



COMPETITION COMMISSION OF INDIA
Case No. 26 of 2019

In Re:

**Suresh Chander Gupta,
B – 175, First Floor, Sushant Lok Phase I,
Gurugram-122009
Haryana**

Informant

And

**Vatika Limited
through its Director Gautam Bhalla
7th Floor, Vatika Triangle,
Block A, Sushant Lok – 1,
Gurugram 122002
Haryana**

Vatika

CORAM:

**Mr Ashok Kumar Gupta
Chairperson**

**Ms Sangeeta Verma
Member**

**Mr Bhagwant Singh Bishnoi
Member**

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

1. The present information has been filed by Suresh Chander Gupta (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against Vatika Limited (“**Vatika**”), through its Director, Gautam Bhalla, alleging contravention of the provisions of Section 3 and 4 of the Act.
2. As per the facts stated in the information, the Informant approached a property dealer in December 2012, for purchase of a residential flat in Gurgaon. The property dealer advised the Informant that Vatika is the top Developer in New Gurgaon and was developing ‘*Vatika Town Square*’, a commercial tower in commercial cum retail shopping complex on land at the junction of Dwarka Express Highway and Delhi- Jaipur Highway (NH-8).



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The property dealer arranged a meeting of the Informant with Vatika officials in Vatika office.

3. The Informant has averred that the sales executive of Vatika informed that ‘*Vatika Town Square*’, would be situated at the entrance of a large number of residential and commercial complexes in new Gurgaon and that all shops in retail shopping complex, Block-A to Block-C, were already sold out. The sales executive added that commercial space in Block-D was also being sold at that time.
4. The Informant was told by Vatika that Block-D was under construction and would be completed by end of June 2015. It was stated that by that time the entire Dwarka Express highway road would also be complete. Further, Kherki-Daula toll for entry to ‘*Vatika Town Square*’ and large number of other Commercial and Residential complexes were to be shifted 8 km towards Manesar. The Informant was assured that these activities would result in appreciation in the value of the commercial units in ‘*Vatika Town Square*’ Block D and the Informant could either sell the property at very good premium before taking possession or take physical possession of the same and sell at a later date for a higher premium or lease it at very good rentals.
5. The sales executive of Vatika asked the Informant to pay Rs. 2,50,000/- immediately, which was paid *vide* cheque number 044073 on 03.01.2013 and the application for allotment was also signed on the same date. Thereafter, Informant paid an amount of Rs. 34,27,427/- *vide* cheque number 631675 on 18.02.2013 as demanded by Vatika towards 40 % advance amount. The balance 60 % amount was to be paid at the time of possession. The Informant was also told that possession of the property would be given after 2.5 years *i.e.*, around June, 2015 and in case of delay in construction or any other default by Vatika, simple interest @ 8 % would be payable by Vatika. These representations were verbal and the Informant was allegedly told that these terms and conditions would be incorporated in the Builder Buyer Agreement (“**BBA**”) to be executed by Vatika with the Informant.



6. The stamp duty for BBA was paid by Vatika on 24.02.2013 and the Informant was called for execution of BBA. The Informant has alleged that in the BBA there was neither any mention of the construction/completion/possession date nor of the payment of simple interest @ 8 % to buyer, for delay, if any, in completion of construction by Vatika. The Informant was told that it being a standard draft, no change was possible in the text of the BBA. The sales executive of Vatika assured the Informant that Vatika was one of the most reputed developers and it never failed in keeping its verbal as well as written commitments. *Apropos*, the BBA was executed on 11.03.2013 and an executed copy of the same was handed over to the Informant in March, 2013.
7. It has been submitted that in December, 2016, the Informant was asked to pay Rs. 37,456/- which was paid *vide* cheque number 276732 dated 02.01.2017. Further, the Informant received an intimation of possession letter dated 16.11.2017 and was asked to deposit an amount of Rs. 60,72,620.48/- by 30.11.2017.
8. It has been averred that on 12.04.2018, in a meeting at office of Vatika, the Informant was told, that leasing/renting of commercial units in 'Vatika Town Square' was already going on in a big way and property may be able to fetch some premium. It has been alleged that on visit to 'Vatika Town Square' there was no activity of leasing/renting at D Block and the construction was not complete. All floors had only bare columns and bare floor without any partitions for the individual units, except for some activity for one unit on 5th floor.
9. It has been stated by the Informant that *vide* letter dated 16.04.2018, he requested Vatika to inform him the amount that would be refunded in case he decides to terminate the BBA alongwith complete details of deductions, if any, from the advance paid by the Informant. The Informant submitted the letter by hand in Vatika Office and was told that the reply would be provided in a week's time. The Informant, however, has alleged that no reply was ever received from Vatika since then.



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10. The Informant received a reminder, *vide* letter dated 08.06.2018, from Vatika for taking possession. Further, the Informant wrote a reminder letter on 14.06.2018 which was submitted by hand in Vatika Office, reiterating the request regarding the total amount that would be refunded and copy of completion certificate, to which there was no reply. Subsequently, another reminder was written by the Informant on 20.08.2018 which also remains unanswered.
11. The Informant has alleged that Vatika was required to complete construction and offer possession of the commercial unit by June, 2015. However, Vatika neither informed about any delay due to *force majeure* event nor sought extension of time. Further, Vatika did not reply to any of the letters sent by the Informant seeking information about amount payable to the Informant in case the BBA was terminated.
12. It has been submitted that the construction activities in Block D, 'Vatika Town Square' are still in progress, although Vatika issued intimation for possession on 16.11.2017. The Informant has alleged that Vatika is demanding huge extra amount from buyers for delay in taking possession.
13. The Informant has alleged that the BBA was not only one sided imposing unfair, discriminatory terms and conditions on the buyer, but also covered builder from all foreseeable or un-foreseeable events at the cost of buyers.
14. The Informant has alleged that there is selling of property through unfair means by nexus between Vatika and property dealers. The Informant has also alleged that Vatika has not taken appropriate action to promote 'Vatika Town Square' and is probably diverting funds collected from Block-D for other projects. The Informant has further alleged that the BBA is completely silent on its obligation to inform buyers and take mitigating measures to minimize adverse impact of *force majeure* event.
15. The Informant has, *inter-alia*, sought the following relief from the Commission
 - To conduct an enquiry into the anti-competitive conduct on the part of Vatika



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- A refund of advance payment and suitable compensation for mental harassment
16. The Informant has also filed an application for interim relief under Section 33 of the Act praying refund of advance amount paid *i.e.*, Rs 37,14,883/- or any other amount as deemed fit by the Commission.
17. The Commission has perused the information forming part of record alongwith other information available in the public domain.
18. The Commission observes that the provisions of Section 3 of the Act have no application to the present case as the Informant is a consumer and agreement with a consumer does not fall within the ambit of the Section 3 of the Act.
19. With regard to Section 4 of the Act, the Commission observes that the matter relates to sale of commercial units in a project developed by Vatika which was booked by the Informant and an advance was paid by him. The first step in the assessment of a case for alleged violation of Section 4 is to define the relevant market. In a plethora of cases, it has been noted by the Commission that the real estate market can be broadly classified into residential and commercial segments. What is of concern to the Commission in the present case is that the Informant booked a commercial space in *Vatika Town Square* project at Gurugram. The Commission observes that sale of commercial units, form a separate relevant product market in terms of the provisions of the Act, because the intention and factors considered by a consumer while buying a commercial/office unit are different from buying a residential flat or plot. The requirements of a consumer buying a commercial unit are different from a consumer buying a residential flat or plot. Not only is the intended use different but the pricing of a commercial property is also different from a residential property. Thus, taking into account factors such as physical characteristics or end use of goods, price of goods or services, consumer preferences and nature of service offered, the relevant product market for the purposes of the present case is the “*provision of services for development and sale of commercial space*”.



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20. With regard to the relevant geographic market, the Commission is of the view that the consumers looking for a commercial/office unit in ‘Gurugram’, may not prefer other areas. Various factors like availability of office space, location of business establishment, transport connectivity *etc.* play a decisive role in a potential buyer’s decision making process while choosing a commercial/office unit in a particular area. Further, the geographic region of ‘Gurugram’ possesses distinct market conditions as compared to other regions of NCR such as Faridabad, Ghaziabad, Delhi *etc.* Considering these aspects, the Commission opines that the relevant geographic market in the instant case would be ‘Gurugram’. Thus, the relevant market would be the market of “*provision of services for development and sale of commercial space in Gurugram*”.
21. The next step in a case of alleged abuse of dominant position is to see if the opposite party is dominant in the relevant market. It is observed that apart from Vatika, there are many players such as *Unitech Limited, Ansal Housing, DLF Limited, Paras Buildtech, Emaar-MGF, Vipul Infrastructure Developers limited., Parsvnath Developers limited, Spaze Towers Private. Limited, Raheja Developers Limited etc.* which are operating in the relevant market and providing services of development and sale of commercial space in Gurugram. These players are providing same or similar service and these services act as competitive constraints on the services provided by Vatika. Further, it is observed that the Commission has already analysed the dominance of Vatika in a similar case of *Shri Dominic Da’Silva vs. M/s Vatika Group* (Case 101 of 2014), decided on 01.04.2015, wherein it was held as under:

“13. After determination of the relevant market, the next step is to assess the dominance of the Opposite Party in the said relevant market. As per the information available in public domain, there are a number of real estate developers in the relevant market offering commercial projects such as Raheja (3 Projects), DLF (15 Projects), Unitech (21 Projects), Vatika (12 Projects), Ansal (2 Projects), Emaar MGF (5 Projects), Spaze Group (10 Projects), Baani Group (11 Projects), M3M (5 Projects) and JMD (9 Projects) *etc.* Presence of such players in the relevant market indicates that the buyers have the option to choose developer of their choice in the



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relevant geographic market. Since there is no information available on record and in the public domain to show the position of strength of the Opposite Party which enables it to operate independently of competitive forces prevailing in the relevant market, prima facie, the Opposite Party does not appear to be in a dominant position in the relevant market.”

Thus, the Commission observes that Vatika cannot be said to be dominant in the relevant market as delineated above.

22. In view of the above finding that Vatika has no dominance in the relevant market, no case to examine alleged abuse of dominance by Vatika in the matter, under the provisions of Section 4 of the Act, remains for determination by the Commission.
23. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed forthwith under Section 26(2) of the Act. Consequently, no case arises for consideration of interim relief claimed by the Informant under Section 33 of the Act.
24. The Secretary is directed to communicate the order to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 03/10/2019