



COMPETITION COMMISSION OF INDIA

Case No. 102 of 2016

In Re:

**Shri Tirath Ram,
R/o 6161/I/4, Dev Nagar,
New Delhi – 110005**

Informant

And

**Baba Associate, Rep. by Sh. Rajender Gupta (Partner)
Office at 13-A/27, WEA,
Karol Bagh,
New Delhi – 110005**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Justice G. P. Mittal
Member**



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

1. The present information has been filed by Shri Tirath Ram (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (the “**Act**”) against Baba Associate (hereinafter, the “**OP**”) alleging contravention of the provisions of Section 4 of the Act.
2. It is stated that the Informant is the owner of a property bearing no. 5A/11013/1, measuring 54 sq. yards, situated at Gali No. 8, WEA Karol Bagh, New Delhi-110005 (hereinafter referred to as the “**Property**”). As per the information, the said property was partly built-up (up to two linters/with eight pillars) and in order to complete the construction of the property, a Collaboration Agreement (hereinafter the “**Agreement**”) dated 18.06.2010 was entered into between the Informant and the OP. The Agreement provided that a new building will be constructed (with stilt parking, ground, first, second and third floors) within 6 months after the execution of the agreement *i.e.*, by 18.12.2010 with the funds of the OP. The development of the area was to be commenced in consonance with the master plan or zonal development plan and with the permission, approval or sanction of the competent authority. It is stated that the OP also promised to pay a sum of rupees of Rs. 3 lakh as amount for recovery made from the previous construction which included, cost of already built-up two linters/with eight pillars.
3. The terms of the Agreement, *inter alia*, provided that the OP shall be entitled to sell or rent the third floor without roof and parking right, after the completion of the construction from top to bottom and the Informant will have no objection to the same. It was also stated in the Agreement that the time period of construction will be six months and the OP will pay rent for three floors as per the market value to the Informant, in case of non-completion of the construction after the expiration of the stipulated time. The Agreement was made binding on both the parties.



4. The Informant has alleged that despite requesting a number of times, the construction was not completed and the OP delayed the construction without valid reason. Noticing no progress in the pending construction work, the Informant visited the office of the OP to ascertain the status of the construction work, collecting payment, construction plan with municipal approvals and completion certificate and know about the reason for delay in the delivery of possession *etc.*, but no information was provided by the OP. Thereafter, it is stated that the Informant sent a legal notice dated 25.05.2012 through his lawyer. It is stated that in the month of January, 2012, the Informant noticed that an illegal occupant was residing on the 3rd floor of his property, which was locked by the OP for construction work. The Informant had asked for the keys of 3rd floor in the month of February, 2012 but the same were not handed over by the OP. Further, it is stated that the Informant tried to contact the OP and came to know that the possession of 3rd floor has been given illegally in an unauthorised manner to Smt. Krishna Khorwal by the OP allegedly in clear violation of the terms and conditions of the Agreement. In this regard, a separate Agreement to Sale (hereinafter “**Sale Agreement**”) was entered into between Smt. Krishna Khorwal and the OP which was executed at New Delhi on 02.03.2011.

5. It has been alleged by the Informant that the OP sold the 3rd floor unilaterally, without notice and before completing the formalities with *malafide* intentions. The entry of Smt. Krishna Khorwal amounts to trespass and misuse of property with the help of the OP and its associates. The Informant has submitted that against the OP, criminal and consumer complaints have been filed which are pending before respective fora. As per the Informant, keeping possession over the whole property by the OP amounts to abuse of dominant position and needs to be examined on the touchstone of Section 4 of the Act.



6. Based on the aforesaid facts and allegations, the Informant has prayed, *inter alia*, initiation of an examination/investigation under Section 4(2)(a) of the Act and to order payment of Rs. 3 lakh as promised by the OP as recovery for partly built-up premises. The Informant has also asked for monthly rent at the rate of Rs. 45000/- per month for the three floors since December, 2010 till date alongwith 18% interest per annum and Rs. 15000/- towards cost of litigation.
7. The Commission has perused the information and the material available on record. From the facts of the case, it is evident that the Informant is aggrieved by the conduct of the OP in delaying the construction of the building on his property, non-payment of recovery amount for the partly build structure and sale of third floor to a third party, unilaterally, without any notice to the Informant, and contrary to the terms of the Collaboration Agreement. As per the Informant, the OP has violated the provisions of Section 4 of the Act which deals with abuse of dominant position.
8. Section 4 of the Act provides that no enterprise or group shall abuse its dominant position and the term 'dominant position' has been defined as a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. In order to assess whether an entity is abusing its dominant position under Section 4 of the Act or not, it is necessary to first establish that it is dominant in the relevant market. Hence, the need for defining a relevant market arises. The relevant market may be defined either in terms of relevant product market or relevant geographic market or both as per Section 2 (r) of the Act. It is noted that the Informant has not suggested any relevant market where the OP is alleged to be dominant.
9. As per the facts stated in the information, the Informant has entered into a Collaboration Agreement for construction of a new building over a



partly built-up structure on a property owned by the Informant that is located in Delhi.

10. The relevant product market as defined under Section 2(t) of the Act means a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.
11. From the buyer's perspective, the Commission observes that a decision to engage the services of a developer/builder for construction on an owned property differs from buying an apartment/flat from a real estate company/developer in terms of characteristics such as nature of ownership, cost involved, development as per land owner's choice *etc.* When a buyer buys an apartment/flat in a real estate project, he enjoys ownership only limited to the apartment/flat in which the property resides whereas, possession and ownership of the plot and building under the Collaboration Agreement in the present case resides with the Informant while consideration is paid to the developer as per the terms of Collaboration Agreement. The scale and magnitude of the real estate market under Collaboration Agreement may be smaller and informal in nature when compared to the real estate market where, large renowned developers acquire land and develop flats and sell them to public at large. Hence, considering the factors provided under Section 2(t) of the Act, the relevant product market in the instant matter would be the "*market for provision of construction services on owned plots under Collaboration Agreement*".
12. Section 2(s) of the Act defines relevant geographic market which means 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 homogeneous and can be distinguished from the conditions prevailing in the neighbouring areas. The Commission is of the view that



geographic region of Delhi exhibits homogeneous and distinct market conditions. Further, the impugned property resides within geographic limits of Delhi. The owners intending to avail/procure services of development of plots under Collaboration Agreement in Delhi are less probable to avail the real estate services from real estate developer located outside Delhi. Hence, Commission is of the view that the relevant geographic market in the present case would be “Delhi”.

13. In view of the relevant product market and the relevant geographic market delineated above, “*market for provision of construction services on owned plots in Delhi under Collaboration Agreement*” may be considered as the relevant market in this case.
14. Having delineated the relevant market, the next issue is to determine whether the OP is dominant in the said relevant market. In this regard, it is noted that the market for provision of construction services under collaboration agreement is fragmented and unorganised with various small players located at various parts of Delhi. Based on the information available in the public domain, the Commission observes that there are numerous real estate developers apart from the OP such as, Arora Real Estate, Earth Group of Companies, Anand Properties & Infrastructure, Khosla Estate, Aarcon, Gemstar, Earthz etc. (*Source: individual websites of real estate developers and websites such as justdial, indiamart and sulekha etc.*) which are operating in Delhi and offering real estate services in the relevant market defined *supra*. These developers are competing with each other in the relevant market for providing their services. Presence of such large number of players in the relevant market indicates that owners of property have a number of builders to choose from. The presence of large number of developers in the relevant market also indicates that the OP does not enjoy a position of strength which enables it to operate independently of the competitive forces prevailing in the relevant market or affect its competitors or consumers in the relevant market in its favour. Further, perusal of the allegations indicate



that the dispute is an individual consumer matter that does not fall within realm of competition law.

15. As per the information available on record and in the public domain alongwith analysis *supra*, the OP does not appear to be dominant in the relevant market. The Informant has also not furnished any material(s) that indicates the dominance of the OP in the relevant market. In the absence of dominance of the OP, the question of examination of abuse of dominance does not arise. Further, no *prima facie* case under Section 4 of the Act as alleged is made out.
16. In view of the above, the Commission is of the view that there exists no *prima facie* case against the OP for contravention of the provisions of Section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
17. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

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

New Delhi:

Date: 14.03.2017