COMPETITION COMMISSION OF INDIA

Case No. 60 of 2014

In Re:

XYZ....... Informant

And

Bengal Ambuja Housing Development Limited,
Having its registered office at: Vishwakarma,
86C, Topsia Road (South), P. S. Benia Pukur,
Kolkata, West Bengal - 700046 Opposite Party

CORAM

Ashok Chawla
Chairperson

Mr. S. L Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

U. C. Nahta
Member

Present: Informant in person.
Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (the “Act”) by the Informant against Bengal Ambuja Housing Development Limited (hereinafter referred to as the “Opposite Party”) alleging abuse of its dominant position by adopting one sided contract, misleading information and inadequate disclosure in Deed of Conveyance and General Terms and Conditions for sale of residential apartments in its Project at Upohar - The Condoville (hereinafter referred to as ‘the Project’), which is in contravention of the provisions of section 3 & 4 of the Act in the matter.

2. Facts of the case, as stated in the information, may be briefly noted:

2.1 The Informant had purchased a residential apartment in the Project. It is alleged that the Opposite Party follows certain anti-competitive practices by way of imposing one sided contract, inadequate disclosure and misleading information in Deed of Conveyance and General Terms and Conditions for sale of residential apartments in its Project.

2.2 The Opposite Party is further alleged to have concealed certain relevant information which was crucial for a buyer to take a decision at the time of purchasing of an apartment in the Project. It has also stated to have misled regarding certain benefits and facilities of the Project.

2.3 In order to substantiate the dominance of the Opposite Party in the market, the Informant has stated that the General Terms and Conditions for the residential apartment were provided after the payment of 95% (approx.) of the total sale consideration. The Deed of Conveyance for the residential apartment was executed only after the entire sale consideration was paid by the Informant. The Informant alleged that objections were raised regarding the conditions
mentioned in the said Deed of Conveyance but no heed was paid by the Opposite Party. The Informant alleged to have signed the said Deed of Conveyance under protest.

2.4 It is alleged that the following clauses in the Deed of Conveyance and General Terms and Conditions were in violation of sections 3 and 4 of the Act:

a) As per clause 6.1 of the Deed of Conveyance, the Informant was never provided with the documents or any sanctioned municipal plan.

b) As per clause 6.2 of Deed of Conveyance and clause 22v of General Terms and Conditions, irrespective of the fact that the recreational, sports activities and get-together of Upohar Club and Club Zone may cause disturbances, Buyers were prohibited to raise any objection to any such activity. On the similar lines, clauses 6.5 and 7.5 of Deed of Conveyance prevented the Informant from raising any objection against the use of central open space for entertainment/social events by the Opposite Party.

c) Clauses 6.8.6 of Deed of Conveyance and clause 22t of General Terms and Conditions provided that water supply to the inhabitants shall be made available from tube wells and alternate arrangements may also be made for supply of potable water. The Informant alleged that only two tube-wells were made available which were inadequate for supply of water to 586 dwelling units of the Project.

d) As per 6.14.1.5 of Deed of Conveyance and clause 22o of General Terms and Conditions, the Opposite Party had the right to put signage, hoardings and neon signs of its names and products on the top of the buildings in the Project.
e) As per clauses 6.14.2.1 and 6.14.2.2 of 6.2 of Deed of Conveyance, the buyers were prohibited after the possession was handed over to them from raising any demand for repair or rectification or any complaint regarding design, layout, accommodation, specifications etc.

f) As per the Informant, the interest rate for delayed payment was discriminatory. In terms of clauses 10, 12 and 14 of the General Terms and Conditions, the buyers were required to pay interest @ 15% per annum for the delayed payment, whereas the Opposite Party was required to pay penalty of Rs.50,000 per month in case of delayed possession which would be effective from the scheduled date of possession till deemed date of possession. Further, there was a provision for construction work in the common areas on any vacant land, building etc. even after possession. It is alleged by the Informant that the flooring of the apartment was completed after the date of possession and the issue raised by the Informant regarding payment of penalty amount was ignored by the Opposite Party. In terms of clause 14 of the General Terms and Conditions, buyers were required to take care of the maintenance and upkeep of the apartment.

g) In terms of clause 22n of General Terms and Conditions, Opposite Party shall have the exclusive right to take up the construction work on any vacant land, building etc. after completion of the project. In such a case, the share of Buyers/ allotees in land and/or common areas shall stand varied.

h) As per clause 22s (inadvertently mentioned as 22o) of the General Terms and Conditions, the buyers were required to bring complaints regarding fittings and fixtures to the notice of Opposite Party within 15 days from the date of the possession. As per clause 22y of General Terms and Conditions, the contents of the accompanying application kit (except the main application form) were not legal and binding on the Opposite Party.
i) The Informant further alleged that the Opposite Party adopted unfair business practices using deceptive marketing material and misleading sales presentation. Different marketing brochures were issued by the Opposite Party at different times consistently showing the Club within the Project as HIG Club, exclusively for the residents of the Complex.

3. The Informant filed additional information before the Commission wherein the relevant market has been defined as “the services for development and sale of premium luxury residential apartments in South East Kolkata in and around Eastern Metropolitan bypass”. The Informant has stated that the South East Kolkata has the highest potential for value appreciation, and other areas of Kolkata cannot be substitutes for south east Kolkata. It has been averred that the Opposite Party is a joint venture between West Bengal Housing Board and Ambuja Neotia and its predecessors and is one of the oldest joint sector firms in Kolkata and biggest from standpoint of concluded projects. As per the Informant, Opposite Party completed 25% of all apartments during 2001 to 2006 and 26% of all High Income Group (HIG) apartments during the same period, which gave it a huge recognition. It has also been stated that the Opposite Party enjoys highest share of most lucrative land in Kolkata, which gives it a dominant market presence. The Informant has stated that the buyers had a very high level of trust and goodwill for Opposite Party because the joint venture partner of Opposite Party was West Bengal Housing Board. It has been further stated that the payment terms were such that after 95% price was paid, it was impossible for any buyer to exit the agreement, irrespective of arbitrary and one-sided terms and conditions.

4. Based on the above averments, the Informant has alleged that the conduct of the Opposite Party is violative of the provisions of section 4 of the Act and has
prayed, *inter alia*, for initiating action against the anti-competitive conduct of the Opposite Party for violation of the provisions of the Act.

5. The Commission perused the material available on record including the information, additional information, facts and data placed on record by the Informant. The Informant was also heard in person by the Commission on 12.11.2014. Facts of the case reveal that the grievances of the Informant primarily pertain to the alleged abusive conduct of the Opposite Party who is allegedly imposing one sided contract, inadequate disclosure and misleading information in Deed of Conveyance and General Terms and Conditions for sale of residential apartments in its Project, in contravention of the provisions of section 4 of the Act.

6. For examination of the alleged abusive conduct of the Opposite Party, it is required first to delineate the relevant market where the Opposite Party is operating and then to assess the position of dominance of the Opposite Party in the relevant market so delineated and finally, examination of the conduct in case it is found to be in a dominant position in the relevant market.

7. Having regard to the facts of the case, the relevant product market appears to be the market of “services of development and sale of residential apartments”. As regards the relevant geographical market, the said project is developed in Kolkata. Thus, the relevant geographic market appears to be the geographic area of Kolkata. As such, the relevant market in the present case appears to be the market of “the services for development and sale of residential apartments in Kolkata”.

8. The Informant contended that the Opposite Party and its various sister companies committed serious acts of unfair and anti-competitive business practices in developing and marketing the Project. It is alleged that due to its
dominant presence in the market, Opposite Party has imposed coercive and one-sided terms on the Buyers.

9. The Commission considered the facts and figures given in the information and material on record and based on the information available in public domain, have come to conclusion that the Opposite Party does not appear to be in a dominant position in the relevant market of services for development and sale of residential apartments in Kolkata. Apparently, there are many other large real estate developers such as Avani Projects and Infrastructure Limited, Eden City Group, Godrej Properties Limited, Siddha Group, Godrej Properties Limited, Derris Infrastructure Private Limited, Salarpuria Sattva Buildcon LLP, Merlin Group, Akshara Group etc. It is further to be noted that real estate developers like Eden City Group, Merlin Group, Akshara Group have several projects which are at different stages of development.

10. The information available in the public domain indicates that there are many real estate developers in the relevant market offering similar or bigger projects. Srijan offers two large projects namely South Winds (1323 Flats) and Green (3948 Flats), similarly Heritage Realty Group also offers Sherwood Estate (1600 Flats) and Bantala Housing Complex (1200 Flats). Whereas Opposite Party offers Udayan (1600 Flats) and Upohar (1332 Flats).

11. Further, presence of such players with comparable projects in the relevant market indicates that the buyers have the option to choose from the various developers in the relevant geographic market. Since there is no information available on record and on the public domain to show the position of strength of the Opposite Party which enables it to operate independently of the competitive forces prevailing in the relevant market, *prima facie*, the Opposite Party does not appear to be in a dominant position in the relevant market. In
the absence of dominance of the Opposite Party in the relevant market, its conduct cannot be examined under the provisions of section 4 of the Act.

12. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 3 & 4 of the Act is made out against the Opposite Party in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

13. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S .L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member
New Delhi

Date: 29.12.2014