



**COMPETITION COMMISSION OF INDIA**

**Case No. 86 of 2016**

**In re:**

Shri Satyendra Singh  
11A, Gali No. 21-B,  
Molarband Extension,  
Badarpur, New Delhi.

**Informant**

**And**

Ghaziabad Development Authority  
Vikas Path, Near Old Bus Stand,  
Ghaziabad – 201001, Uttar Pradesh.

**Opposite Party**

**CORAM**

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

**Mr. Sudhir Mital**  
**Member**

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

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



## **Appearances**

**For Informant:** *Shri Satyendra Singh, Informant in-person*

**For Opposite Party:** 1. *Shri Gaurav Upadhyay, Advocate*  
2. *Shri Gyanendra Verma, Additional Secretary*  
3. *Shri Prashant Guatam, Assistant Engineer*

## **Order under Section 26(1) of the Competition Act, 2002**

1. The information in this matter has been filed by Shri Satyendra Singh (**‘Informant’**) under Section 19(1)(a) of the Competition Act, 2002 (the **‘Act’**) against Ghaziabad Development Authority (**‘OP’/ ‘GDA’**) alleging contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant is an allottee of a flat under the Pratap Vihar residential housing scheme for the Economically Weaker Sections (EWS) (**‘Scheme’**) being developed by the OP in Ghaziabad, U. P. in 2008. OP is constituted under Section 4 of the Urban Planning and Development Act, 1973 of Uttar Pradesh and is, *inter alia*, engaged in the activity of development and sale of real estate in Ghaziabad, U. P.
3. It is stated that the OP had conducted a lottery draw for allotment of EWS flats under the aforesaid scheme. On being successful in the said lottery draw, the Informant was allotted a flat bearing no. H-2/311 and accordingly, an allotment letter dated 04.05.2009 was issued in favour of the Informant mentioning the final price of the flat as Rs. 2,00,000/- and other conditions relating to payment plan, date of giving possession, penal interest in case of delay in the payment of the balance amount *etc.* As per the condition of the scheme, the Informant paid Rs. 20,000/- to the OP as registration amount constituting 10% of the total price of the said house.



4. It is averred that on 27.11.2015, the OP issued a letter to all the allottees of the aforesaid scheme asking them to pay Rs. 7,00,000/- as sale price of the flats allotted to them failing which their allotment would stand cancelled. It is alleged that the OP has arbitrarily increased the sale price of the said flat to Rs. 7,00,000/- from Rs. 2,00,000/- which was mentioned in the allotment letter dated 04.05.2009. As per the Informant, the OP has indulged in unfair and arbitrary practices and has misused its dominant position in the market. It is averred that the OP has indulged in the said practice even after knowing that the allottees of the scheme belong to the weaker sections of the society and they are not in a position to challenge the OP for its unfair and arbitrary conduct. Further, it is stated that the allottees of the said scheme are dependent upon the OP for the residential flats under the said scheme. The Informant has averred that the alleged conduct of OP is in contravention of the provisions of Section 4(2)(a) of the Act.
5. Based on the above submissions, the Informant has prayed the Commission to initiate an inquiry against the OP under the provisions of the Act, set aside the impugned letter dated 27.11.2015 of the OP demanding Rs. 7,00,000/- for the aforementioned flat, and direct the OP to deliver possession of all the flats to the allottees under the said scheme at the price of Rs. 2,00,000/- per flat.
6. Besides hearing the parties on 27.12.2016, the Commission has perused the information available on record and the documents submitted by the OP.
7. From the facts of the case, it appears that the grievance of the Informant relates to the letter dated 27.11.2015 of the OP demanding a higher price of Rs. 7,00,000/- for a EWS flat allotted to the Informant under the aforesaid scheme as compared with the price of Rs. 2,00,000/- as declared in the scheme's initial brochure and intimated to the Informant *vide* allotment letter dated 04.05.2009. It is the case of the Informant that the OP has abused its dominant position by arbitrarily increasing the price of the said flat in contravention of the provisions of Section 4 of the Act.



8. The Commission observes that GDA is established under Section 4 of the Urban Planning and Development Act, 1973 of the State of Uttar Pradesh. It has a common seal with power to acquire, hold or dispose of both movable and immovable properties. The Urban Planning and Development Act, 1973 of Uttar Pradesh empowers GDA to pursue activities for promoting and securing development of Ghaziabad in a planned manner. GDA has the power to acquire, hold, manage and dispose of land and other properties in Ghaziabad and to carry out building, engineering, mining and other operations, *etc.* Further, GDA is, *inter alia*, engaged in the activities of development and sale of buildings, flats, complexes *etc.* for residential, commercial, institutional and other purposes. Accordingly, the Commission is of the view that the above said activities of GDA are squarely covered under the definition of ‘enterprise’ in terms of the provision of Section 2(h) 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 in the matter and then examine whether OP is dominant in that relevant market or not.
10. The Commission observes that the allegations raised by the Informant in the instant matter relate to the allotment of low cost residential flats under the Pratap Vihar residential housing scheme announced by the OP for the benefit of EWS. Thus, the relevant product in question is low cost residential flats under affordable housing schemes for EWS. The Commission is of the view that other categories of residential flats available in the market for sale cannot be considered as substitute with the low cost residential flats/ houses under affordable housing schemes for EWS as there is a considerable difference in prices of both types of flats as well as in their features. It may be noted that a consumer of flats under the affordable housing scheme will not consider other residential flats available in the market as substitutable. Further, the market of low cost residential flats under affordable housing scheme for EWS is limited to people falling under a specific income group and other consumers are not eligible for allotment of flats under such housing schemes. Thus, based on the



above, the Commission delineates the relevant product market in the instant case as *'the market for provision of services for development and sale of low cost residential flats under affordable housing schemes for economically weaker sections'*.

11. With regard to the relevant geographic market, the Commission is of the view that the geographic area of Ghaziabad district of the State of Uttar Pradesh exhibits homogeneous and distinct market conditions for the development and sale of low cost residential flats under affordable housing schemes for EWS and can be distinguished from the conditions of competition prevailing in other adjacent areas of Ghaziabad such as Delhi, Noida, *etc.* It may be noted that a consumer intending to buy a low cost residential flat under affordable housing scheme for EWS in Ghaziabad may not prefer to purchase the same in other adjacent areas of Ghaziabad because of factors such as difference in regulatory authorities (and hence, different rules, regulation and taxes), distance to locations frequently commuted, regional or personal preferences, transport connectivity *etc.* Thus, the Commission considers the geographic area of *'Ghaziabad'* as the relevant geographic market in this case.

12. In view of the relevant product market and the relevant geographic market delineated above, the Commission defines the relevant market as *"the market for provision of services for development and sale of low cost residential flats under affordable housing schemes for economically weaker sections in Ghaziabad"* in this case.

13. Having delineated the relevant market, the next issue is to determine whether the OP is dominant in the said relevant market. In this regard, the Commission observes that in the said relevant market the OP appears to be in a dominant position. Other than OP, very few other players are there in the relevant market who are developing and selling low cost residential flats targeted for economically weaker sections of the society. As per the submissions of the OP, till 2015, it has developed/ constructed a total of 10,419 EWS flats whereas, as



per the information available in the public domain, no other player in the market has developed EWS flats on a comparable scale. Further, the size and resources of GDA are huge and it being a statutory authority as per the Urban Planning and Development Act, 1973 of Uttar Pradesh, the buyers/ allottees are completely dependent on it and there are a very few other options available in the relevant market for such buyers as substitutes of this relevant product. Based on the above, the Commission, *prima facie*, holds that the OP is in a dominant position in the relevant market defined under para 12 above.

14. In regard to the abusive conduct of the OP, the Commission has examined the allotment letter dated 04.05.2009 issued by the OP to the Informant with respect to allotment of a flat under the aforesaid scheme, brochure of the scheme and the letter dated 27.11.2015 issued by the OP to all the allottees intimating them to pay a higher price of Rs. 7,00,000/- for the flats allotted under the scheme. The Commission observes that the conduct of OP in unilaterally raising the sale price of flats under the said scheme from Rs. 2,00,000/- to Rs. 7,00,000/-, without any enabling stipulation in the brochure of the scheme or in the allotment letter, appears to be abusive. The Commission is of the view that the above said conduct of the OP, emanating from its dominant position in the relevant market, amounts to imposition of unfair price on the Informant and other allottees of flats under the aforesaid scheme which is anti-competitive in terms of Section 4(2)(a)(ii) of the Act.

15. In the light of the above analysis, the Commission finds that a *prima facie* case of contravention of provisions of Section 4 of the Act is made out against the OP in the instant matter and it is a fit case to be investigated by the Director General (DG). Accordingly, the Commission directs the DG to cause an investigation into the matter under the provisions of Section 26(1) of the Act. The Commission directs the DG to complete the investigation and file a report on the same within a period of 60 days from the date of receipt of this order.



16. The Commission, however, makes it clear that nothing stated herein shall tantamount to an expression of opinion on the merits of the case and the DG shall conduct the investigation without being influenced in any manner by any observation made herein.
17. The Secretary is directed to send a copy of this order along with the information and the documents filed therewith to the office of DG forthwith.

Sd/-

**(S. L. Bunker)**

**Member**

Sd/-

**(Sudhir Mital)**

**Member**

Sd/-

**(U. C. Nahta)**

**Member**

Sd/-

**(Justice G. P. Mittal)**

**Member**

**New Delhi**

**Dated: 02.02.2017**