



COMPETITION COMMISSION OF INDIA

Case No. 08 of 2015

In Re:

Shri Dharam Vir and Shri Aditya Umang Vir

Informants

And

Jaiprakash Associates Limited

Opposite Party

CORAM

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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

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

**Justice G. P. Mittal
Member**

Appearances: Shri Pulkit Agarwal and Shri Rakesh Agarwal, Advocates for the Informant alongwith the Informant Shri Dharam Vir.

Shri A.S. Chandhiok, Sr. Advocate with Shri Karan Chandhiok, Ms. Shewta Kakkar, Ms. Kalyani Singh, Ms. Shruti Sharma and Shri Mehul Parti, Advocates alongwith



Shri R. L. Batta, Joint President (Legal) and Shri Tarun Sharma, Assistant Manager (Legal) for the Opposite Party.

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

1. The present information has been filed by Shri Dharam Vir and Shri Aditya Umang Vir ('the Informants') under Section 19(1) (a) of the Competition Act, 2002 ('the Act') against Jaypee Greens Ltd. ('the Opposite Party'/ OP), alleging *inter alia* contravention of the provisions of Section 4 of the Act.
2. The Informants have submitted that on 25.09.2006 they had jointly applied for allotment of one apartment at 'Crescent Court' at Jaypee Greens, Greater Noida, a project of the OP. Pursuant to the above application, the Informants *vide* Provisional Allotment Letter dated 08.12.2006 were allotted one Crescent Court Apartment bearing unit reference no. CC-203 measuring 3340 sq. ft. on the 2nd floor of building number T2 at Jaypee Greens for a consideration of Rs. 1,97,16,000/-. It is submitted by the Informants that as per the said Provisional Allotment Letter, the possession of the flat was to be delivered within a period of 36 months thereof *i.e.* on or before 08.12.2009.
3. The Informants have stated that *vide* amendment to Provisional Allotment Letter dated 25.08.2008, the consideration for the flat was revised to Rs. 1,80,89,430/- and payment of 95% of the total revised price was demanded in advance. However, all other terms and conditions governing the said allotment continued to remain as contained in the Provisional Allotment Letter dated 08.12.2006.
4. According to the Informants, they have made all the payments as and when demanded by the Opposite Party and the last payment of Rs. 92,17,230/- was made on 31.08.2008. It is alleged that the Informants sent



several enquiries about the status of the flat and the likely date of delivery of possession to the OP but of no avail.

5. It is alleged by the Informants that after a delay of about five years, the Opposite Party *vide* letter dated 26.10.2013, offered to deliver possession of the flat to the Informants. It is submitted that *vide* letter dated 26.10.2013, the Opposite Party claimed that the flat is ready for possession and that certain works such as wooden flooring, final coat of painting and polishing, C. P. fittings and door phone for security have been withheld which were to be completed after the payment of the remaining Rs. 9,68,100.39/- being 5% of the total sale consideration.
6. According to the Informants, the demand made by the Opposite Party is contrary to the terms of the Provisional Allotment Letter as nowhere in the application form or in the Provisional Allotment Letter dated 08.12.2006 it is stated that the above mentioned works will be completed only after receipt of balance 5% sale consideration *i.e.* 100% price which was the payment due at the time of delivery of possession.
7. It is stated in the information that the Informants, after receiving the said letter dated 26.10.2013, visited the flat and found that it is far from completion and was not in a condition for delivery of possession. According to the Informants, it was apparent that the Opposite Party by pretending to deliver the possession of the flat was interested only in realising more payment without discharging their obligations.
8. It is submitted that the Informants, *vide* letter dated 21.11.2013, informed the Opposite Party about the above facts and requested it to complete all the works in the flat and inform as to when the Informants can take the possession of the flat. According to the Informants, on another inspection of the flat done in April, 2014, it was found that still many works are incomplete.



9. According to the Informants, they issued a legal notice dated 16.07.2014 to the Opposite Party calling upon it to complete the flat in all respects, issue a fresh offer letter of possession and compensate the Informants adequately for the delay in completing the flat and delivery of possession. According to the Informants, they are ready and willing to make the payment of the remaining 5% sale consideration after adjustment of the adequate compensation amount due to them.
10. The Informants have submitted that the Opposite Party neither complied with the notice dated 16.07.2014 nor gave any response thereto. Thereafter, the Informants got issued a reminder dated 10.09.2014 to the Opposite Party calling upon the Opposite Party to comply with the notice dated 16.7.2014. It is further stated by the Informants that the Opposite Party instead of replying/complying with the above notice dated 16.07.2014 and the reminder dated 10.9.2014, further issued a demand notice *vide* email dated 15.10.2014 calling upon the Informants to make the payment of Rs. 10,77,021.21/- towards overdue/outstanding amounts. It is stated by the Informants that the said email was sent without any basis and had been written by the Opposite Party merely to cover up the deficiency/defaults on its part, to pretend as if the flat is ready for possession and to create false evidence. Further, absence of any reference to the above mentioned legal notice and the reminder in the said email dated 15.10.2014 clearly demonstrates the *malafide* intention of the Opposite Party and amounts to unfair trade practice.
11. The Informants have submitted that the said email dated 15.10.2014 was duly replied to by the Informants *vide* their email dated 07.11.2014, calling upon the Opposite Party to comply with the notice dated 16.07.2014 and complete the flat in all respects and then issue a fresh offer letter of possession. It is submitted that the Informants again got the said flat inspected on 29.11.2014 and found that many works are still incomplete.



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Photographs showing the condition of the said flat as on 29.11.2014 were also filed alongwith the information.

12. The Informants have further alleged that the terms and conditions of the application form dated 25.09.2006 containing 'Standard Terms and Conditions of Allotment of One Estate Home/ Villa/ Townhome/ Apartment/ Sea Court/ Sun Court/ Crescent Court' are unfair and abusive in nature in terms of Section 4 of the Act. Some of the clauses which are unfair, one sided and loaded in favour of the Opposite Party are Clause 2.2, Clause 2.4, Clause 4.3, Clause 5.7, Clause 7.2 and Clause 7.3. The Informants have submitted that the agreement does not contain a proportionate liability clause to fasten commensurate penalty/charge on the Opposite Party for breach in discharge of its obligations.
13. It is submitted by the Informants that the aforesaid actions on the part of the Opposite Party in having a unfair and one-sided agreement, in not completing the flat in all respects as per the representations made by it while booking the flat to the satisfaction of the Informants, delaying delivery of possession beyond 5 years, demanding balance sale consideration before completing the flat and demanding maintenance charges even before delivery of possession amount to abuse of its dominant position and as such contravene the provisions of Section 4 of the Act.
14. The Informants have stated that in Case Nos. 72 of 2011, 16 of 2012, 34 of 2012, 53 of 2012, 45 of 2013 and 56 of 2014, the Commission had formed a *prima facie* opinion that Jai Prakash Associates Ltd. was in a dominant position in the relevant market of "*provision of services for development and sale of residential apartments in the geographic area of Noida and Greater Noida.*" Also, the Commission had considered some clauses of the buyers' agreements in the said cases abusive and accordingly passed



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orders under Section 26(1) of the Act, directing the Director General (DG) to cause an investigation.

15. Based on the above averments and allegations, the Informants have filed the instant information seeking various reliefs as detailed in the prayer clause of the information.
16. The Commission has perused the material available on record besides hearing the learned counsel for the parties.
17. In the present case, the Informants have essentially alleged abuse of dominant position by the Opposite Party.
18. To examine whether a *prima facie* case for contravention of Section 4 of the Act is made out or not, the Commission will have to determine the relevant product market. In this connection, the Commission observes that the present dispute relates to a residential apartment in one of the residential projects developed by the Opposite Party known as 'Crescent Court' located at Jaypee Greens, Greater Noida. The land on which the said project is being developed has been transferred to the OP by local authorities as part of the concession agreement that was entered into for development of Yamuna Expressway. The said land has been transferred with mixed use rights by the authority for real estate development and the entire land is located at a single location spread over 452 acres which is known as Jaypee Greens, Greater Noida. It is observed that the OP had the flexibility to split the land into individual pieces and develop the same separately. On the contrary, it is observed that the OP has been engaged in developing the entire land as a single large project with many residential projects along with the following features: a gated community with 3- tier security, power and water back-up from power substation and water filtration plant owned by the OP, multiple golf courses with one of them spread around 197 acres, social clubs, spa, integrated sport complex with



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outdoor and indoor facilities, sport academies, 60 acre nature park, gyms, swimming pools, retail shops, public school, spiritual centres, 15 community parks, restaurants *etc.* It is observed that the OP has various residential options within Jaypee Greens, Greater Noida being offered to the buyers at various price bands. OP has advertised the said residential project by mentioning all the aforementioned facilities as part of the said project indicating that what is offered is not a standalone apartment. The Commission observes that as the said residential project and all the aforementioned facilities are being developed by the OP, and as the said residential project and the amenities mentioned above are being offered together, it indicates that the services offered by the OP are not only different but are neither interchangeable nor substitutable with the services of a real estate developer offering an standalone apartment in a project. In sum, residential units in an integrated township are not substitutable with residential units in a cooperative society or a group housing scheme or any other residential units built in standalone projects as such residential projects do not include all the facilities that an integrated township offers. In such a scenario, a consumer who opts to buy a residential unit in an integrated township will not prefer a residential unit elsewhere. The distinguishing and intrinsic characteristics of Integrated Township make the residential units located in such townships a distinct ‘relevant product’ which is not substitutable with residential units in other standalone residential projects/towers. Accordingly, the Commission is of the *prima facie* view the relevant product market is “provision of services for development and sale of residential/ dwelling units in integrated townships”.

19. The Commission further notes that Greater Noida and Noida exhibit distinct characteristics from a buyer’s point of view and conditions of competition in Greater Noida appears to be distinct from the areas such as Delhi, Gurgaon and Ghaziabad in the National Capital Region. The consumers looking for a residential unit in the said geographic area may



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not substitute it with other neighbouring areas in the NCR region because of factors such as level of urban development, location advantage, proximity and connectivity to National Capital Territory (NCT) *etc.* The relevant geographic market, therefore, seems to be ‘Noida and Greater Noida’.

20. Hence, *prima facie*, the relevant market in the present case appears to be “*provision of services for development and sale of residential/ dwelling units in integrated townships in Noida and Greater Noida*”.
21. At this stage, it would be appropriate to refer to the case of *Sunil Bansal etc. v. Jaiprakash Associates Ltd. etc.*, Case Nos. 72 of 2011, 16, 34 and 53 of 2012, and 45 of 2013 (*Jaypee* cases) decided by the Commission *vide* its final order passed on 26.10.2015. The Commission through its majority order held the relevant market as the market for ‘*provision of services for development and sale of residential apartments in Noida and Greater Noida regions*’. While delineating the relevant market, it was opined by the Commission that integrated township was not a distinct product market as it was an evolving concept and at this stage of development of markets, it could not be said with certitude that ‘integrated township’ constituted a separate product market from standalone residential projects.
22. It may, however, be observed that the minority order in *Jaypee* Cases noted that what the OP specifically represented to its customers was development of a full-fledged integrated township which cannot be termed as a marketing gimmick only, as claimed by the OP at a later stage. It was further noted that in its representation and conduct, the OP had time and again maintained that what it is building was an integrated township in Noida, Greater Noida and beyond. Moreover, the OP in the Annual Reports which includes Director’s Report, Notes on accounts *etc.* at several places referred to development of an integrated township, but the OP, before the DG and the Commission, contended that it had not



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developed any project which can be said to be an ‘Integrated Township’. Thus, it was concluded by the minority order that the appropriate relevant market would be ‘provision of services for the development and sale of dwelling/residential units in Integrated Townships in Noida and Greater Noida’.

23. The Commission has carefully examined the decision rendered in *Jaypee* cases. After bestowing thoughtful consideration, the Commission is of the considered opinion that the relevant market was not determined in the majority order correctly. With due deference to the majority decision, the Commission disagrees with the reasoning adopted therein. For the reasons given in the minority order and the observations made hereinabove in this order, the Commission is of the *prima facie* opinion that the relevant market in the present matter would be “*provision of services for development and sale of residential/ dwelling units in integrated townships in Noida and Greater Noida*”.
24. In the relevant market defined *supra*, the minority order in *Jaypee* cases, on the basis of number of dwelling units, financial resources and land resources as well as vertical integration, found the OP to enjoy a dominant position. For the reasons given in the said order, the Commission is also of *prima facie* opinion that the OP is in a dominant position in the relevant market in the present case as well.
25. So far as the abuse of dominant position is concerned, the Informants have alleged the following clauses in the Application Form to be unfair and one sided:

“Clause 2.2

The Allottee agrees that unless an Indenture of Conveyance is executed in favour of the Allottee, the company shall continue



to be the owner of the Demised Premises and no payments made pursuant to the allotment of the Demised Premises to the Allottee, whether pursuant to the Standard Terms and Conditions or otherwise, shall give any person any lien on the Demised Premises until they have complied with all the terms and conditions of the allotment and the Indenture of Conveyance (as defined hereinafter) has been executed and registered in favour of the Allottee.

Clause 2.4

Nothing herein shall be construed to provide the Allottee with the right, whether before or after taking possession of the Demised Premises or at any time thereafter, to prevent the company from

- (i).....*
- (ii) putting up additional constructions at Jaypee Greens*
- (iii) amending/altering the plans herein.*

Clause 4.3

For the sake of clarity it is stated that nothing herein shall be construed to give the Allottee any right to raise any claim against the company on account of any such construction changes or the right to object to the additional construction or removal thereof.

Clause 5.7

Notwithstanding anything stated herein and without prejudice to the Company's right to cancel the Allotment or to refuse



execution of the Indenture of Conveyance, as provided herein, and without, in any manner condoning any delay in payment of Consideration, the Allottee shall be liable to make payment of interest at the rate of 18% per annum on the outstanding amounts of Consideration from the due date upto their payment or cancellation of the Allotment. The payments made by the Allottee shall first be adjusted against the interest and/or any penalty, if any due from the Allottee to the company under the terms herein and the balance available, if any, shall be appropriated against the installment(s) due from the Allottee under the Standard Terms & Conditions and the Provisional Allotment Letter.

Clause 7.2

.....If, however, the company fails to deliver possession of the Demised Premises within the stipulated period as mentioned herein above, and within the further grace period of 90 (ninety) days thereafter, the Allottee shall be entitled to compensation for delay there after @ Rs. 5/- per sq. ft. per month for the Super Area of the Demised Premises....

Clause 7.3

Such compensation shall be payable by the company to the allottee only after the Indenture of Conveyance has been executed, after payment of consideration and the payment of the other charges as detailed herein.”

26. On a careful perusal of the various terms as detailed above, *prima facie*, it appears that the above clauses are unfair, onerous, one-sided and tilted favourably towards the Opposite Party and call for a detailed investigation.



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Accordingly, the Commission holds that *prima facie* the Opposite Party appears to have contravened the provisions of Section 4 of the Act.

27. Resultantly, the Director General (DG) is directed to cause an investigation to be made into the matter and to complete the investigation within a period of 60 days from receipt of this order.
28. Lastly, it is made clear that though the Informants have impleaded Jaypee Greens Ltd. as the Opposite Party, the Commission notes that the allegations are directed against M/s Jaiprakash Associates Limited. As such, the cause title has been modified to reflect the proper legal entity against whom allegations have been made which have been ordered to be investigated by the DG.
29. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Augustine Peter)
Member

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

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

New Delhi
Date: 14/09/2016



DISSENT NOTE

Per: Mr. Sudhir Mital and Mr. U. C. Nahta, Members

30. We have gone through the order prepared by the majority to be passed under Section 26(1) of the Competition Act, 2002 ('the Act'). For the reasons given below, we are unable to lend our concurrence therewith.
31. In brief, the present information has been filed by Shri Dharam Vir and Shri Aditya Umang Vir ('the Informants') under Section 19(1) (a) of the Act against M/s Jaiprakash Associates Limited ('the Opposite Party'/ JAL), alleging *inter alia* contravention of the provisions of Section 4 of the Act. The Informants have submitted that on 25.09.2006 they had jointly applied for allotment of one apartment at 'Crescent Court' at Jaypee Greens, Greater Noida. Pursuant to the above application, the Informants *vide* Provisional Allotment Letter dated 8.12.2006 were allotted one Crescent Court Apartment bearing unit reference No. CC-203 measuring 3340 sq. ft. on 2nd floor of building number T2 at Jaypee Greens for a consideration of Rs. 1,97,16,000/-. It is not necessary to reproduce various averments and allegations made by the Informants as they have been adequately captured in the majority order.
32. Suffice to note, the Informants have essentially, *inter alia*, alleged that the terms and conditions of the Application Form dated 25.09.2006 containing 'Standard Terms and Conditions of Allotment of One Estate Home/ Villa/ Townhome/ Apartment/ Sea Court/ Sun Court/ Crescent Court' are unfair and abusive in nature in terms of Section 4 of the Act. Some of the clauses which have been alleged to be unfair, one sided and loaded in favour of the Opposite Party are: Clause 2.2, Clause 2.4, Clause 4.3, Clause 5.7, Clause 7.2 and Clause 7.3. The Informants have also submitted that the agreement does not contain a proportionate liability clause to fasten commensurate penalty/charge on Opposite Party for breach in discharge of its obligations.



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33. To examine the alleged abusive conduct of the Opposite Party, it is first necessary to determine the dominance of such enterprise in the relevant market.
34. In this connection, we may refer to the order proposed by the majority in this case wherein the relevant market has been defined as *provision of services for development and sale of residential/ dwelling units in integrated townships in Noida and Greater Noida*'.
35. For the reasons detailed below, we are unable to lend our concurrence to the relevant market so delineated in the majority order. It may be pointed out that in a similar setting of factual matrix, the Commission, pursuant to detailed investigation, had recently closed the matters against the Opposite Party through a final order by holding the Opposite Party to be not dominant in the relevant market.
36. For ready reference, we observe that in *Sunil Bansal etc. v. Jaiprakash Associates Ltd. etc.*, Case Nos. 72 of 2011; 16, 34 & 53 of 2012; and 45 of 2013 (*Jaypee cases*), the Commission through its majority order dated 26.10.2015 held the relevant market as the market for '*provision of services for development and sale of residential apartments in Noida and Greater Noida regions*'. While delineating the relevant market, it was opined by the Commission that integrated township was not a distinct product market. It was noted by the Commission that the term 'integrated township' was a nebulous and evolving concept and at this stage of development of markets, it could not be said with certitude that 'integrated township' constituted a separate product market from standalone residential projects. It may also be noted that the issue of integrated township being a separate product market also came up before the Commission in *Shri Sunil Chowdhary v. TDI Infrastructure Ltd.*, Case No. 27 of 2014 decided on 23.09.2014 where it was noted by the Commission categorically that though the concept of integrated township has become



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popular where all facilities are provided within one township but even in those cases, ordinarily the market would be of residential units.

37. Further, the Commission in the aforementioned *Jaypee* cases concluded that JAL did not enjoy a position of dominance in the said relevant market in accordance with the provisions of Section 4 read with the provisions of Section 19(4) of the Act. As JAL was not found to be in a dominant position in the relevant market, the Commission did not examine the alleged abusive conducts. In our respectful opinion, no new facts have been brought on record by the Informant which warrants us to take a different view in the present matter. We also do not subscribe to the majority view wherein it has been observed that the Commission in the previous cases did not determine the relevant market “correctly”. Accordingly, following the majority decision of the Commission in Case Nos. 72 of 2011; 16, 34 & 53 of 2012; and 45 of 2013, we have no hesitation in holding that the relevant market in the present case would also be ‘*provision of services for development and sale of residential apartments in Noida and Greater Noida regions*’ wherein the Opposite Party/ JAL was found to be not dominant. Thus, the issue of alleged abuse of dominant position by the Opposite Party in the relevant market so defined, does not arise in this case as well. Further, we may also point out that even the Informants have not asserted that they have booked the apartment in question in any integrated township where the Opposite Party was enjoying any dominant position.
38. In view of the above, we are of the considered view that no case is made out against the Opposite Party for contravention of the provisions of Section 4 of the Act and the information deserves to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

New Delhi
Date: 14/09/2016

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member