



COMPETITION COMMISSION OF INDIA

Case No. 96 of 2016

In Re:

**Ms. Usha Roy
4/28, Vishal Khand, Gomti Nagar,
Lucknow- 226010.**

Informant

And

**ANS Developers Pvt. Ltd.
Regd. Office- 308, 3rd Floor,
Tulsiani Chambers,
Nariman Point, Mumbai-400021
Corporate Office- 11th Floor,
Shalimar Titanium, Vibhuti Khand,
Gomti Nagar, Lucknow-226010, UP**

Opposite Party-1

**Shalimar Corp. Ltd.,
Regd. Office- 308, 3rd Floor,
Tulsiani Chambers,
Nariman Point, Mumbai-400021
Corporate Office- 11th Floor,
Shalimar Titanium, Vibhuti Khand,
Gomti Nagar, Lucknow-226010, UP**

Opposite Party-2

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. U.C. Nahta
Member**



Present: - *For the Informant:* - Mr. K.K. Sharma, Senior Advocate
Mr. Sarthak Bhargava, Advocate
Mr. S.P. Roy (Husband of the Informant)
For the Opposite Parties: -None

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

1. The present information has been filed by Ms. Usha Roy (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against ANS Developers Pvt. Ltd. (hereinafter, “**OP-1**”) and Shalimar Corp. Ltd. (hereinafter, “**OP-2**”) (collectively referred as “**OPs**”/ “**Opposite Parties**”) alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant is a resident of Lucknow. OP-1 is stated to be a private limited company incorporated on 1st September, 2006 under the Companies Act, 1956, having its registered office in Mumbai. OP-1 is engaged in the business of real estate development and stated to be subsidiary of OP-2. OP-2 is stated to be incorporated on 11th August, 1988 as a private limited company under the Companies Act, 1956 and its registered office and corporate office are same as OP-1. OP-2 is engaged in the business of real estate, property management, various allied services, civil construction, imports and exports and glass processing, *etc.*
3. The Informant has submitted that OP-1 and OP-2 form a ‘group’ within the definition given in the explanation of Section 5(b) of the Act. As per the Standalone Balance Sheet of OP-1 for period of 1st April, 2013 to 31st March, 2014, OP-2 owns 63.04% of shareholding of OP-1. Also, OP-1 and OP-2 have the same registered address and corporate office. Thus, both OPs, allegedly, form a “Group” for the purpose of Act and are engaged in the business of real estate development.



4. The Informant has further submitted that on 23rd July, 2012, OP-1 and the Informant had entered into an “Agreement to Sell without Possession” (hereinafter, the “**Agreement**”) for a plot of land bearing No. HC-1/A admeasuring 50,000 sq. ft. for construction of hospital or for any other purpose. This plot of land is situated in the Integrated Township, namely, Shalimar One World (hereinafter, the “**Project**”) being developed by OPs at Village Baghamau, Tehsil Pargana, District Lucknow. The total consideration to be paid in this regard was Rs. 2,09,50,000/- and Rs. 4,19,100/- as stamp duty. Out of the total consideration, Rs. 23,75,000/- was to be paid on the date of signing of the Agreement, Rs. 1,04,75,000/- at the time of execution of sale deed *i.e.* 25 months from the date of the sanction of Detailed Project Report (hereinafter, “**DPR**”), Rs. 62,85,000/- to be paid within six months after the execution of the sale deed and Rs. 18,15,000 on completion of the project.
5. The Informant has alleged that the Agreement has following anti-competitive clauses:
- Clause 1 – if the Informant is unable to pay the consideration within time, she will be liable to pay interest @ 1.50% per month or part thereof on the amount outstanding and in case the payment (consideration plus interest) is not made within 90 days of its accrual, then OP-1 shall have the option to cancel the present Agreement entered between the parties.
 - Clause 5 –If OP-1 is unable to complete the work within stipulated time, then OP-1 shall be liable to pay the balance of Rs. 18,15,000/- at the time of completion of the project.

In this regard, the Informant alleged that as Informant is liable to pay interest @ 18% p.a. in case of delay in payment of instalment, however, there is no liability upon OP-1 to pay any interest in case of delay on its part. Thus, the buyer does not have any bargaining power or countervailing buying power to negotiate the terms of the Agreement.



6. As per the Agreement, OP-1 was to intimate the Informant about the grant of approval of DPR by the competent authority. However, the Informant alleged that she was not informed about approval of DPR even after passage of more than one year. After inquiries from the Lucknow Development Authority (hereinafter, “LDA”), the Informant came to know that DPR had already been approved in July, 2013. Thereafter, the Informant sent a letter dated 14th October, 2013 to OP-1 enquiring about the reason as to why she was not intimated about the approval of DPR that had already been granted in July, 2013. The Informant has alleged that OP-1, *vide* its response dated 28th October 2013, had made following false representations:
- a. OP-1 misquoted the date of Agreement to be 23rd July, 2013 instead of 23rd July, 2012 which resulted in false suggestions with respect to its contractual obligations.
 - b. OP-1 stated that DPR along with map was submitted to the competent authority on 3rd December, 2012 and sanction was received on 31st August, 2012. This fact was to be intimated by OP-1 to the Informant, as per its contractual obligation under the Agreement, however, OP-1 failed to do so.
 - c. It was also stated in the abovementioned letter that OP-1 was in the process of submitting a revision to the previous DPR/Map to the appropriate authority.
7. The Informant submitted that she had filed a Right to Information (RTI) application dated 11th March, 2015 before LDA to find out the status of revised DPR and its sanction. LDA, *vide* its reply dated 23rd March, 2015, stated that the revised DPR was filed on 11th December, 2013 and the same was sanctioned on 16th January, 2014.
8. The Informant further stated that OP-1, *vide* letter dated 13th May, 2015, mentioned a separate ‘Agreement to Sell’ (hereinafter, “**Second Agreement**”) dated 23rd July, 2012 between the Informant and Titanium Buildwell Pvt. Ltd (stated to be a wholly owned subsidiary of OP-1 and member of the consortium of



OP-1). OP-1, allegedly, threatened the Informant to execute the sale deed pursuant to this Second Agreement otherwise to cancel the Agreement for the hospital land. The Informant claimed that the subject matter of the second agreement between the Informant and Titanium Buildwell Pvt. Ltd. was entirely a separate matter and had no commercial connection with the present dispute. However, in order to safeguard her interest in the Agreement and money already invested by her, the Informant sent a legal notice dated 15th July, 2015 to OP-1. Consequently, *vide* reply to the said legal notice, OP-1 terminated the Agreement on the misconceived ground of ‘serious misunderstanding and loss of trust’, which was not a ground for termination arising out of the Agreement. Therefore, such conduct of OP-1 amounts to alleged contravention of Section 4(2)(d) of the Act.

9. The Informant stated that she had sought to resolve the dispute through arbitration as per the Agreement. However, OP-1, allegedly, declined all names proposed by the Informant for arbitrator and did not propose any alternative names from its side. Subsequently, the Informant had to initiate an application for arbitration before the Hon’ble District Court of Lucknow.
10. The Informant has alleged that such unilateral termination of Agreement by OP-1 and its non-cooperation with the request for arbitration made by the Informant, despite the Agreement having such clause, resulted in denial of market access which is in contravention of Section 4(2)(c) of the Act.
11. Further, the Informant had placed on record the copy of the Integrated Township Policy, 2014 (hereinafter, the “**Policy**”) of the Government of Uttar Pradesh. As per Section 2 of the policy, the term ‘*integrated township*’ means 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 the area of minimum 25 acres and maximum of 500 acres and characterised by easy approach *via* roads and regular access to water and electricity. It is also mentioned in the



policy that establishment of such townships in areas connected *via* urban mass transit corridors and in the vicinity of newly emerging growth centres is encouraged. The Informant explained the features of the integrated township as a project which comprised of residential plots, row houses, villas as well as low-rise and high-rise apartments. 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; on the other hand, the government has provided the other part of infrastructure 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.*, was required to be developed by the real estate developers to provide a holistic living experience.

12. The Informant submitted that *vide* order dated 31st August, 2016 in Case No. 48 of 2016, namely, *Smt. Usha Roy v. M/s ANS Developers Pvt. Ltd.*, the Commission observed that Ansal API's Sushant Golf City with 6465 acres land appeared to be the largest integrated township project in Lucknow. However, on the other hand, the Informant has claimed that this explanation is not applicable in the present case, as Sushant Golf City is a Hi-tech Township and not an integrated Township as per their website. The Informant has further relied on Hi-tech Township Policy in this regard and differentiated between Hi-tech Township and Integrated Township. The Hi-Tech Township has been defined under Section-I, para 2(h) of the Hi-Tech Township Policy, 2007 of the Government of Uttar Pradesh, as follows:

“Hi-tech Township means 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.”



Section-II, para 1 of the Hi-Tech Township Policy consist the features of the Hi-Tech Township, as follows:

“The canvas for the Hi-Tech Township comprised land areas of about 1500 acres with a minimum investment of Rs.750 crore to be incurred in 5 years, considering the size and growth of urban population and shortage of housing and infrastructure services, the State Government announced open-ended Hi-Tech Township Policy in May, 2006 to facilitate and promote private investment through development of various sizes of Hi-Tech Townships ranging from 1500 acres to 5000 acres of land area.”

13. It is further submitted by the Informant that the Government of Uttar Pradesh under Hi-Tech Township Policy had granted licenses to 13 developers in 2006 in the entire State of UP out of which only 3 are in Lucknow. However, since many developers could not acquire the requisite land for the township, the Government asked them to make affordable flats to cater the housing needs of the majority and thereby appropriately converted their licenses into integrated townships. It is claimed that in Lucknow, only one Hi-tech Township *i.e.* Ansal API's Sushant Golf City has been able to successfully initiate construction and launch the project. However, the Informant did not provide the list of real estate companies who have been allotted land under the aforesaid policy. (verified)
14. In the light of the above, the Informant suggested that the relevant market in the instant matter would be *“provisions of services for development and sale of plots of land earmarked for providing medical facilities in an integrated township in Lucknow”*. The Informant claimed that the said relevant market is in conformity with the Commission's order in Case No. 48 of 2016.
15. With regard to the dominant position of OPs in the relevant market, the Informant claimed that OPs hold a minimum of 62.86% and upto almost 83% market share,



depending upon the time of grant of licenses. Further, the Informant has also submitted data of integrated townships in Lucknow, as follows:

S. No.	Name of the Project	Builder	Area	Hospital facility	Status
1	Shalimar OneWorld	Shalimar Group	220 acres	Yes	Ongoing
2	Omaxe City	Omaxe	140 acres	No	Completed
3	Eldeco City	Eldeco Group	133 acres	No	Completed
4	Emaar MGF Gomti Greens	Emmar MGF	Over 100 acres	Health Centre	Ongoing
5	DLF Garden City	DLF	30 acres	Medical Facilities	Ongoing

16. In order to establish the dominance of OPs, the Informant stated that OP-2 was established in 1988 and vertically integrated in the real estate and ancillary services. It was stated that OPs have 20 projects (residential and commercial) whereas, Eldeco has 12, Omaxe has 10, Paarth has 6 and Ansal API has 1 project. Hence, in view of above data, the Informant submitted that OP-2 is the dominant player in the relevant market.
17. It was further alleged by the Informant that OP-1 unilaterally changed the size and shape of the plot that was purchased by the Informant. The said conduct of OP-1 is allegedly a clear violation of Section 4(2)(a)(i) of the Act.
18. It was also submitted by the Informant that the Agreement was entered into in 2012 and terminated in 2015. On 7th October, 2015 and 16th December, 2015, OPs had launched two healthcare companies called First Core Tertiary Care Hospital Private Limited and First Core Healthcare Projects Limited, respectively. Thus, OPs had used their dominant position as the developer of the integrated township to enter into the market of providing medical facilities. Therefore, OPs denied market access to the Informant during the duration/subsistence of Agreement, and also took advantage of their dominant position in one market to enter into another market which is in contravention of Section 4(2)(e) of the Act.



19. The Informant has also stated that earlier in Case No. 48 of 2016, she had sent a request letter dated 22nd July, 2016 to the Commission for grant of six weeks' time to provide detailed and well researched data. Meanwhile, Commission passed an order under Section 26(2) of the Act and closed the matter. Pursuant to the same, the Informant has submitted that she has filed the present case containing detailed market research and evidence to substantiate the finding of 'dominant position' enjoyed by the OPs and abuse of such dominant position.
20. Based on the above facts and allegations, the Informant has prayed before the Commission, *inter alia*, to direct an investigation under Section 26(1) of the Act and direct OPs to cease and desist from indulging in all anti-competitive conduct.
21. The Commission has thoroughly perused the material available on record and observed that the Informant has filed the instant case after getting no relief in Case No. 48/2016 pertaining to the same subject matter and against the same Opposite Party *i.e.* M/s. ANS Developers Pvt Limited. Further, it is noted that the Informant has claimed in above paragraph that she could not make sufficient representation before the Commission as she was not granted six week time in Case No. 48 of 2016. In this regard, the Commission observes that the Commission had considered the said request of the Informant and, *vide* order dated 1st August, 2016 in Case No 48 of 2016, held that :-

“Today, the Commission considered the aforesaid application of the Informant and observed that the Informant had filed the information on 27th May, 2016. Subsequently, she also filed additional information dated 15th July, 2016. In these circumstances, the Commission does not seem it appropriate to give further time to the Informant. Accordingly, the Commission declines the request of the Informant in this regard.”

Hence, it can be inferred that sufficient opportunity was given to the Informant.



22. Considering the same allegation against the same opposite party, i.e., OP-1 and also in absence of substantial evidence provided by the Informant, the Commission herein reiterates its decision in order dated 31st August, 2016 passed by the Commission under Section 26(2) of the Act in Case No. 48 of 2016. Relevant paragraphs of said order are reproduced below:

Relevant Market

“8. The Commission observes that the allegations raised in the information relate to purchase of a plot of land by the Informant for developing a hospital in the integrated township developed by OP. Since, the said plot of land was transacted for the purpose of establishment of a hospital and the same was earmarked for hospital in DPR and layout plan/ map approved by LDA, it cannot be considered as substitutable with the plots of land meant for residential use or for other commercial use. Further, it is observed that for developing a hospital, the potential developer does not necessarily require to develop the same within a residential colony or integrated township. Buying plots from the area earmarked for developing hospital as per approved layout plan/ map within a residential colony or integrated township is one of the many alternatives available for the developer of a hospital. Apart from that, there are other alternatives where a potential purchaser can develop hospital. Thus, the Commission is of the view that the market for “the provision of services for development and sale of plots of land for providing medical facilities” may be considered as the relevant product market in this case. With regard to the relevant geographic market, the Commission is of the view that the geographic region of Lucknow District of Uttar Pradesh exhibits homogeneous and distinct market conditions. The buyer of a plot of land for establishing a hospital may not prefer other adjacent areas of Lucknow because of the factors such as level of urban development and infrastructure facilities, commutation facilities, consumer preferences for the medical services, differences in the price of land etc. Therefore, the relevant geographic market in this case may be considered as Lucknow District of Uttar Pradesh.



9. In view of the relevant product market and the relevant geographic market delineated above, “the provision of services for development and sale of plots of land for providing medical facilities in Lucknow District of Uttar Pradesh” may be considered as the relevant market in this case.”

Dominance

“10. Having delineated the relevant market, the next issue is to determine whether OP is dominant in the said relevant market. In this regard, based on the information available in the public domain, the Commission observes that there are several real estate developers such as Ansal, Eldeco, Sahara, Omaxe, Unitech, etc. are operating and offering similar kind of services in Lucknow. It is noted that all the above said developers are competing with each other in the relevant market with projects of varying magnitudes and have comparable size and resources as that of OP. The presence of a number of players in the relevant market indicates that the buyers have options to choose plots for developing hospital from other developers. With such renowned builders in the relevant market, it does not appear that OP enjoys a position of strength which enables it to operate independently of competitive forces prevailing in the relevant market or to affect its competitors or consumers or the relevant market in its favour.”

23. In view of above explanation provided in Case No. 48/2016, the Commission opines that due to presence of several significant and major real estate developers, such as, Ansal, Eldeco, Sahara, Omaxe, Unitech, etc. in the market for, “the provision of services for development and sale of plots of land for providing medical facilities in Lucknow District of Uttar Pradesh”, OPs do not appear to be dominant in the relevant market either individually or as a group.

24. The Commission further noted in Case No. 48 of 2016 that even in a hypothetical scenario wherein a different relevant market was considered by the Commission



in the said order, the Commission could not find the OP-1 as dominant entity in the relevant market. The relevant paragraph is reproduced below:

“11. Even if, ‘the provision of services for development and sale of plots of land for providing medical facilities in an integrated township in Lucknow’ is considered as the relevant market, the OP cannot be considered as dominant. From the information available in public domain, it is observed that Ansal API has launched an integrated township project in the name of ‘Sushant Golf City’ sprawling across 6465 acres in Amar Shaheed Path & Lucknow-Sultanpur Highway which appears to be the largest integrated township project in Lucknow whereas, the size of the integrated township project being developed by the OP is only 210 acres, indicating absence of market power of OP in the relevant market. Further, the Informant in its additional information dated 15th July, 2016 has admitted that OP is the fourth largest builder amongst 11 companies which have been granted license to develop intergrated township in Lucknow. Thus, the Commission holds that OP is not in a dominant position in the relevant market as defined in para 9 above.”

25. However, with regard to a hypothetical scenario considered by Commission, the Informant submitted that explanation given in para 11 of aforesaid order is not applicable in the present case, as Sushant Golf City is a Hi-tech Township and not an integrated Township as per website of Sushant Golf City. In this regard, the Commission notes that firstly, the analysis in para 11 of aforesaid order was in relation to a hypothetical situation. Secondly, the Commission observes that the distinction between Integrated Townships and Hi-tech Township is a policy matter of UP Government to encourage the growth of the real estate in the city. From the Competition Act stand point, the distinction between the Integrated and Hi-Tech Township is very narrow and is largely confined to the areas granted by the authorities to real estate developers, period of time for development and few other requirements. Such distinction does not change the basic criteria of satisfying commercial and residential needs. Both these townships are self-contained, self-sufficient units providing residential, commercial and



entertainment features with electricity, water, hospital, school, community centre, shopping facilities, parks, convention centre *etc.* The concept of Integrated and Hi-Tech Township are mainly guided on the principle of participation of private players in the development of real estate to meet the requirements of growth of business and population. In light of the same, the Commission considers Integrated and Hi-Tech Township as substitute of each other and interchangeable for developing a hospital. Accordingly, the Commission is of the view that OPs do not appear to be dominant either individually or as a group. In the absence of dominance, the question of abuse need not be assessed further under the Act.

26. It may be pertinent to note that with no new facts and substantial evidences against the OPs that could differentiate from the previous case, the Commission holds that earlier order dated 31st August in Case No. 48 of 2016 stands. Therefore, the matter is closed Under Section 26(2) of the Act.

27. The Secretary is directed to communicate to the parties accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S.L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U.C. Nahta)
Member

New Delhi
Date: 04/10/2017