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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case Nos. 31 of 2017 and 33 of 2017

Case No. 31 of 2017

In Re:

Mrs. Nikunj Sisondia

Informant No. 1

And

**Chairman and Managing Director,
M/s Earth Infrastructure Ltd.**

Opposite Party No. 1

**Plan Conversion Manager,
M/s Earth Infrastructure Ltd**

Opposite Party No. 2

Case No. 33 of 2017

In Re:

Mrs. Rashmi Raj

Informant No. 2

And

**Chairman and Managing Director,
M/s Earth Infrastructure Ltd.**

Opposite Party No. 1

**Plan Conversion Manager,
M/s Earth Infrastructure Ltd**

Opposite Party No. 2

CORAM:

**Mr. Devender Kumar Sikri
Chairperson**



Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Justice G. P. Mittal
Member

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

1. The information bearing Case No. 31 of 2017 has been filed by Mrs. Nikunj Siondia (hereinafter, “**Informant No. 1**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against the Chairman and Managing Director, M/s Earth Infrastructure Ltd. (hereinafter, “**Opposite Party No. 1**”) and Plan Conversion Manager, M/s Earth Infrastructure Ltd. (hereinafter, “**Opposite Party No. 2**”) alleging contravention of the provisions of Section 4 of the Act (hereinafter, Opposite Party No. 1 and Opposite Party No. 2 are collectively referred to as the “**Opposite Parties**”).
2. The other information bearing Case No. 33 of 2017 has been filed under Section 19(1)(a) of the Act by Mrs. Rashmi Raj (hereinafter, “**Informant No. 2**”) against the same Opposite Parties alleging contravention of the provisions of Section 4 of the Act (hereinafter, Informant No. 1 and Informant No. 2 are collectively referred to as the “**Informants**”).



3. The Commission has considered both the informations and has found that though different Informants have filed these informations separately, they are against the same Opposite Parties, relate to same project and contain similar allegations. As the facts and allegations raised therein are substantially similar, the Commission is satisfied that these can be clubbed together. Therefore, this common order is being passed to dispose of both the informations.
4. Opposite Party No. 1 is stated to be the Chairman and Managing Director of M/s Earth Infrastructure Ltd. (hereinafter, “**Earth Infra**”), which is a real estate developer and is alleged to be in a dominant position to dictate its own terms and conditions in the Memorandum of Understanding (MoU) and other documents executed with the Informants. Opposite Party No. 2 is stated to be an employee of Opposite Party No. 1. It may be noted that though the information has the names of employees of Earth Infra as the Opposite Parties, the allegations pertain mainly to the company *i.e.* Earth Infra, *vide* its employees. Accordingly, in this case, the analysis under Section 4 of the Act is done with respect to the company *i.e.* Earth Infra.
5. Both the Informants had booked a retail shop each in the commercial project of Earth Infra *i.e.* Earth Express One at Plot no. 1, Sector Tech Zone, Greater Noida (UP), with flexi payment plan, in the year 2012 and had executed separate MoUs with Earth Infra and subsequently provisional allotment letters were also issued by Earth Infra in their favour which were followed by confirmation letters. It is submitted that Earth Infra had agreed to pay assured returns @ 12% every month to each of the Informants until the possession of the unit allotted to the Informants for booking of the retail shops is given.
6. It is stated that till date the Informants have made all payments as demanded by the Opposite Parties and assured returns have been received for some time.



However, the Opposite Parties have stopped paying the committed assured returns since October, 2015 without any prior intimation or mutual agreement with the Informants. The Informants allege that such conduct of Earth Infra amounts to imposition of unfair/discriminatory conditions/prices in dealing with the Informants and other similarly situated allottees which is abuse of dominant position, in contravention of the provisions of Section 4 of Act.

7. It is alleged that the Opposite Parties are not abiding by the MoU executed with the Informants, thus, resulting in financial losses to the Informants and they also do not seem to have the intention to make payment of the assured returns or deliver the possession of units of local shops as promised by them. It is further alleged that such act of the Opposite Parties amounts to unfair trade practice, restrictive trade practice and deficiency of services on behalf of the Opposite Parties which is in violation of the provisions of the Act.
8. Both the Informants have thus, prayed before the Commission to, *inter alia*, direct an enquiry, as per the provisions of Section 26(1) of the Act.
9. The Commission has given a careful consideration to the material available on record. Both the Informants are aggrieved by the alleged abusive conduct of the Opposite Parties, which is stated to be in violation of Section 4 of the Act. For the purpose of analysis under Section 4 of the Act, the first requirement is to delineate the relevant market as per Section 2(r) of the Act. The next step is to assess the dominance of Earth Infra in the relevant market as per the factors enumerated under Section 19(4) of the Act. Once the dominance of Earth Infra is established, then the allegations of abuse of dominance are to be examined.
10. The Informants in the present case had booked the retail shops *i.e.* a commercial units with Earth Infra in Greater Noida. The Commission has dealt with similar issues in Case No. 05 of 2016 (*Mr. Mukul Kumar Govil and Others*



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v. *ET Infra Developers Pvt. Ltd. and Another*) and Case No. 06 of 2016 (*Mrs. Anshoo Bansal Vs ET Infra Developers Pvt. Ltd. and Another*). As observed by the Commission in the said cases, real estate market can be broadly classified into two main segments: residential and commercial. Residential segment can be further sub-categorised into residential apartments/ flats and plots. Further, the sale of commercial units form a separate relevant product market, because the intention and factors considered while buying a commercial/office unit are different from those considered while buying a residential flat or plot. The requirements and prospects of a consumer buying a commercial/office unit are also different from those of a consumer buying a residential flat or plot. Thus, taking into account factors such as substitutability, characteristics of service offered, price and intended use, the relevant product market in the present case may be taken as “*provision of services for development and sale of commercial space*”.

11. As regards relevant geographic market, the Commission is of the view that consumers looking for a commercial/office unit in ‘Noida and Greater Noida’, may not prefer other areas. Various factors like availability of office space, location of business establishment, transport connectivity, price, *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 ‘Noida and Greater Noida’ exhibits heterogeneous and distinct market conditions as compared to other regions of NCR such as Faridabad, Delhi, Gurugram *etc.* Considering these aspects, the Commission is of the view that the relevant geographic market be taken as ‘*Noida and Greater Noida*’. Thus, the relevant market is the market for “*provision of services for development and sale of commercial space in Noida and Greater Noida*”.
12. Having delineated the relevant market, the next issue is to determine whether Earth Infra is dominant in the said relevant market. The Informants contended



that Earth Infra being in a dominant position has dictated its own terms and conditions in the MoU executed with the Informants. Further, Earth Infra is disregarding the MoUs' provision to pay assured returns @ 12% every month till possession of the booked units is allotted to the Informants. Further, allegations of giving false promises, misleading representations, unfair trade practices *etc.* are made against Earth Infra.

13. The underlying principle for assessing dominance of an enterprise is linked to the market power enjoyed by it. An enterprise can be regarded as dominant if it enjoys/possesses a position of strength in the relevant market, which enables it to operate independently of the competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour. It is observed that no data has been provided by both the Informants in support of their assertion that Earth Infra is dominant in the relevant market. From the information available in public domain, the Commission observes that other than Earth Infra, there are many other major real estate developers such as Jaypee Infrastructure Limited, Omaxe, Supertech, Wave, *etc.*, rendering similar services in the relevant market. The competitors of Earth Infra have projects of varying magnitude which are comparable with Earth Infra in terms of size and resources. The presence of such other players indicates that buyers have various options. Accordingly, Earth Infra does not appear to enjoy a dominant position in the relevant market. In the absence of dominance, the examination of alleged abusive conduct need not be made.
14. The Commission, therefore, is of the view that no *prima facie* case of contravention of the provisions of Section 4 of the Act is made out against Earth Infra or for that matter against the Opposite Parties. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.



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15. The Secretary is directed to communicate to the Informants 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/-
(Justice G. P. Mittal)
Member

New Delhi

Date: 24/08/2017