



COMPETITION COMMISSION OF INDIA

Case No. 109 of 2015

In Re:

**Rajeev Nohwar,
S/o Mr. U.V.S. Nohwar,
C-1104, Park Titanium,
Park Street, Wakad,
Pune-411057, Maharashtra**

...Informant

And

**Lodha Group
(Represented Through),
M/s Sahajanand Hi-Tech Constructions Private Limited
(A Lodha Group Company)
Lodhaexcelus, Level 2, Appollo Mills Compound,
N .M. Joshi Marg, Mahalaxmi,
Mumbai-400001, Maharashtra**

.....Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L Bunker
Member**

**Mr. Augustine Peter
Member**

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



Justice G.P. Mittal

Member

Appearances:

For the Informant: Mr. Rajeev Nohwar, Informant
Mr. Joydeep Sarma, Advocate

For the Opposite Party: Mr. Gopal Menghani, President
Ms. Raunika Malhotra, Senior Vice President
Mr. Donnie Dominic George, General Manager

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

1. The information in the present case has been filed by Shri Rajeev Nohwar, a resident of C-1104, Park Titanium, Park Street, Wakad, Pune-411057, Maharashtra (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Lodha Group, represented through Sahajanand Hi-Tech Constructions Private Limited (hereinafter, the “**Opposite Party**”) alleging, contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant booked a 3 bedroom-hall-kitchen flat bearing no. 2001 on the 20th floor in 24th Tower with a carpet area of 1660 sq. ft., including 2 car parkings (hereinafter, the “**Flat**”) in a project named Lodha Belmondo (hereinafter, the “**Project**”) launched by the Opposite Party on the Pune-Mumbai Highway (hereinafter, “**Pune Mumbai/Mumbai Pune Highway/Expressway**”) against a total consideration of Rs.1,68,88,095/- (Rupees One Crore Sixty Eight Lakh Eighty Eight Thousand and Ninety Five Only) *vide* application dated 24th June, 2014. The Informant has alleged that at the time of booking, the Opposite Party had stated that the possession of the flat would be handed over in September, 2015.
3. The Informant has submitted that since Lodha Group is not a juristic entity, it has been impleaded through Sahajanand Hi-Tech Constructions Private Limited, a



special purpose vehicle (hereinafter, the “**SPV**”) of the Opposite Party incorporated for the purposes of the project. The Informant has further submitted that the project was given huge publicity as a “Lodha Group’s” project and all advertisement and representations regarding the project were made in the name of Lodha Group only.

4. As per the Informant, the master plan of the project in the sales brochure, represented various amenities, *e.g.*, large clubhouse, swimming pool, kids pool, outdoor play area, party lawn, Ganesha temple and meditation hall, cricket playground, 1 kilometer long riverside promenade with viewing docks, jetty, outdoor sports area having badminton court, tennis court, multipurpose court with basketball and volley ball, full size cricket ground, jogging/walking track, golf practice area and water ponds *etc.*
5. It has been stated by the Informant that after booking of the flat, he had requested the Opposite Party for a copy of the Agreement to Sell (hereinafter, the “**Agreement**”) together with the title documents, approvals *etc.* for perusal before the execution and registration of the same. However, the Opposite Party did not share the copy of the Agreement as well as other documents with the Informant.
6. It has been averred by the Informant that, after much delay and on persistent follow up, the Opposite Party provided a copy of the Agreement to the Informant on 20th July, 2014. The clauses of the Agreement were allegedly found by the Informant to be in complete violation of various laws, including, the Maharashtra Apartment Ownership Act, 1970 (hereinafter, the “**MAO Act**”); Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter, the “**MOF Act**”); and the Standardised Development Control and Promotion Regulations for Municipal Councils and Nagar Panchayats under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter, the “**Town Planning Act**”) and also against the decisions of the Competition Commission of India (hereinafter, “**the Commission**”) and of the Hon’ble Supreme Court.



7. The Informant has alleged that the Opposite Party raised demands for further payments despite the fact that the Informant had already made payment of 20% of the consideration value, thereby violating Section 4 of the MOF Act which mandates that payments over and above 20% of the consideration value shall be made only after the registration of the Agreement. As per the Informant, refusal by the Opposite Party in sharing title documents, approvals, lease deed and other documents was in complete violation of Section 3(2) of the MOF Act, which mandates full and true disclosure of the title and encumbrances of the property.
8. The Informant has submitted that the common amenities mentioned in the Agreement are in contrast with the facilities advertised and represented in the sales brochure initially, *i.e.*, 50,000 sq. ft. of club house, gym, yoga centre, swimming pool, indoor kids playing areas, theatre, party hall and lawn, squash court, outdoor playing facilities like cricket, tennis, volley ball, basketball, jogging track, sit outs, river promenade, amphitheater, 9-hole golf course *etc.* The Opposite Party has also charged from the Informant and other buyers internal development charges for the development of these amenities. It has been alleged that the Opposite Party deliberately kept the aforementioned facilities out of the common facilities/amenities, so that these could be commercially exploited, which was in complete violation of Section 6 of the MAO Act and the Regulations under Town Planning Act, which mandate that, all common amenities of the real-estate projects ought to be handed over to its customers/apartment owners. The Informant has cited various contradictions/inconsistencies in the Agreement in comparison with the sales brochure in terms of withdrawal of benefits initially promised to be given to the prospective buyers including the Informant.
9. The Informant has also cited various clauses/terms in the Agreement which are alleged to be one-sided, abusive, illegal and unreasonable, *i.e.*, clause 16.2.3 of the Agreement which deals with waiver of the rights of the buyers over the amenities which were part of the sales brochure and which according to the Informant, is in



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violation of Section 6 of the MAO Act and provisions of the MOF Act. The Informant has also raised objections regarding clauses 1.13 and 1.14 of the Agreement as they do not mention the actual date of possession which is linked with the date of fit out and date of fit out does not allow the Informant to use the premises. A fit out period is generally a period where developer offers permissive/temporary possession before handing over the actual possession of the flat to the buyer and intimates that the flat would be ready subject to furnishing or carrying out interior designing *etc.* In this period, a buyer is not allowed to move in or to use the said flat for any other purpose. Further, clause 17.2.3 of the Agreement provides that maintenance charges and municipal taxes would become applicable on the flat from the date of fit out. Clause 4.1 of the Agreement requires the Informant to undertake that the buyer is completely satisfied regarding the title and encumbrances of the Opposite Party, even when the same have not been supplied to the Informant.

10. It has been alleged that the Agreement does not have any penalty clause against the Opposite Party in case of delay in handing over of the possession. Refund clause in the Agreement is also stringent and unreasonable. The Informant has highlighted the discriminatory rate of interest as a huge penalty on the buyers in case of a delay in the payment (18% quarterly compoundable interest) without any corresponding penalty payable by the Opposite Party in case of delay in handing over the possession (12% annually compoundable simple interest). The Informant has cited clause 11.3 of the Agreement in this regard. As per clause 5.2 of the Agreement, buyers are made to deposit the entire amount almost an year in advance of the proposed date of possession, without any commitment regarding the date of possession or stipulation of penalty for any delay in possession. The Informant has also complained about the vague indication regarding the date of possession as the date of fit outs, which has no legal or technical implication, as per clauses 1.13 and 11.1 of the Agreement



11. The Informant has averred that upon realising the one-sided terms of the Agreement, he had immediately protested and had sought amendment to the illegal clauses in the Agreement. However, the Opposite Party kept avoiding the same. The Informant has submitted that in the meantime, the Opposite Party issued a demand letter calling upon the Informant to make payment by 4th August, 2014 which as per the Informant, was absolutely illegal as a builder cannot demand more than 20% of the total consideration for registration of the Agreement in light of the statutory rules/laws. As the cut-off date for payment was approaching, the Informant sent a sum of Rs.1,23,28,426/- (Rupees One Crore Twenty Three Lakh Twenty Eight Thousand Four Hundred and Twenty Six Only) to the Opposite Party by way of cheque dated 4th August, 2014, in addition to, the earlier payment of Rs.34,00,000/- (Thirty Four Lacs Only) together with taxes. Further, the Informant had also purchased stamp papers for Rs.9,00,000/- (Nine Lakh Only) for registration of the Agreement as demanded by the Opposite Party. It is stated that the Opposite Party returned the cheque on 10th August, 2014 as a result of which, the Agreement could not be executed. Pursuant to this, the Informant once again sent the said amount by way of RTGS on 16th August, 2014 to avoid levy of penalty. Thereafter, it is stated that the Informant received an email from the Opposite Party on 27th August, 2014 intimating that the Informant had failed to make payment on time and hence, it is alleged that, the Opposite Party threatened to cancel the booking of the flat. It is further stated that upon being reminded by the Informant that he had already made the payment, the Opposite Party attempted to return the money through a cheque dated 30th August, 2014.

12. Subsequently, it is stated that the Informant approached the Hon'ble National Consumer Disputes Redressal Commission ("NCDRC") and filed a consumer complaint bearing no. 346 of 2014, which came up for hearing on 25th September, 2014, and notice was issued to the Opposite Party and further direction was made not to create any third party right over the property/flat in question.



13. In light of the facts narrated in the information as above, it has been submitted by the Informant that the terms and conditions contained in the clauses of the Agreement are one sided and unreasonable in nature and the Opposite Party is abusing its dominant position in the relevant market by forcing the buyers to sign the same. The Informant has stated that the conduct of the Opposite Party is apparently an attempt to subvert all the provisions of various beneficial legislations and judicial pronouncements in favour of customers/apartment owners such as the Informant and that, if an Agreement of such nature were permitted to be utilised by the Opposite Party as a tool of pressurizing its consumers and misusing its dominant position, it would have an adverse impact on the market and society in general. It is alleged that, if the Opposite Party succeeds in its evil design, then other builders in the market may follow the same design and rob the statutory rights of the consumers which will affect the entire real estate market in the country to the detriment of the general consumers such as the Informant. The Informant has annexed various reports of print and electronic media alongwith the information to show that the Opposite Party holds the position of dominance in the relevant market.
14. The Commission has perused the allegations put forth by the Informant and material available on record as well as in the public domain. The Commission heard the parties on 16th February, 2016 and 23rd March, 2016. The Commission also considered the additional submissions filed by the Informant dated 02nd March, 2016 and reply filed by the Opposite Party dated 21st March, 2016 in the matter.
15. The Informant in his additional submission has stated that the project is not located in Pune but is located at approximately at 30 minutes' drive from Pune towards Mumbai side on the expressway. It has been contended that "Mumbai Pune Expressway" is distinctly identified as a unique market in all the property websites such as Magic Bricks, 99 acres, Common Floor and Proptiger. It has been highlighted that the said project is identified as a Luxury Resort and Weekend Getaway by the Opposite Party as it is a 30 minutes drive from Pune and 2 hours drive from Mumbai and away from hustle and bustle of these two cities. It is



registered in the Sub-Registrar Office at Lonavala which is 20 minutes drive from the project and as per the market news, more than 60% of the buyers in the project are from Mumbai. Further, it has been stated by the Informant that majority of Pune Developers also have projects in Mumbai and *vice versa* due to contraction of two markets (Pune and Mumbai) and excellent connectivity. Saturation of Mumbai market has led to spill over of demand to Pune from Mumbai. Given this background, the Informant has defined the market into Micro Market (Mumbai Pune Expressway) and Macro Market (Mumbai and Pune put together) and on the basis of this definition, has stated that the relevant geographic market as per Section 2(s) of the Act for the present case is the “*real estate market around the Mumbai-Pune highway*” and the Opposite Party is enjoying a dominant position in the same.

16. The Informant in his additional submission has further stated that the reality market around the Mumbai Pune Highway stretches some 40 kms. (from Lonavala to end of express way) and there are many small projects located around the highway. However, the Opposite Party is easily the largest township currently under advance stage of execution with 120 acres of land and approximately 2500 units. Other than the Opposite Party, there are a couple of other large townships planned for development around the highway *e.g.*, Sanjivani Township at Talegaon by Kolte Patil Developers with 475 acres of land. However, no other existing project is even close to the said project in terms of size or value- even by a fraction. The Informant has stated that the Opposite Party is the largest supplier of residential space in Mumbai and Pune put together and is almost 3 times the size of its nearest competitors *viz.*, Runwal, Indiabulls, Kolte-Patil and Kalptaru and in this regard for which, data from Liases Foras (a Reality Data Provider) has been furnished by the Informant.

17. The Opposite Party in its reply to the information and additional submission filed by the Informant has submitted that the information does not disclose any cause of action for this Commission to initiate any action/proceedings under the Act, as the Informant has not been able to establish that the Opposite Party is a dominant player



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in the relevant market. The Opposite Party has contended that the grievances raised by the Informant are already being adjudicated by the NCDRC. Further, the Opposite Party has raised objections about the delineation of the relevant market by the Informant as area around Mumbai-Pune Highway. The Opposite Party has stated that the stretch ‘*around the Mumbai-Pune Highway*’ would include Mumbai, Thane, Lonavala, Mawal, Pune and beyond, and areas adjoining them. A consumer of real estate services for a residential unit in Mumbai will not choose a location in Pune and *vice versa*. The conditions of competition in the areas that form part of the relevant geographic market as per the Informant (Mumbai Pune Expressway) cannot be said to be distinctly homogeneous and distinguishable from the conditions prevailing in the neighbouring areas.

18. On the issue of relevant product market being “*weekend getaway for Mumbai residents*”, the Opposite Party has submitted that a sheer number of locations were available to Mumbai residents looking for availing real estate services in case of a weekend getaway and these areas are Alibaug, Kashid, Manori, Kalamboli, Panvel, Khandala, Matheran, Lonavala, Pune, Mulshi, Pawna, Kolad, Daman, Silvassa, Mahabaleshwar, Panchgani *etc.* Pune region is not the only option available to Mumbai residents to buy a real estate as a weekend getaway. The Opposite Party has further submitted that it has a single project in Pune by the name of Lodha Belmondo and is not a dominant player in Pune.
19. The Commission notes that the Informant has alleged abuse of dominant position on the part of the Opposite Party being aggrieved with the denial by the Opposite Party in amending the various allegedly unfair, abusive and one-sided clauses and conditions of the Agreement to be entered into with the Opposite Party for purchase of a flat. The abuse has also been stated to be arising out of an email dated 27th August, 2014 sent by the Opposite Party to the Informant, stating that the Informant has failed to make the payment in time and threatening to cancel the booking of the flat within 15 days’ time.



20. It is observed that examination of allegations arising out of abuse of dominant position under Section 4 of the Act requires the determination/delineation of the relevant market in terms of relevant product market and/or relevant geographic market. Section 4 of the Act prohibits abuse of dominance by a dominant enterprise/group in a relevant market. It is only when the Opposite Party is found to be dominant in the relevant market that the alleged conduct needs further examination to ascertain the abuse.
21. 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 interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. It is observed that for a consumer buying an apartment/flat, various factors such as price, quality of construction, size and other related facilities (like club house, swimming pool, connectivity within the city/locality and transport facilities *etc.*) play an important role in determining the decision to purchase an apartment/flat. In the instant case, the Commission observes that the Informant has booked a residential flat/unit in a project of the Opposite Party. In this regard, it may be noted that the requirement, scope and prospect of buying a residential flat is different from that of a plot for residential purpose. From the buyer's perspective/demand side, the Commission observes that a residential apartment/flat is a distinct product which is not substitutable or interchangeable with a piece of plot for residential purposes. While plots allow the buyers to decide the floor plan, number of floors, structure and other specifications as per their own choice, the same is not the case with booking/buying of an apartment/flat. Based on the factors considered above, the Commission is of the view that the relevant product market in the instant matter would be "*market for the provision of services relating to development and sale of residential flats*".
22. The relevant geographic market as given under Section 2(s) of the Act means a market comprising the area in which the conditions of competition for supply of goods or provision of services *etc.* are distinctly homogeneous and distinguishable from the conditions prevailing in neighbouring areas. With regard to the delineation



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of the relevant geographic market, it is noted that the Informant has stated that the Mumbai Pune Highway is the micro market and Mumbai and Pune together is the macro market. In response to the said contention, the Opposite Party has submitted that the geographic area relevant for the purpose would be the Pune Metropolitan Region which would include the cities of Pune, Hinjewadi, Pimpri Chinchwad and Maval, among others. The Commission has considered the arguments posed by both the parties regarding the delineation of the relevant geographic market.

23. It is observed that the expanse/stretch of Mumbai Pune Highway is 93 kilometres (approx.) and it connects Mumbai and Pune. Combining both the geographical areas of Mumbai and Pune into a single geographic market is not possible because a consumer who prefers to live in Mumbai would not prefer to buy a flat in Pune and similarly *vice-versa*. Therefore, the residential accommodations located in Pune and Mumbai cannot be considered to be substitutable with each other and would not form part of a single composite relevant geographic market. Similarly, the contention that the conditions of competition along the entire stretch of Mumbai Pune Highway are homogenous is also not acceptable because real estate market is primarily driven by location and thus, a location that is closer to Mumbai or Pune would be more lucrative than a location that is located at the middle of the said stretch or at other point on the stretch but is located far from the geographical boundaries of both the cities.

24. It is a trite that urban settlements/agglomerations historically have seen shifts in the pattern of settlement owing to factors such as development of suburban areas, availability of employment opportunities, trade, *etc.* Similar patterns can be observed across cities in terms of shifts in residential localities. Residential areas concentrated in older/ancient parts of a city shift/expand outwards, as a city expands due to more people migrating to it in search of employment and for trade purposes from the outskirts/ neighbouring areas. In the present case, the project of the Opposite Party seems to be located near Gahunje which is on the outskirts of Pune. Based on the description provided by the Opposite Party on its website for reaching the project from Pune as well as from Mumbai sides, it is observed that the project



is located at a short drive from Pimpri-Chinchwad, Talegaon and Hinjewadi; an hour's drive from the proposed new international airport at Navi Mumbai and at 30-45 minutes' drive from Central Pune.

25. The project of the Opposite Party is closer to new residential pockets being developed in Talegaon and Hinjewadi than older parts of Pune in terms of geographical location. It is observed that with the development of Information Technology(IT)/Information Technology Enabled Services (ITES) hub at Hinjewadi, “*the focus of [real estate] development is moving towards Punavale, Hinjewadi and neighbouring areas in the direction of Mumbai*”, which is resulting in expansion of residential construction activities around Mamurdi, Gahunje, Marunji and Punavale, located at approximately 20-30 minutes' drive on the Mumbai Pune Expressway” (Source: <http://indianexpress.com/article/india/india-news-india/property-appreciation-emerging-residential-destinations-in-punes-hot-pockets>). Though, the project of the Opposite Party is closer in terms of distance to the newly developing residential pockets in Talegaon and Hinjewadi than the older parts of Pune, all these new geographic locations discussed above are located contiguous on the Mumbai Pune Expressway closer to the Pune city side. It is noted that, though the newly developing residential pockets as discussed *supra* are being developed on the outskirts and are located outside the older/central part of the Pune city due to shrinkage in residential spaces within the older part of Pune city, these newly developed areas do not indicate that the conditions of competition are distinguishable from the Pune city to make them a separate/ distinct relevant geographic market. Further, the fact that these new residential pockets are located at much closer proximity to Pune city than compared to Navi Mumbai/ Mumbai would be one of the important factor amongst others that a buyer would factor in while choosing to purchase a residential flat in Pune city. Considering the factors such as distinguishable conditions of competition, location of the project, proximity to Pune city, and other factors discussed in the preceding paragraphs, the Commission deems it appropriate to define the relevant geographic market in the instant matter as “*Pune city*”.



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26. In light of the factors mentioned above, the relevant market in the present case would, therefore, be “*market for the provision of services relating to development and sale of residential flats in Pune city*”.
27. Based on the data/information available in public domain, it is observed that there are several other major real estate developers like Life Republic (450 acres, 2526 units) Kotle Patil, Blue Ridge (138 acres, 3900 units) Paranjape Schemes, DSK, Nyati Group, KUL Ecoloch, Megapolis Xrbia *etc.*, apart from many other small real estate developers operating in the aforesaid relevant market, who are engaged in the provision of services relating to the development and sale of residential units/flats. Presence of such players with comparable projects in the relevant market indicates that buyers have various options while buying residential units/flats and that they are not dependent on the Opposite Party alone for the same. The services offered by these developers, thus, pose competitive constraints upon the Opposite Party in the relevant market. Further, it is noted that no information is available on record or in the public domain indicating the position of strength of the Opposite Party, which enables it to operate independently of the competitive forces prevailing in the relevant market.
28. In the absence of dominance of the Opposite Party in the relevant market, the Commission is of the view that its conduct need not be required to be examined under the provisions of Section 4 of the Act.
29. In light of the above, the Commission is of the *prima facie* view that no case is made out against the Opposite Party for contravention of any of the provisions of Section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.



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30. It may be noted that the observations of the Commission are limited to the relevant provisions of the Act and should not be construed as an opinion on the contravention, if any, of any other laws as alleged by the Informant.

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

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S.L. Bunker)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi
Date: 08.03.2017