunder when the dominant undertaking *inter alia* imposes unfair or discriminatory conditions upon the counterparties, the same can be examined by the Commission within the settled framework of law and evolved jurisprudence.
54. In this backdrop, the Commission notes that the Informants are primarily aggrieved of non-disclosure and allotment of encumbered land (riddled with disputes) to the developers and charging premium as well lease rent for the same; demanding additional farmer compensation from the developers even though no document- the scheme, allotment letter and the lease deed stipulated such payment obligations; demanding hefty sums of money and imposing interest and penal interest when the developers were not even given peaceful possession of the land; non- grant of zero period when the project land was not either handed over to the developers or failure on GNIDA's part to execute external developmental works. Also, some contractual terms are alleged to be abusive.



55. Having examined the allegations and response of GNIDA thereon, for the reasons elaborated in the succeeding paras, the Commission is of the considered opinion that no interference is warranted in the matters.
56. To begin with, the Commission proceeds to examine the issue raised by the Informants that GNIDA is demanding additional farmer compensation without there being any clause in the lease deed to this effect. In this regard, the Commission notes that there is history of litigation on this point as highlighted by GNIDA in its reply wherein it has been pointed out that as per the order passed by the Hon'ble Allahabad High Court in the case of *Gajraj & Ors. v. State of U.P. & Ors.*, (2011) 11 ADJ 1, it was held that the Authority would determine the manner in which the extra compensation being sought would be paid and the proportion in which it would be paid. It was also pointed out that it is the discretion of the GNIDA to determine the manner and proportion of payments to be made by the Allottees. In pursuance to this, a decision was taken in the 114<sup>th</sup> Board Meeting of the GNIDA dated 31.05.2019, that the burden of additional compensation payment shall be transferred to the Allottees. Without further delving into this aspect, the Commission is of the opinion that the issue projected by the Informants in the form of a competition law violation, is not appropriate and the Commission is not inclined to interfere on this count in the matter.
57. On the issue of non-disclosure and allotment of encumbered land (riddled with disputes) to the developers and charging premium as well lease rent for the same, it has been submitted by GNIDA that every trade relation relies on the principle of *Caveat Emptor i.e.* Buyer Beware. It was stated that every purchaser/ buyer or in this case Lessee, is expected to ensure that she must make reasonable inspection of the property being transferred. It was further submitted that the Bid Document based on which the Scheme is advertised and invitation to bid is sent out, specifies clearly that if any land that has not been resumed, is a part of the land offered, attempts shall be made to resume the same or else alternative plot would be offered. Thus, it was pointed out that such information is always in public domain that there



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may be certain disputed areas in the total land acquired that falls within the area being plotted and allotted. Thus, it was submitted that if the developer submits its bid for the scheme, it is presumed that such circumstances are known and consented to.

58. Having examined the issue, the Commission is of the opinion that so long as the information about the status of the land is transparently made available to the potential developers, as affirmed by GNIDA, in a non-discriminatory basis and there is no asymmetry of information in this regard, the buyers or developers cannot be absolved of their own lack of due diligence or otherwise consensual behaviour.
59. Adverting to allegations pertaining to non- grant of zero period when the project land was not either handed over to the developers or failure on GNIDA's part to execute external developmental works, it was submitted by GNIDA that item 107/13 of 107<sup>th</sup> Board Meeting of GNIDA lays down the following conditions for grant of ZERO PERIOD: (a) If due to certain reasons GNIDA is unable to transfer possession of the allotted land to the allottee (b) Due to law and order concerns or encroachment upon the allotted land, construction work cannot be undertaken on the allotted land (c) By orders of the court, if construction work has been stayed (d) Due to Government order or by the order of Board meeting of GNIDA, lease deed could not be executed in relation to the allotted land. That on 09.03.2016, in the 104<sup>th</sup> Board Meeting of the GNIDA, decision was taken *vide* Item No. 104/35 to consider to provide Zero Period to those allottees who could not be granted physical possession due to various reasons and had made representations for the same. Thereafter in the 111<sup>th</sup> Board Meeting implementation mechanism of the same were discussed. It was submitted that wherever applicable the request for Zero Period has been granted and the same had been communicated through relevant Office Orders. It was also pointed out that these decisions of GNIDA are policy decisions and the Informant was free to challenge the same at the appropriate forum. However, such decisions were not commercial/ economic in nature and that



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they do not raise any competition concern. Hence, the same, if required, should have been challenged before the appropriate courts at an appropriate time.

60. It is not the case of the Informant that zero period policy was an obligation flowing from the contractual arrangements. If the State or the Authority, after taking into account the unforeseen difficulties faced by the developers or the difficulties which are beyond their control, comes out with a benevolent policy to offer solace to the developers, the same cannot be held against the Authority. This is, however, not to suggest that the Authority can deviate at its sweet will or otherwise discriminate or act in an arbitrary manner in implementing such policy, yet in the facts as provided by GNIDA and the various communications on this count between GNIDA and the developers, the Commission is not persuaded to interfere with the administrative decisions flowing out of a policy which is not part of contractual obligations.
61. With respect to undertaking external works, it was admitted by GNIDA that work of providing external infrastructure is a part of its obligations and it was stated that GNIDA has been undertaking the external work of constructing approach roads, drains, culverts, electricity distribution facilities, transmission lines, water supply, sewerage *etc.* on a massive scale in the region. It was also pointed out that GNIDA has undertaken the task of fulfilling these infrastructural development works efficiently and that has ensured the creation of Greater Noida region into a world class city. It was fairly conceded that only in the case of SAG Civitech there was a delay in completion of some of these tasks. It was, however, submitted that a delay to fulfil obligations in one project may not be considered as an abusive behaviour.
62. External Development Charges are paid by the developer to the civic authorities for maintenance of civic amenities within the periphery of the project and the development work of this kind normally includes the construction of roads, supply of water and electricity, landscaping, maintenance of drainage and sewage systems, waste management, and any other work that is likely to benefit the project at large. Thus, the utility of development of external work needs hardly any elaboration and



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the same is *sine qua non* for an orderly and timely completion of any project. In the present case, the Commission takes on record the submissions made by GNIDA that it has been undertaking such external works as per its contractual obligations on a massive scale in the region in an efficient way and in this view of the matter, no interference is warranted.

63. Coming to the allegation that GNIDA demanded hefty sums of money and imposed interest and penal interest when the developers were not even given peaceful possession of the land, the Commission notes that lease deed is a document that transfers vacant and unencumbered possession of the land to the lessee, however, there may be unforeseen instances where disputes have arisen after transfer of the possession to the lessee. In this regard, the Commission takes on record the submission of GNIDA that only the unencumbered vacant land is transferred through lease deed whereas with respect to the remaining land, a supplementary lease deed is executed when the land is acquired and for all other area of land, it is clearly provided that the date of execution of lease deed shall be considered as the date of possession. Furthermore, as pointed out by GNIDA, there have been certain instances where the land may have been encumbered and, in those cases, only the unencumbered vacant land is transferred through Lease Deed whereas with respect to the remaining encumbered land, it is transferred only when the encumbrance has been removed through a Supplementary Lease Deed. This has to be seen also in the light of the fact that the terms and conditions detailing the penalty and penal interest are laid down in a transparent manner and are also made available to the potential developers.

64. On the alleged one sided clauses in the lease deed such as (a) no liability on GNIDA of providing clear land to the developers, whereas the developers have to adhere to strict timelines; (b) no clause which grants the developer any choice to opt for cancellation and refund of the deposited amounts in the event of any deviation or breach on part of GNIDA, it cannot be denied, as submitted by GNIDA, that the acquisition process is a long and complex process. The details of the amount of





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land that may have been acquired and the limits that could not be acquired, are all public knowledge. This information is stated to be in the public domain and easily accessible to the developers at all stages. It was pointed out by GNIDA that it only enters into the Lease Deed for the land that is acquired and in its possession. For the remaining land, as submitted previously supplementary lease deeds are executed. It is, thus, unnecessary to have any clauses that direct GNIDA to hand over possession of land.

65. As regards, clearing the land is concerned, GNIDA submitted that it is beyond its duties/ powers and obligations to undertake the task of management of law and order over the property of a Lessee. The District administration and local police are the appropriate authority to assist the developers. Thus, such issues of encroachment that have arisen after the land has been allotted, are not the Authority's obligation to resolve as the OP is obligated to provide land in the manner specified in the Lease Deed and it was submitted that the same has been done. Furthermore, with regard to strict timelines for developers, it was submitted that there have been many cases where extensions have been granted to the developers upon timely payment of dues. However, it is in the interest of the home buyers *i.e.* the end-consumer that projects are completed in time and possession handed over accordingly. It is evident from the number and magnitude of cases filed before the Real Estate Regulatory Authority, among other forums, that the developers who have made these allegations are failing in their duty to complete construction on time and the instant Informations are being used as an opportunity to evade responsibility.
66. In view of the foregoing and the reasons placed on record by GNIDA, the Commission is of the opinion that the justifications offered by the Authority appear to have some merit and the same have to be seen and appreciated in a holistic manner. The Commission agrees that post-execution of the lease deed and transfer of possession, the developers are at liberty to take the assistance of district administration and local police to address the issues of encroachment and law and



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order situations. The importance of timely execution of projects needs hardly any reiteration as it is in the larger public interest that projects are completed in time and possession handed over accordingly.

67. Before parting with this order, the Commission also observes that the lease deeds referred to in the instant matters date back to as early as July 2010, October 2010 and June 2014 and the Informations have offered no justifiable reasons for approaching the Commission at this belated stage.
68. In view of the above, nothing survives in the Information in Case No. 37 of 2020 also where similar allegations pertaining to additional farmer compensation, failure to external development works, denial of zero period etc. against another Authority *i.e.* Noida have been levelled and for the reasons given in the context of Case Nos. 34 & 38 of 2020, NOIDA also appears to be dominant in the market for allotment of land for development of group housing projects in Noida. For the reasons and analysis given while analysing other analogous Informations, the Commission is not inclined to interfere in this case keeping also in mind that the lease deeds enclosed with the Information in the present case date back to May 2007, March 2010, June 2010, October 2010, January 2012 *etc.* and no reasons have been detailed for approaching the Commission at this belated stage for impugning the terms of the lease deeds.

### **ORDER**

69. Thus, in view of the foregoing, the Commission is of the opinion that in the instant matters there exist no *prima facie* case and the matters are ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
70. Before parting with this order, the Commission is not oblivious of the scenario obtaining in the real estate sector and the difficulties faced by developers in completing the projects, some of which are entirely beyond their control. The



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Commission hopes and trust that NOIDA and GNIDA Authorities would consider the issues raised in these Informations in a non-adversarial manner by calling a meeting with the developers and its representative body CREDAI to address the genuine difficulties faced by the developers as projected in these Informations at the earliest.

71. The Secretary is directed to communicate to the Parties, accordingly.

**Sd/-  
Ashok Kumar Gupta  
(Chairperson)**

**Sd/-  
Sangeeta Verma  
(Member)**

**Sd/-  
Bhagwant Singh Bishnoi  
(Member)**

**New Delhi  
Date: 04/05/2021**