



सत्यमेव जयते



COMPETITION COMMISSION OF INDIA

Case No. 04 of 2017

In re:

1. **Sh. Ujjwal Narayan**
Flat No. 59, New Millennium Apartment,
Pocket-7, Sector-21, Rohini, Delhi - 110086 **Informant No. 1**
2. **Sh. Abhay Kumar Sinha**
1001, Guru Sun Sky Bungalows,
Plot No.18H, Sector-14, Sanpada,
Navi Mumbai, Maharashtra - 400705 **Informant No. 2**

And

1. **M/s Goel Enclave**
101, Goel Place, Sanjay Gandhi Puram,
Faiza Road, Lucknow, Uttar Pradesh **Opposite Party No. 1**
2. **Mr. Mahesh Aggarwal**
Partner of M/s Goel Enclave,
101, Goel Place, Sanjay Gandhi Puram,
Faiza Road, Lucknow, Uttar Pradesh **Opposite Party No. 2**
3. **Ms. Neelam Aggarwal**
Partner of M/s Goel Enclave,
101, Goel Place, Sanjay Gandhi Puram,
Faiza Road, Lucknow, Uttar Pradesh **Opposite Party No. 3**
4. **Mr. Rohin Goel**
Partner of M/s Goel Enclave



**101, Goel Place, Sanjay Gandhi Puram,
Faiza Road, Lucknow, Uttar Pradesh**

Opposite Party No. 4

- 5. The Chief Officer/ In-charge,
District Panchayat, Lucknow, Uttar Pradesh**

Opposite Party No. 5
- 6. The District Magistrate of Lucknow
Lucknow, Uttar Pradesh**

Opposite Party No. 6
- 7. The Chairman, Lucknow Development Authority
Vipin Khand, Gomti Nagar,
Lucknow, Uttar Pradesh - 226010**

Opposite Party No. 7
- 8. The Chairman, Madhyanchal Vidyut Vitran Limited
4-A, Gokhale Marg, Lucknow, Uttar Pradesh**

Opposite Party No. 8
- 9. The Director General, Police Fire Services,
The Government of Uttar Pradesh
5th Floor, Indra Bhawan, Lucknow, Uttar Pradesh**

Opposite Party No. 9

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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



सत्यमेव जयते



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

1. In terms of the provisions of Section 19(1)(a) of the Competition Act, 2002 (the 'Act'), Sh. Ujjwal Narayan and Sh. Abhay Kumar Sinha (hereinafter, **Informants**) have filed the information in the present case against M/s Goel Enclave (hereinafter, '**OP 1**') and eight others as enumerated *supra* (all the Opposite Parties collectively hereinafter referred to as the '**OPs**') alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informants are the buyers of two flats in a residential housing project in the name of 'Silver Line Apartments' ('**Project**') developed by OP 1 to OP 4 at Ganeshpur Rahmanpur, Chinhut, Faizabad Road, Lucknow, Uttar Pradesh. As per the information, at the time of booking of the said flats, OP 1 to OP 4 assured the Informants that they have got all the necessary approvals/ clearances from the concerned authorities for the said project and the cost of each flat in the project is inclusive of all charges *i.e.* the charges towards power backup, fire-fighting, lift facilities, car parking, external development, *etc.* Believing the assurance of OP 1 to OP 4, the Informants have booked the aforesaid flats and in this regard an 'Agreement to Sale' ('Agreement') was signed by OP 1 with both the Informants separately.
3. It is averred that despite the payment of entire cost, OP 1 to OP 4 have failed to handover the possession of the flats to the Informants as per the agreed time. Further, OP 1 has demanded an additional sum of Rs. 35,000/- as parking charges and Rs. 80,500/- as maintenance charges from the Informants on the pretext that the said amounts are required for transfer of documents and giving possession of the flats. Being constrained and finding no other option, the Informants have paid the aforesaid amounts to OP 1. It is alleged that OP 1 to OP 4, by misusing their dominant position, have taken the aforesaid charges despite the fact that no such charges were agreed upon in the Agreement. As per the Informants, OP 1 to OP 4 have collected nearly Rs. 1,75,00,000/-



towards car parking charges and nearly Rs. 5,50,00,000/- towards lifetime maintenance charges of common facilities from the residents of the said project.

4. It is stated that after getting possession of the flats, the Informants were shocked and surprised to find that OP 1 to OP 4 have not properly developed the flats and the common facilities in the project. They have also not adhered to the agreed terms and conditions of the Agreement as well as the applicable benchmark which is binding on OP 1 to OP 4. On inspection, it was found that the quality of construction of the flats and common areas such as staircase, outer walls, *etc.* and the quality of materials used for finishing of the flats was very poor. It is averred that lack of common facilities in the complex forced the residents to live a miserable life and absence of important common facilities such as fire-fighting system, functional lifts, hygienic environment *etc.* have endangered the lives of the residents.
5. The Informants have submitted that for the aforesaid problems various representations were given by the residents of 'Silver Line Apartments' to OP 1 to OP 4 but, of no avail. Further, many personal meetings have been held between the residents and OP 1 to OP 4 for providing upgraded common facilities and to handover the charge of common facilities to the resident welfare association of each block in the project as well as to refund Rs. 80, 500/- per flat along with interest collected by the OP 1 from the flat owners for life time maintenance charges. But, OP 1 to OP 4 were least bothered about the same. It is alleged that OP 1 to OP 4 have abused their dominance by imposing unfair and discriminatory conditions on maintenance of common facilities and limited/ restricted the said services to other service providers in 'Silver Line Apartments'. Further, it is alleged that OP 1 to OP 4 have indulged in the practices that resulted in denial of market access.
6. It is stated that as per the initial sanctioned plan of the project, OP 1 to OP 4 were to build 11 blocks *i.e.* block no. A to K whereas the remaining area was to



be used for building common facilities for the residents or to be kept open for common use. However, it is averred that OP 1 to OP 4 have illegally built up 8 more blocks *i.e.* block no. L to S in the said project which caused great prejudice to the residents because the aforesaid illegal construction has not only taken away the common area of the complex from the residents but also put unwanted pressure on the common facilities due to increase in the number of residents in the complex.

7. It is averred in the information that OP 1 to OP 4 have grabbed the hard earned money of the Informants by making false representations regarding construction of the flats and to provide maintenance of common facilities for lifetime. It is stated that the OPs in collusion and connivance with each other have launched the said project just to cheat the Informants and other flat owners. The Informants have issued a legal notice dated 19.03.2016 to OP 1 to OP 4, however, they have failed to comply with any of the legitimate demands of the Informants. It is also averred that in spite of the aforesaid conduct of the OP 1 to OP 4 being in violation of U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 and Uttar Pradesh Fire Prevention and Fire Safety Act, 2005, OP 5 to OP 9 have allowed them to carry on with developments in 'Silver Line Apartments'.
8. Based on the above, the Informants have, *inter alia*, prayed the Commission for the following interim and final reliefs: (i) to direct OP 1 to OP 4 to immediately construct, renovate the entire common area for each and every building, install proper fire-fighting system, install new electricity wiring system in accordance with the prescribed norms, and replace the existing sub-standard electricity wiring system; (ii) to refund the amount collected from the owners along with interest @18% per annum from 01.01.2012 till the date; (iii) to direct OP 5, OP 6 and OP 7 to ensure that the construction of the said project as per the sanctioned plans and; (iv) to direct OP 8 and OP 9 to ensure the supply of electricity in 'Silver Line Apartments' as per the norms.



9. The Commission has perused the information available on record. It is observed that the Informants are primarily aggrieved by the alleged abusive conduct of OP 1 to OP 4 in imposing arbitrary, unfair and unreasonable conditions in terms of not giving possession flats as per agreed time, not handing over the maintenance responsibility to the residents welfare associations, and charging lifetime maintenance charges of Rs. 80,500/- per flat and car parking charges of Rs. 35,000/- per flat which was not agreed upon. The Commission observes that the allegations of the Informants are mainly directed towards the abusive conduct of OP 1 and its partners *viz.* OP 2 to OP 4 in violation of the provisions of Section 4 of the Act. However, OP 5 to OP 9 have been made pro-forma parties to the case.
10. The allegations of the Informants in the present matter relate to purchase of two residential flats in 'Silver Line Apartments' developed by OP 1 and its partners at Ganeshpur Rahmanpur, Chinhut, Faizabad Road, Lucknow, Uttar Pradesh. Thus, the relevant product in question is a residential flat. The Commission notes that the requirement, scope and prospect of a residential unit *viz.* flat/ apartment are different from that of a commercial unit or a residential plot. The Commission is of the view that residential flat form a separate relevant market since the motive of buying and factors considered for buying a residential flat by the consumers are different from that of a commercial unit or a residential plot. In case of residential flat/ apartment the real estate developer completes the construction of the flat/ apartment before the possession is given to the allottee whereas the buyer of a plot has the freedom to decide the floor plan, the structure, and other specificity subject to applicable regulations. Thus, the buyers wishing to purchase a residential flat/ apartment may not prefer to substitute it with a residential plot or commercial apartment. Accordingly, keeping in view the substitutability and characteristics of services, their prices and intended use, the Commission is of the view that the market for "*the provision of services for development and sale of residential flats*" may be considered as the relevant market in the instant case.



11. The Commission notes that there are various residential projects in Lucknow, other than the project of OP 1 to OP 4, which can be considered by the consumers desirous of purchasing a residential flats. The distance is also not a factor that would restrict the consumer from exploring similar options in any area of Lucknow. The Commission observes that the geographic region of Lucknow exhibits homogenous and distinct market conditions as compared with those prevailing in adjacent areas of Lucknow in the provision of services for development and sale of residential flats. The consumers looking for a residential flat in the said geographic area may not prefer other neighbouring areas because of the factors such as level of urban development, price, distance *etc.* Further, the consumers may not switch to other areas with a slight increase in the price of the residential flat because of factors such as consumer preferences, urban infrastructure facilities, transport services *etc.* Therefore, the Commission is of the view that relevant geographic market in this case may be considered as the geographic area of '*Lucknow*'.

12. Based on the relevant product market and the relevant geographic market delineated under para 10 and 11 above, the relevant market in the present case may be defined as the market for '*the provision of services for development and sale of residential flats in Lucknow*'.

13. Now the issue is whether the OP 1 is a dominant player in the relevant market as defined *supra*. In this regard, the Commission observes that as per the information available in the public domain there are many other major more established developers such as Sahara, Eldeco, Parsvanath, Antriksh Group, Ansal API, Amrapali, Unitech, Omaxe *etc.* which are competing with OP 1 in the relevant market with residential housing projects of varying magnitudes and having comparable or even better sizes and resources. The presence of such a large number of major players with multiple projects provides several options for the consumers and acts as a competitive constraint for OP 1 from acting independently of the existing market forces in the relevant market. Thus, OP 1 has not been found be dominant in the relevant market. Since OP 1 is not in a dominant position in



सत्यमेव जयते



the relevant market, the question of abuse of its dominant position within the meaning of the provisions of Section 4 of the Act does not arise.

14. With regard to the contravention of Section 3 of the Act in the matter, the Commission notes that the allegation of the Informants does not hold any ground as the information does not disclose any kind of agreement amongst any of the OPs which can be termed as anti-competitive in terms of any of the provisions of Section 3 of the Act.
15. Based on the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of either Section 3 or Section 4 of the Act is made out against any of the OPs in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
16. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Dated: 05/05/2017