



सत्यमेव जयते



Fair Competition  
For Greater Good

**COMPETITION COMMISSION OF INDIA**

**Case No. 59 of 2016**

**In re:**

**Shri Sameer Agarwal  
H. No. 117/L/324, Naveen Nagar,  
Kakadeo, Kanpur, U.P.**

**Informant**

**And**

**M/s Bestech India Pvt. Ltd.  
Bestech House 124,  
Sector-44, Gurgaon, Haryana**

**Opposite Party**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

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

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

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

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**Dr. M. S. Sahoo**  
**Member**



**Justice G. P. Mittal**  
**Member**

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

1. The information in the present matter has been filed by Shri Sameer Agarwal ('**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against M/s Bestech India Pvt. Ltd. ('**OP**') alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.
2. OP is stated to be a company registered under the Companies Act, 1956 and has been engaged in the business of real estate development. The Informant is an allottee of a flat in 'Park View Sanskruti', a group housing complex developed by OP in Sector-92, Gurgaon, Haryana ('**Project**').
3. It is alleged that through false, baseless, concocted offers and fake assurances/promises OP and its agents induced the Informant to book a flat in the said project of OP for a total sale consideration of Rs. 1,54,09,350/-. It is stated that OP had promised to hand over the possession of the said flat within a period of 36 months from the date of signing of the apartment buyer's agreement ('**Agreement**') or from the date of approval of building plan by Town and Country Planning Department, whichever is later but, till date, it has not completed the construction work of the project. Further, OP has not given any reply to the Informant regarding the progress of construction inspite of repeated reminders. It is alleged that OP had sent a letter dated 19.11.2014 to the Informant demanding Rs. 5,116,199/- alongwith an interest of Rs. 8,04,517/- and later cancelled the allotment of the flat unilaterally and forfeited the amount already paid.

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4. The Informant has also alleged that the Agreement is in favour of OP and there is no such provision in the Agreement by which the rights or interests of the Informant are secured or protected. It is averred that certain conditions in the Agreement are one-sided, unfair and arbitrary and there is no scope for the Informant to object to such provisions.
5. It is averred that OP and other real estate developers have an arrangement whereby they are luring the customers to book flats/ residential units through fake promises of giving possession of the same as per the agreed timeline and once the consumers are trapped, they start exploiting the consumers by not giving possession in time. It is alleged that the flat buyers' agreements and applications for allotment of flats of all the real estate developers have similar terms and conditions.
6. Based on the above, the Informant has, *inter alia*, prayed the Commission to direct OP to discontinue from abusing its dominant position, refrain from entering into any anti-competitive agreement and impose such penalty on OP as the Commission deems appropriate.
7. The Commission has perused the information and other material available on record. It appears that the Informant is aggrieved of the fact that despite having paid huge amount for the flat, OP has not only failed to deliver the possession of the same on time but also unilaterally cancelled the allotment and forfeited the amount paid by the Informant. It is also alleged that the terms and conditions of the Agreement are unfair, arbitrary and tilted in favour of OP. It is therefore, alleged that OP has abused its dominant position thereby contravening Section 4 of the Act.
8. It is noted that the Informant has also alleged that OP and other real estate developers have an agreement to lure the customers with fake offers. Further, it is averred that OP and other real estate developers have similar terms and



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conditions in the buyers' agreement and allotment applications. Thus, it is alleged that there is contravention of Section 3 of the Act.

9. To examine the allegations of abuse of dominance in terms of the provisions of Section 4 of the Act it is essential to first determine the relevant market and then to examine whether OP is dominant in that relevant market or not. The Commission observes that the allegations in the instant case relate to purchase of a flat by the Informant in OP's group housing complex 'Park View Sanskruti'. Thus, the relevant product in the present matter is a residential apartment/ flat which is different from a plot of land or a commercial space. It may be noted that a plot of land or a commercial space cannot be considered substitutable with a residential apartment by the consumers because of difference in price and intended use. Therefore, the Commission considers the market for "*the provision of services for development and sale of residential apartments/ flats*" as the relevant product market in this case. It is observed that the geographic region of Gurgaon exhibits homogeneous and distinct market conditions. The buyer of a residential apartment/ flat in Gurgaon may not prefer other areas of Haryana and Delhi NCR because of factors such as differences in price of land, commutation facilities, quality of essential services *etc.* Therefore, in this case, the relevant geographic market may be considered as Gurgaon. Accordingly, the relevant market in this case may be considered as the market for the '*provision of services for development and sale of residential apartments/ flats in Gurgaon*'.

10. The Commission notes from the information available in the public domain that there are many other major real estate developers like DLF, Ansal, Unitech, Adani, Emaar, Vatika, Supertech *etc.* operating and competing with OP in the relevant market. The presence of a large number of players with projects of varying magnitude acts as a competitive restraint upon OP from acting independently of the market forces in the relevant market. Thus, OP



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does not appear to be dominant in the relevant market. In the absence of dominance, the Commission is of the view that, no case of contravention of Section 4 of the Act is made out against OP in the present case.

11. Further, it is alleged by the Informant that OP and other real estate developers are acting in tandem in stipulating similar terms and conditions in the flat buyers' agreement/ application form and exploiting the consumers by not giving possession of flats as per the agreed time. In this regard, the Commission observes that even though the Informant has alleged existence of an arrangement amongst the real estate developers in relation to stipulation of similar terms and conditions in the flat buyers' agreement/ application form for booking flats, no cogent material evidences have been provided to substantiate the allegations. Moreover, similar terms and conditions in the flat buyer agreement and other similar practices by the real estate developers may be common industry practices, not necessarily because of arrangement or understanding amongst the real estate developers.
12. Furthermore, the Commission in its order dated 03.02.2015 in case no. 59 of 2011 in the matter of '*Shri Jyoti Swaroop Arora Vs. M/s Tulip Infratech Ltd. & Ors.*' has observed that commonality of terms and conditions in the agreements executed between the builders and the buyers, in the absence of any evidence to establish understanding, arrangement or action in concert between the individual enterprises, cannot be held to be anti-competitive in terms of the provisions of Section 3(3) read with Section 3(1) of the Act and the said order of the Commission has been upheld by the Hon'ble Delhi High Court *vide* its order dated 16.05.2016 in W.P. (C) No. 6262/2015 in the matter of '*Jyoti Swaroop Arora Vs. Competition Commission of India & Ors.*'
13. Based on the above, the Commission finds that no case of contravention of the provisions of either Section 3 or 4 of the Act is made out against the OP in the



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instant matter. The matter is ordered to be closed under the provisions of Section 26(2) of the Act.

14. 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**

**Sd/-**  
**(Dr. M. S. Sahoo)**  
**Member**

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

**New Delhi**  
**Dated: 06.09.2016**