



COMPETITION COMMISSION OF INDIA

Case No. 23 of 2021

In Re:

Mr. Kuldeep Dahiya

Informant

And

Nishad N.P.

Opposite Party No. 1

Abdul Nazer N.P.

Opposite Party No. 2

Nashid N.P.

Opposite Party No. 3

Noushad Ali Akbarkhan N.P.

Opposite Party No. 4

**Way One Resorts LLP through its Designated Partner,
Abdul Nazer N.P.**

Opposite Party No. 5

**Nucleus Premium Properties Pvt. Ltd. through its
Managing Director, Nishad N.P.**

Opposite Party No. 6

**Nucleus Hotels and Resorts LLP through its
Designated Partner, Nashid N.P.**

Opposite Party No. 7

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



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

1. The present Information has been filed by Shri Kuldeep Dahiya (**‘Informant’**) under Section 19(1)(a) of the Competition Act, 2002 (**“Act”**) against seven Opposite Parties (hereinafter referred to as **‘OPs’**) alleging contravention of the provisions of Section 3 and 4 of the Act.
2. As stated in the Information, the Informant is stated to have entered into an Investment Agreement dated 12.06.2018 with OP-1 to OP-7, whereby the Informant invested INR 15 Lakhs.
3. It is averred in the Information that OP-6 is a trusted builder in Kerala which started operating in 2010 in Kochi, with OP-1 to OP-4 as its Directors. In 2016- 17, OP-6 decided to enter into the hospitality sector by forming a Limited Liability Partnership firm (LLP) in Ernakulum by the name and style of “Way One Resorts LLP” (OP-5), of which OP-1 to OP-4 became the Designated Partners. To carry out the operations of OP-5, another LLP firm in Ernakulum was formed by the name and style of “Nucleus Hotels and Resorts LLP” (OP-7), and OP-1 to OP-4 became the Designated Partners. Thus, in a way, OP-5 to OP-7 constitute a single entity run by OP-1 to OP-4.
4. It is further stated in the Information that OP-1 to OP-4 and OP-6 decided to float 250 shares of OP-5, each valuing INR 15 Lakhs. Out of these 250 shares, 50 shares were being purchased by OP-1 to OP-4 and OP-6, thereby investing an initial amount of INR 7.5 Crores in OP-5. An investment of INR 30 Crores was sought from 200 other partners from the general public, the Informant being one of them.
5. According to the Information, OP-7, on behalf of OP-1 to OP-7, e-mailed a presentation on 28.04.2018 promising the following returns to the Informant:
 - (a) A shareholder investing a sum of INR 15 Lakhs will own a Five-Star Category Resort for their life time, i.e., 0.4% of the Company and undivided share equivalent approx. 1% (40.47 sq. mt. of land and 200 sq. ft. (8.5 sq. mt.) of the built-up area.



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- (b) The investor under normal circumstances might receive up to 100% appreciation of investing once the property becomes operational within 3 years
 - (c) Monthly Rental Income of INR 14,726 i.e. INR 1,76,712/- on annual basis (INR (14,726*12 months)
 - (d) Benefits of yearly 7-night free stay for lifetime in the resort @ INR 7,500/- = INR 52,500/-.
6. Thereafter, on 11.05.2018, the Informant, after trusting the presentation, promises and portrayals, booked his share and paid INR 50,000/-. Subsequently, on 12.06.2018, the Informant paid an amount of INR 4.50 Lakhs which was required for signing the Agreement dated 12.06.2018 between the Owner, Builder & Operator on one side and Investor & Shareholder on the other side. As per the Informant, by 15.12.2018, the full amount of INR 15 Lakhs was paid by him after the execution of the Investment Agreement on 23.06.2018. Further, it has been stated that OP-5 had entered into a Lease Agreement with the OP-7 to run & manage the resort to be constructed.
7. However, as per the Informant, OPs delayed the completion of the project on one pretext or on other. The sequence of events, according to the Information, are detailed below:
- (i) On 03.09.2018, OP-7 apprised the Informant about some natural calamity beyond a 15-20 km circumference of the project site.
 - (ii) On 24.01.2019, OP-7 confirmed the completion of the resort by May 2019 and operations and returns by June 2019.
 - (iii) On 12.06.2019, OP-7 conveyed to the Informant that only the first phase of the building would become operational and only by October 2019 rather than June 2019.
 - (iv) On 02.08.2019, OP-7 communicated to the Informant that the Additional District Magistrate and other department heads of Geology, Forest and Disaster Management had visited the site of OP-5 for routine inspections. It was also



conveyed that OP-1 to OP-7 would inaugurate the first phase before December 2019.

(v) On 26.11.2019, OP-7 apprised the Informant that a meeting was conducted by the District Disaster Management Authority (DDMA) at Wayanad.

(vi) On 26.02.2020, the Informant was apprised by OP-7 that they have moved the Ld. High Court as DDMA permission to restart construction was taking an indefinite amount of time.

(vii) On 11.06.2020, OP-7 further informed that they would reschedule the construction to complete the project in six months after getting DDMA approval.

8. Owing to such delays in the completion of the project, the Informant requested a surrender of his share and refund of money. Subsequently, one of the officials of the OPs contacted the Informant and provided an alternative to swap the Informant's share to Tdew Resorts LLP (another already-running resort of the OPs) for INR 12 Lakhs for a return of INR 8,000/- to 14,000/- p.m. from November 2020 and payment of a difference of INR 3 Lakhs in three months after the execution of new agreement. The Informant wanted the proposal to be in writing; however, the OPs only provided a monthly return of INR 5,000/- in writing.
9. As per the Informant, multiple requests and legal notices were sent to the OPs for sale of his share and refund of money. However, no response was received from the OPs. Thus, the Informant neither received any monthly returns nor the refund of INR 15 Lakhs. Further, the Informant's shares were not transferred to some other resort on equitable terms.
10. After examining the Investment Agreement, the Informant is stated to have recognised that several clauses thereof are anti-competitive. Moreover, the Informant alleged that the OPs have abused their dominant position. Thus, a notice dated 26.06.2021 under the provisions of Section 3 and 4 of the Act was served upon the OPs by the Informant. Like earlier notices, the OPs did not respond to this notice also.



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11. Accordingly, the Informant has prayed for the following reliefs:

- (a) Pay the amount of INR 23,14,000/- after deducting the amount, if any, paid by way of interim relief within the time as may be prescribed by the Commission or as an alternative relief;
- (b) Send the Conveyance Deed in respect of the promised 40.47 sq. mt. of land and 200 sq. ft. (8.5 sq. mt.) of built- up area to the Informant, valuing INR 23,14,000/-, along with the affidavits of the real value of land and the Indemnity Bonds by OP-1 to OP-4 in respect of the said land and built- up area;
- (c) In case OPs are opting for the alternative relief of granting a Conveyance Deed to the Informant on the terms detailed in sub- para (b) above, pay the arrears of monthly returns from January 2019 till December 2021, amounting to INR 5,49,136/- to the Informant with an undertaking that the monthly rent of INR 14,726/- would be continued to be paid by OPs to the Informant throughout his life, as promised;
- (d) Pass any such order or direction against the OPs for the violation of Section 3 and 4 in respect of the Investment Agreement and their actual subsequent conduct.
- (e) Any other relief which the Commission may deem fit and proper.

12. The Informant has also claimed interim relief seeking prohibition on the OPs from selling the property of OP-5, as it would cause irreparable loss to the Informant.

13. The Commission considered the Information in its ordinary meeting held on 01.09.2021 and decided to pass an appropriate order in due course.

14. Having considered the averments and allegations made in the Information, the Commission observes that the Informant has not been able to show as to how the impugned clauses of the Investment Agreement and the Lease Agreement, can be said to be anti-



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competitive in terms of the provisions of Section 3 or Section 4 of the Act. The Commission is of the opinion that the issues projected by the Informant in the instant Information and as adumbrated *supra*, do not reveal any competition issue and the same appear to be purely individual consumer/ contractual in nature, and as such remedies lie elsewhere.

15. Needless to state, in the event the Informant moves appropriate forum for seeking redressal, the cause of the Informant would be determined in accordance with the law and nothing stated herein, shall be construed as an expression of opinion on the merits of the case.
16. In view of the above, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the OPs, and the matter 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/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date:13/09/2021