



COMPETITION COMMISSION OF INDIA

Case No. 62 of 2015

In Re:

Shri Vivek Chandra

Informant

And

Jaiprakash Associates Limited

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

Dr. M. S. Sahoo
Member

Justice G. P. Mittal
Member

Apearances: Shri Rajesh Kumar, Advocate for the Informant.

Shri Karan Chandhiok and Ms. Kalyani Singh, Advocates alongwith Shri R. L. Batta, Jt. President (Legal) for the Opposite Party.



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

1. The present information has been filed by Shri Vivek Chandra ('the Informant') under Section 19(1) (a) of the Competition Act, 2002 ('the Act') against M/s Jaiprakash Associates Limited ('the Opposite Party'), alleging *inter alia* contravention of the provisions of Section 4 of the Act.
2. The Informant, describing himself in the information as a law abiding citizen, is stated to be residing at Noida, U.P.
3. The Opposite Party has been described as a leading real estate company having nation-wide presence including at Noida. It is stated that the Opposite Party is a public limited company incorporated under the Companies Act, 1956 having its registered office at Noida, U.P. It is stated to be engaged in the activities of construction work *etc.*
4. It is averred in the information that the Opposite Party is having a plot of land admeasuring approximately 20.6895 acres located in Sector-128, Noida, U.P., which is leased from the Yamuna Expressway Industrial Development Authority. It is stated that on this land, the Opposite Party is constructing a multi-storied project named KUBE, Jaypee Greens, Noida.
5. The Informant booked an apartment on 28.01.2011 in KUBE, Jaypee Greens, Noida by making an initial booking payment of Rs. 4 Lacs to the Opposite Party. On 07.02.2011, the Opposite Party issued a provisional allotment letter for the apartment in favour of the Informant. As per the provisional allotment letter, the total sale consideration of the apartment was Rs. 66, 83,600/-.
6. As per the information, the Informant has already made a payment of Rs.63,60,470/- to the Opposite Party besides making an additional



payment of Rs.1,63,798/- towards the interest charged and demanded by the Opposite Party @ 12% *per annum*.

7. Referring to the provisional allotment letter dated 07.02.2011, the Informant stated that the Opposite Party was legally bound to deliver the possession of the said apartment to the Informant by February, 2014. It is, however, alleged that the possession of the apartment is yet to be delivered by the Opposite Party.
8. It is further stated in the information that due to financial crisis faced by the Informant, he wanted to sell his allotted flat to a third party and in this regard, a request was made on 04.02.2015 by the Informant to the Opposite Party for issuance of an No Objection Certificate (NOC) and for giving permission for assigning his complete rights and interests in the allotted flat to the would-be assignee.
9. It is further alleged in the information that the Opposite Party issued an NOC on 26.02.2015 containing very unfair/ discriminatory conditions against the Informant. Specifically, it was alleged that one of the conditions in the NOC states that "*period for delivery of possession of the said unit for the purpose of clauses 7.1 & 7.2 of the standard terms and conditions shall reckon to commence from the date on which the assignment is reordered by the company*". This has been described by the Informant as an arbitrary condition whereby the Opposite Party is trying to escape away from its own fault and liability for not delivering possession of the flat/ apartment on time to the Informant.
10. The Informant has also impugned Clause 7.2 of the Standard Terms and Conditions of Provisional Allotment of an Apartment at Jaypee Greens, Noida wherein it is mentioned that "*if the company fails to deliver the possession of the said premises within the stipulated period as mentioned hereinabove, and within the further grace period of 90 days thereafter, the*



applicant shall be entitled to a discount in consideration for delay thereafter @ Rs. 5/- per sq. ft. per month for the super area of the said premises.....” It is alleged by the Informant that on delayed payment on the part of the buyer, the Opposite Party is charging interest from the Informant @ 12% *per annum* (and the Informant had in fact made an additional payment of Rs. 1,63,798/- to the Opposite Party on account of penalty interest) and, as such, the Informant is also entitled to interest @ 12% *per annum* on the total amount paid to the Opposite Party upon late delivery of possession of the flat/ apartment.

11. Based on the above averments and allegations, the Informant has filed the instant information alleging contravention of the provisions of the Section 4 of the Act by the Opposite Party.
12. The Commission has perused the material available on record besides hearing the learned counsel for the parties.
13. The Informant is aggrieved of the alleged abusive terms imposed by the Opposite Party in respect of the apartment booked by the Informant in the project KUBE, Jaypee Greens developed by the Opposite Party at Noida. Thus, the Informant has essentially alleged abuse of dominant position by the Opposite Party. To examine the alleged abusive conduct, it is necessary to first determine the relevant market.
14. 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 ‘KUBE’ located at Jaypee Greens Wish Town, Noida. The land on which the said project is being developed has been transferred to the Opposite Party by the local authorities as part of a 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 1162 acres which is known as Jaypee Greens Wish Town, 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 sub-station and water filtration plant owned by OP, multiple golf courses, social club with outdoor and indoor sporting facilities, spa, gyms, commercial zone with retail and office space for large and small corporate houses based on the concept of walk to work, 500 bed super speciality Jaypee Medical Centre, Jaypee Public School, Jaypee Institute of Information Technology, swimming pools, gymnasium, auditorium, library, spiritual centres, community parks, 5-star hotel, shopping malls, restaurants *etc.* It is observed that OP has various residential options within Jaypee Greens Wish Town, Noida being offered to the buyers at various pricing 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 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”.

15. 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 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’.
16. 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*”.
17. 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.



18. 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 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'.
19. 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 correctly in the majority order. 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 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*".
20. 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 dominant position. For the reasons given in the said order and considering the



relevant material the Opposite Party appears to be in a dominant position in the relevant market in the present case.

21. So far as the alleged instances of abuses are concerned, it may be observed that essentially, two specific grievances have been made by the Informant in the information: firstly, a stipulation made by the Opposite party in the NOC issued to the Informant for assigning his rights and interests in favour of the future assignees. The impugned stipulation provides that “*period for delivery of possession of the said unit for the purpose of clauses 7.1 & 7.2 of the standard terms and conditions shall reckon to commence from the date on which the assignment is reordered by the company*”. This is alleged to be unfair and arbitrary in as much as the buyer of the right of allotment of the flat will not be entitled for any compensation for late delivery of the possession of the flat in terms of the original agreement and the same would also affect the Informant in realising the full market value of his right on transfer. Secondly, the Informant is aggrieved of the asymmetric liabilities under the impugned terms recorded in Clause 7.2 of the Standard Terms and Conditions of Provisional Allotment of an Apartment at Jaypee Greens, Noida wherein it is mentioned that “*if the company fails to deliver the possession of the said premises within the stipulated period as mentioned hereinabove, and within the further grace period of 90 days thereafter, the applicant shall be entitled to a discount in consideration for delay thereafter @ Rs. 5/- per sq. ft. per month for the super area of the said premises.....*”.
22. The Commission notes that impugned imposition by the Opposite Party through the NOC appears to be *prima facie* in contravention of the provisions of Section 4 of the Act in as much as the same appears to be an unfair condition affecting the original delivery schedule and also affecting the saleability of the apartment in question besides being a unilateral imposition. The other stipulation challenged in the present information



also appears to be *prima facie* in contravention of the provisions of Section 4 of the Act.

23. In view of the above, the Commission is of *prima facie* opinion that the impugned term/ conduct of the Opposite Party is in contravention of the provisions of Section 4 of the Act.
24. Accordingly, the Commission directs the Director General (DG) 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.
25. 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/-
(Devender Kumar Sikri)
Chairperson

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

26. 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.
27. In brief, the present information has been filed by Shri Vivek Chandra ('the Informant') under Section 19(1) (a) of the Competition Act, 2002 ('the Act') against M/s Jaiprakash Associates Limited ('the Opposite Party'/ JIL), alleging *inter alia* contravention of the provisions of Section 4 of the Act. It is not necessary to reproduce various averments and allegations made by the Informant as they have been adequately captured in the majority order.
28. Suffice to note, The Informant is aggrieved of the alleged abusive terms imposed by the Opposite Party in respect of the apartment booked by the Informant in the project KUBE, Jaypee Greens developed by the Opposite Party at Noida.
29. 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.
30. 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*".



31. 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.

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

33. 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.



34. 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 Informant has not asserted that he has booked the apartment in question in any integrated township where the Opposite Party was enjoying any dominant position.

35. 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.

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Date: 14/09/2016