



COMPETITION COMMISSION OF INDIA

Case No. 31 of 2020

In Re:

Ms. Nutan Agrawal
R/o T5-303, Parsvanath Prestige-2,
Sector 93A, Noida, U.P-201304

Informant

And

Uppal Chadha Hi-Tech Developers Pvt Ltd.
Regd. Office: Mezzanine Floor, M-4 South Extension Part-II,
South Delhi, New Delhi-110002

Opposite Party (OP)-1

Mr. Manpreet Singh Chadha, Director of OP-1,
R/o: House No. 21 Oak Drive DLF, Chattarpur Farms,
South Delhi-110074

Opposite Party (OP)-2

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. The present information has been filed by Ms. Nutan Agrawal (**‘Informant’**) under Section 19(1)(a) of the Competition Act, 2002 (**‘Act’**) against Uppal Chadha Hi-Tech Developers Pvt. Ltd. (**‘OP-1’**) and its Director, Mr. Manpreet Singh Chadha (**‘OP-2’**) (collectively referred to as **“OPs”**) alleging contravention of the provisions of Section 4 of the Act.



2. The Informant is a resident of Noida, who had booked a 500 sq. yard, residential freehold plot, for her own use, in OPs' forthcoming Hi-Tech Township Project in Ghaziabad, UP.
3. As per the Information, Uppal Chadha Hi-Tech Developers Pvt. Ltd., OP-1, is a company which is a part of Wave Group, a leading business conglomerate with presence in North India, the operations of which are handled by Mr. Manpreet Singh Chadha (also known as Monty Chadha).
4. OP-1 invited applications from public for registration of Expression of Interest for purchase of a residential plot in its forthcoming 'Hi Tech Township Project' through a *prescribed registration form*. The Informant wanted to buy a 500 sq. yard, affordable, residential, freehold plot in a large integrated, viable, self-sustained township, full of amenities, in Ghaziabad, UP for own use to construct a spacious bungalow.
5. The Informant states that OP-1's High-Tech Township Project was coming up in Ghaziabad under Hi-Tech City Policy of UP Government. In the registration form, in para (a) it was stated that the allotment was expected to be made within 8 months, and para (c) provided that 10% interest on the deposit would be paid to the applicant for delay in allotment of plot after 8 months of registration up to the date of allotment. There was no provision for OP-1 to seek/determine any arbitrary and unjust payments or to put conditions against the interest of the plot buyers. The Informant got registered with OP-1 for a 500 sq. yard plot in the proposed Hi-Tech Township.
6. The price and other terms and conditions were broadly fixed as per the prescribed registration form (Registration No. 002579 dated 21.12.2005) for a 500 sq. yard plot with price fixed at Rs.7,200/- (less 3%) per sq. yard. All the documentation in the



project was prescribed by the OP-1 and was common to all the plot buyers. The OP-1 took 30% payment (Rs. 10, 80,000) at the time of registration from the Informant.

7. The Informant further submits that OP-1 procured thousands of acres of lands through hundreds of commercial deals with local land sellers/ farmers. OP-1 paid for the lands but deliberately did not take possession of the lands from the sellers to save on costs. There was a delay in purchase and the OP-1 managed to acquire major portion of land from the farmers in the year 2011 by way of purchase via sale deed executed between farmers and OP-1. The Informant alleges that OP-1 was responsible for all costs/ tax increases including increase in cost of registry and cost of construction because of speculative delay in the procurement of lands (despite having taken 30% payment) and because it was through their direct commercial deals.
8. The Informant submits that OP-1 took possession of major part of land only after the judgement by *Hon'ble Allahabad High Court dated 28.04.2017 in Writ Petition (C) 63139 of 2014* and others which involved hundreds of the land sellers. From the judgement, the following facts came to light:
 - a. The land was purchased by OP-1 at about Rs. 850 – 1,250 per sq. yard.
 - b. The procurement of land was done through a large number of private commercial deals.
 - c. The sellers received the payments but had not parted with possession even after such sale.
 - d. The project in question was a township project under Hi-Tech City Policy of UP Government.
9. OP-1 had, after 5 years from the date of registration, made an Offer of Allotment dated 30.10.2010, for a specific plot, stating "Offer of Allotment of plot in 'Wave City' (Hi-Tech Township Project) situated at NH-24, Ghaziabad". The Informant



submits that no time limit was given for the completion of the committed township project and no such date or benchmark has been given till date. The Informant further submits that offer of allotment stated that OP-1 had entered into a Developer Agreement with Ghaziabad Development Authority (GDA), and further made following modifications/additions in the offer of allotment:

- a. The aforesaid plot was offered at Rs. 7,194/- per sq. yard, thus making the total consideration of Rs. 34,93,406/- payable for a 485.6 sq. yard plot (instead of 500 sq. yards) and additionally, a requirement to pay Peripheral/ Infrastructural Development Charges (PDC) and other fees /taxes payable to the government besides charges in accordance with the payment plan was added in the letter of Offer of Allotment.
- b. The Offer of Allotment to Informant was for Plot No. 95, Sector 3, measuring 485.6 sq. yard (instead of 500 sq. yard), and demand was made for an additional substantial payment (Rs. 4,92,033) to be made with the application of Allotment in the prescribed form. In the Offer of Allotment, it was stated that the offer was to expire automatically on 17.11.2010 in case of non-payment and acceptance of new conditions.
- c. The Offer of Allotment dated 30.10.2010 was also accompanied by application of allotment and plot allottee(s) arrangement ('Arrangement') dated 11.01.2011 to be signed and returned.
- d. Additional payment of Rs. 4,92,033/- was mandatorily taken with prescribed application of allotment of specific plot (in the prescribed form) and through time-based instalments thereafter, as indicated in payment plan (as per Arrangement), from the Informant (and other thousands of plot buyers without the ownership and possession of the relevant land). This amounted to unlawful forward selling of unowned



lands. Through abuse of their position, OPs got unjust enrichment through such premature payments at the cost of the Informant and thousands of other plot buyers.

- e. The Informant asserts that Para 4 and 5 of the application for allotment stated that initial registration will be revoked and the new terms and conditions for allotment will be applicable which are actually unilateral prescriptions, even though registration was done based on the cost and terms prescribed by OP-1 in the registration form at the relevant time.
- f. The Informant has cited addition of various one-sided/unfair clauses in the Arrangement which are discussed briefly here:
 - i. *Para 1.8, Page 4, Arrangement-* Clause pertaining to cancellation of booking, wherein no such right was vested with plot buyer once booking/allotment is done, and discretion in this matter was with the Developer.
 - ii. *Para 2.3, Page 4 of Arrangement-* Clause states that any increase or decrease up to 10% of the original allotted area shall be acceptable to the Allottee and price thereof will be computed at booking rate. In respect of increase/decrease beyond 10%, the Developer shall have the sole discretion to decide the rate and the same shall be binding on Allottee and payable as well. The clause also sets out that if the particular plot is omitted or the developer is not able to hand over the same to the allottee(s), the developer shall be responsible only to refund the actual amount received by it and shall not be liable to pay any compensation or damages or interest.



- iii. Arbitrary increase in the cost of the plot with respect to that fixed on registration, without any value addition or other revealed justification. These arbitrary increases are *inter alia* related to: Cost of Electricity, Water and Sewer connection, Preferential Location Charges, Peripheral/ Infrastructural Development Charges, Premium charges, Stamp duty, tax and cess charged by the Government *etc.*
- g. The Informant states that there is no provision for an equitable compensation and for refund of interest charged to plot buyers by OP-1, who is mandatorily taking a premature payment and its demands are defective. Offer of possession was sent on 16.04.2016 to allottee prior to judgement dated 28.04.2017 of the Hon'ble Allahabad High Court, based on which OP-1 got the possession of some land.
10. The Informant has contended that as price fixed on registration included all development charges, therefore subsequently charging "Peripheral/ Infrastructural Development Charges" additionally was an act of imposing an unfair condition arbitrarily, in abuse of dominant position by OP-1.
11. The Informant contends that OP-1 was permitted in terms of Hi-Tech Township Policy to allot plots developed/ constructed by the developer, under Para (h), page 2 of the Arrangement filed with the Information. Thus, the developer had no authority to allot any specific plot and to charge more money for it. The payment of Rs. 4,92,033/- taken by the developer, *i.e.* OP-1, on offer of allotment was, therefore, a mandatorily taken premature payment. It is further stated that without completion of development work, OP-1 had no eligibility to seek additional money or to impose any changes with respect to cost and conditions agreed at the time of registration by offering allotment of specific plots. The Informant contends that registration was



made by developer in the name of forthcoming Hi-tech Township only and the price was fixed accordingly. Arbitrary addition of items in costs by OP-1 is an abuse of its dominant position. The Informant contends that allottee(s) including Informant must be compensated equitably by OP-1 for delays in completion beyond a reasonable time period.

12. The Informant contends that OP-1 sold the plots at Rs. 7,200/- per sq. yard, and the lands were purchased by it at Rs. 850 - 1250 per sq. yard. The price settled on registration included all the costs including development costs too. Further, the Informant has stated that a reduction in the size of the plot, as Offer of Allotment has been given for a plot of 485.6 sq. yards (instead of 500 sq. yards as registered), was already done by the OP without any specific/compelling reason and without any compensation. The Informant submits that sufficient land, to the tune of 4500 acres was earmarked for the project, as stated in Offer of Allotment, which was enough to accommodate all the registered plot buyers for the committed size by OP-1 at the time of Offer of Allotment. The Informant has claimed that any change in the area of the plot than what was given at the time of registration is the sole responsibility of OP-1. Therefore, such changes in area of the plot(s) from the area specified at the time of registration should be allowed at the booking rate only and not on any other rates.
13. Additionally, despite a stay by Uttar Pradesh Real Estate Regulatory Authority (UP RERA) on 10.10.2019 on additional PDC charged arbitrarily by OP-1, as reported in *Indian Express*, OP-1 is insisting on payment of additional PDC at the rate of Rs. 850 per sq. yard instead of Rs. 350 per sq. yard.
14. The Informant alleges that OP-1, in a fraudulent activity, had applied for the completion certificate of its project in Sector 3 to GDA only on 04.11.2016, which was after issuing the offer of possession on 16.04.2016 and prior to getting the



possession of lands which it got only after 28.04.2017. Such application must have been rejected by GDA outrightly. A partial completion certificate dated 15.07.2017 was allegedly managed from GDA by OP-1 for Sector 3, based on such a fraudulent application. It is further alleged that OP-1 had stated its project to be township project at the time of registration and also at the time of allotment. OP-1 has not yet applied to GDA, for the completion certificate of the township even after lapse of 15 years from the date of registration for plots bought by it.

15. Therefore, it is alleged that such conduct of the OP-1 is in contravention of Section 4 of the Competition Act, 2002 on account of imposition of unfair and discriminatory conditions.
16. In view of the facts and circumstances of the case, the Informant has prayed that the Commission may:
 - a) Pass a cease and desist order against OP-1 to desist from its anti-competitive practices, undo it *ab initio* and take corrective actions, and report compliance in a time bound manner.
 - b) OP-1 be directed to bear all cost increases and in addition compensate the Informant equitably at 18% p.a. for period of delay in completion after registration. OP-1 must also compensate for reduction in area of plot.
 - c) OP-1 must complete the development of township and provide offer of completed and peaceful possession in a time-bound manner, desist from coercive actions and reveal the titles of all the relevant lands, NOCs /clearance and completion certificate obtained, to the Informant.
 - d) Imposition of penalty on OP-1 in an exemplary and deterred manner, separately for each violation of Section 4 of the Act.



- e) Issue direction to OP-1 to register the Wave City Township Project with Uttar Pradesh Real Estate Regulatory Authority (UP RERA)

17. The Informant under Section 33 of the Act has also sought an interim relief *viz.* for direction to OP-1 to maintain *status quo* until further orders. The Informant has also prayed for direction to OP-1 to immediately reveal list of pending items, NOCs, completion certificate obtained, details of ownership and possession of relevant lands and schedule of completion. It has also been requested that OP-1 be made to reveal estimated benchmark and the date of completion of the Township Project.
18. The Commission considered the matter in its ordinary meeting held on 22.09.2020 and decided to pass an appropriate order in due course.
19. Upon consideration of the Information and documents placed on record by the Informant, the Commission notes that the Informant has made allegation of abuse of dominant position by the Uppal Chadha Hi-Tech Developers Pvt. Ltd. ('OP-1') and its Director ('OP-2'), and has made allegations of abuse of dominant position through imposition of unfair and discriminatory conditions concerning allotment of plots and plot allottee arrangement in Wave City Township Project, for which registration was made in the year 2005, and has alleged contravention(s) under Section 4 of the Act. It is further alleged that OP-1 has imposed unfair and discriminatory conditions without completing the project and has sought payments related to allotment over a span of 15 years and imposed arbitrary one-sided clauses *via* offer of allotment.
20. The Commission observes that as the allegations pertain to abuse of dominant position, an assessment under Section 4 is required to be undertaken. It is therefore necessary to delineate the 'relevant market' for ascertaining whether the enterprise



under scrutiny, i.e. OP-1, holds a dominant position in such market. Thereafter, the conduct is examined to ascertain whether such conduct amounts to abuse or not.

21. The Informant has submitted that the plot was purchased by the Informant for residential purpose and for self-use. In terms of relevant product market, the Commission considers its earlier decision in the matter of *In Re: Ms. Usha Roy and ANS Developers Pvt. Ltd. & Anr.* (Case no. 96 of 2016 decided on 04.10.2017) wherein the terms ‘integrated township’ and ‘hi-tech township’ were discussed as per the policy laid down by Government of Uttar Pradesh. The term ‘integrated township’ was stated to be a ‘self-contained’, organised and developed township having various facilities of physical and social nature including residential, commercial and entertainment establishments under one roof. Such township could be spread on an area of minimum 25 acres and maximum of 500 acres and characterised by easy approach via roads and regular access to water and electricity. The physical infrastructure was partly to be developed by real estate developers which included internal roads, lighting, open space, ready and easy access and landscaping, and partly to be provided by the government, such as external connecting roads, water supply, electricity supply, sewage connection, *etc.* The social infrastructure, such as, educational facility, hospital and medical facility, shops and commercial spaces, recreational clubs, *etc.*, were required to be developed by the real estate developers to provide a holistic living experience. The term ‘Hi-Tech Township’ was stated to mean a modern state-of-the-art township having world class infrastructure facilities, high quality living, working and entertainment conditions which are particularly suited to the flexible use and space needs of high technology and knowledge based industries and business organizations engaged in modern technologies. The Informant in the said case had stated that distinction between ‘integrated township’ and ‘hi-tech township’ is a policy matter of the Govt. of UP. The Commission had, however, observed that from a competition law perspective, such distinction is very narrow and largely confined to the area granted



by authorities to real estate developers, period of time for development of such area and a few other requirements. Such nomenclature does not change the basic criteria of satisfying commercial and residential needs.

22. Thus, in the present case, the relevant product market is delineated as “*the provision of services for development and sale of plots of land for residential use*” and the relevant geographic market is restricted to the Ghaziabad region as the region exhibits homogeneous and distinct market conditions. Accordingly, the relevant market is delineated as “*the provision of services for development and sale of plots of land for residential use in Ghaziabad region*”.
23. Based on the information available in public domain, the Commission observes that several real estate developers are operating in the relevant market being Unitech, Supertech, Eldeco, Amrapali Group, Omaxe, *etc.* The presence of such developers besides OP-1 indicates that the buyers have options to choose from in the said relevant market. The 'dominant position' as defined under the Explanation to Section 4(2) of the Act is in reference to any act which allows an entity to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers in its favour. Accordingly, in the relevant geographic market, OP-1 cannot be said to possess market power so as to enable it to act independently of competitive forces prevailing in that relevant market; or to affect its competitors or consumers or the relevant market in its favour. Thus, OP-1 is not found to be in a dominant position in the relevant market, under Section 4 of the Act.
24. In the absence of dominance of OP-1 in the relevant market, the assessment of OP-1's alleged abusive conduct is not required to be undertaken.



25. It is further pointed out that the Informant in the present matter has approached the National Consumer Disputes Redressal Commission (NCDRC) for relief in Case no. CC/81/2018 which is still pending adjudication.
26. As the dominance of OP-1 has not been established in the facts and circumstances of the present case, no further assessment under the provisions of the Act is required to be undertaken in relation to the alleged abuses. Thus, the Commission opines that no competition concern has been said to have arisen in the present matter.
27. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case, and the information filed is closed forthwith against the OPs under Section 26(2) of the Act.
28. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Dated: 29.10.2020