



COMPETITION COMMISSION OF INDIA

Case No. 32 of 2017

In re:

**Wing Commander Jai Kishan
R/o Air Force Station Arjan Singh (Panagarh),
Distt. Burdwan, West Bengal – 713 148**

Informant No. 1

**Nikunj Sisondia
R/o Air Force Station Arjan Singh (Panagarh),
Distt. Burdwan, West Bengal – 713 148**

Informant No. 2

And

**The Chairman and Managing Director,
M/s Concept Horizon Infra Pvt. Ltd.
813, Jangpura Extension, New Delhi – 110 014**

Opposite Party No. 1

**Nitant Verma
M/s Concept Horizon Ltd.
813, Jangpura Extension, New Delhi – 110 014**

Opposite Party No. 2

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**



Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Justice G. P. Mittal
Member

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

1. The information in the present matter is filed by Wing Commander Jai Kishan and his wife Mrs. Nikunj Sisondia (**‘Informants’**) under Section 19(1)(a) of the Competition Act, 2002 (the **‘Act’**) against M/s Concept Horizon Infra Pvt. Ltd. through its Chairman and Managing Director (**‘OP 1’**) and one of its employees, Mr. Nitant Verma (**‘OP 2’**) alleging contravention of the provisions of the Act.
2. As per the information, the Informants are buyers of a flat in the residential housing project ‘Orizzonte’ developed by OP 1 at Knowledge Part-III, Greater Noida, Uttar Pradesh. It is stated that Informant No. 1 had booked a residential unit, Flat No. 512 admeasuring 750 sq. ft., in the aforesaid project of OP 1 under down payment scheme. As per the Informants, after receiving full payment, OP 1 issued the allotment letter for the aforesaid residential unit on 23.04.2014 and subsequently, on 21.05.2014, a Memorandum of Understanding (MoU) was executed between OP 1 and Informant No. 1 whereby it was agreed that OP 1 would pay an assured return @ 12% per month *i.e.* Rs. 27000/- to Informant No. 1 starting from 13.05.2014 till possession of the flat is given. It is submitted that subsequently, on the request of Informant No. 1, the name of Informant No. 2 was also included as co-applicant and accordingly, a fresh MoU was executed on 06.05.2016.
3. It is the case of the Informants that despite making full payment for the aforesaid residential unit, since July, 2016, the OPs have stopped making payment to the



Informants towards the monthly assured return without giving any notice/ information. It is averred that the cheque given by the OPs towards the assured return for the month of December, 2016 was dishonoured by the concerned bank due to insufficient fund for which the Informants made numerous complaints to the OPs, but of no avail. It is stated that even though the OPs assured the Informants that their pending payments would be given on quarterly basis, they have failed to pay any amount.

4. It is alleged that the OPs have not only failed to honour the terms of the MoU entered into between them that resulted in financial losses to the Informants, but also there seems to be no intention on their part to either make payment of assured returns or deliver possession of the flat to the Informants as promised. As per the Informants, such act of the OPs amounts to unfair and restrictive trade practices as well as deficiency in the provision of services. It is further alleged that the said arbitrary and unilateral conduct of the OPs amounts to cheating, criminal breach of trust, fraud and willful default under the provisions of Sections 420, 406, 34 and 120B of the Indian Penal Code, 1860. It is also stated that the said conduct of the OPs has caused great mental agony, harassment, hardship and inconvenience to the Informants.
5. Based on the above, the Informants have, *inter alia*, requested the Commission to initiate an enquiry against the OPs, direct the OPs to pay the monthly assured return in accordance with the terms of MoU until possession of the flat is given, direct the OPs to either give possession of the booked flat or refund the total amount received towards the cost of the flat with interest @ 18% per annum along with penal interest and award compensation and damages to the tune of Rs.20,00,000/- for harassment, inconvenience, hardship and mental agony caused to the Informants.
6. The Commission has perused the information and the material available on record. It is observed that even though the Informants have filed the instant information against the Chairman and Managing Director of M/s Concept Horizon Infra Pvt. Ltd. and one of its employees, however perusal of the information reveals that the grievances of Informants are primarily directed towards the abusive conduct of M/s Concept Horizon Infra Pvt.



Ltd. *i.e.* OP 1 for non-payment of monthly assured return for the residential unit allotted to them as per the terms of MOU which they allege to be in contravention of the provisions of Section 4 of the Act.

7. The Commission observes that the allegations raised in the instant matter relate to allotment of a residential apartment/ flat in the project 'Orizzonte' developed by OP 1 at Knowledge Park-III, Greater Noida, Uttar Pradesh. Thus, the relevant product market in this case is the provision of services for development and sale of residential apartments/ flats which is different from the services for development and sale of residential plots or commercial spaces. It may be noted that a plot of land or a commercial space cannot be considered substitutable with a residential apartment/ flat by the consumers because of the difference in the characteristics of the product, price and intended use. Therefore, the Commission considers the market for "*provision of services for development and sale of residential apartments/ flats*" as the relevant product market in this case.
8. Further, it may be noted that the rules and regulations for development of residential housing projects applicable in Noida and Greater Noida are different from other adjacent areas such as Ghaziabad, Gurgaon, Delhi, *etc.* The geographic area of Noida and Greater Noida exhibits distinct characteristics from a buyer's point of view and the conditions of competition for the services for development and sale of residential apartments/ flats in Noida and Greater Noida are different from the conditions of competition for the services for development and sale of residential apartments/ flats in the areas such as Delhi, Gurgaon and Ghaziabad of the National Capital Region (NCR). The consumers looking for a residential apartment in the said geographic area may not substitute it with other neighbouring areas because of factors such as difference in price, level of urban development, location advantage, proximity and connectivity to National Capital Territory, consumer preferences and transport services. Therefore, the Commission is of the view that the relevant geographic market in this case may be considered as the geographic area of '*Noida and Greater Noida.*'



9. In view of the above, the Commission delineates the relevant market in this case as the market for “*provision of services for development and sale of residential apartments/flats in Noida and Greater Noida.*”
10. The Commission notes that the Informants have not provided any information regarding the dominance of OP 1 in the relevant market as defined *supra*. Based on the information available in public domain, it is observed that there are several established large real estate developers having residential housing projects of varying magnitudes and comparable or even bigger in sizes than OP 1, such as J P Associates, Eldeco, Parsvanath, Antriksh Group, Amrapali, Ansal API, Unitech, Omaxe, Supertech *etc.* operating in the relevant market and competing with OP 1. The presence of such large players with multiple projects provides several options to the consumers and acts as a competitive constraint upon OP 1 to operate independently of the existing market forces in the relevant market. Further, based on the information available in the public domain, it is observed that the aforesaid project of OP 1 has total area of mere 7.5 acres with 500 residential units, whereas the residential housing project size of some of the competitors of OP 1 in the said relevant market are much larger. For example, the total area of *Unitech Habitat* is 23 acres, the total area of *Omaxe Palm Greens* is over 23 acres, the total area of *Ajnara Panorama* is 21.49 acres, and the total area of *Ace City* is 15 acres. Furthermore, the Commission observes that, other than the project ‘Orizzonte’, OP 1 is also developing two more residential housing projects *viz.* ‘*Horizon Iridia*’ (having total area of 6 acres) and ‘*Horizon Noida Nxt*’ (having total area of 7.5 acres) in the relevant market. Even if the total area of all the three projects of OP 1 is taken into consideration, it is less than the total area of a single project developed by some of its competitors as stated above. Based on the above, the Commission is of the view that OP 1 does not possess market power to act independently of the competitive forces in the relevant market or has the ability to affect its competitors or consumers in the relevant market in its favour. Therefore, OP 1 is not found to be in a dominant position in the relevant market.



11. In the absence of dominance of OP 1 in the relevant market, assessment of its alleged abusive conduct does not arise. Accordingly, the Commission finds that no *prima facie* case of contravention of the provisions of Section 4 of the Act is made out against the OP 1 in the present matter and the information is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
12. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi

Date: 06.09.2017