



COMPETITION COMMISSION OF INDIA

Case No. 87 of 2016

In Re:

Major Siya Ram (Retd.)

S/o Late Sh. Malkhan Singh,

R/o A-83 GF Vikas Puri, New Delhi

Informant No. 1

Major General Vineet Rai Handa (Retd.)

S/o Late Shri M.R. Handa,

R/o C-199, Mansarovar Garden, New Delhi

Informant No. 2

And

M/s Wave Megacity Centre Private Ltd.

Through Managing Director,

A-25, Mohan Co-operative Industrial Estate,

Mathura Road, New Delhi

Opposite Party

CORAM

Mr. Devender Kumar Sikri

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member



Mr. Augustine Peter

Member

Mr. Justice G. P. Mittal

Member

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

1. The information in the instant matter has been filed by Major Siya Ram (Retd.) (hereinafter, the “**Informant No. 1**”) and Major General Vineet Rai Handa (Retd.) (hereinafter, the “**Informant No. 2**”) (hereinafter, collectively referred to as the “**Informants**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against M/s Wave Megacity Centre Private Limited (hereinafter, the “**Opposite Party**”/ “**OP**”) alleging, *inter-alia*, contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informants are residents of New Delhi. The OP is a company incorporated under the Companies Act, 1956, having its registered office at C-1, Sector-3, Noida, Uttar Pradesh and corporate office at Wave City Center Sales Pavilion, Plot No. CC-001, Sector 25A and 32, Noida, Uttar Pradesh. It is engaged in the development and sale of real estate properties in India.
3. It is averred that each of the Informants booked one residential unit with 2 BHK on 15.02.2013 with the OP. The said residential units have been described in the information as ‘*Elegantia Serviced Residence*’, proposed to be developed by the OP in “Wave City Center”, (hereinafter, the “**Project**”) located at NOIDA, District Gautam Budh Nagar, Uttar Pradesh. The Informants had paid booking amount of Rupees 5 lakh per unit. After payment of the booking



amount, unit no. 611 and 612 in Block 3J in Tower Elegantia were allotted to the Informant No. 1 and 2 respectively. Subsequently, the Informants also paid Rs. 22,55,525/- for each unit in instalments on 05.03.2013, 02.08.2013 and 27.08.2013, which includes the booking amount. It is submitted that each of the Informant and the OP had entered into an Allottee(s) Arrangement on 17.07.2013. As per the Allottee(s) Arrangement, the total cost of the project was Rs. 87,20,309/- per unit. As per the Welcome Letter, the units were supposed to be completed in a stipulated period of 48 months after the booking and were proposed to be delivered by March, 2017 to the Informants/buyers. However, it is alleged that the said project has not even commenced so far and therefore, it is not possible to complete the said project by the stipulated time.

4. It is submitted that due to non-commencement of the project even after delay of more than 3 years, the Informants demanded refund of the whole amount paid by them to the OP. After repeated demands by the Informants, the OP refunded each Informant only Rs. 5 lakh. Later on, a sum of Rs. 1,90,191/- and Rs. 1,90,000/- of the Informant No.1 and Informant No.2 was forfeited by the OP on the plea of brokerage charges and the balance amounts were refunded by the OP but without paying any interest and/or compensation. The OP informed the Informants that it has paid the brokerage charges to Investor Clinic (a real estate service company situated in Noida) and upon receiving a no-objection certificate from Investor Clinic, the OP would release the balance amount to the Informants. However, as per the Informants, Investor Clinic refused to give no-objection certificate and therefore, the OP refused to refund the balance amount.
5. The Informants have alleged that withholding of the aforesaid balance amount is contrary to the Allottee(s) Arrangement dated 17.07.2013, and is a deliberate illegal act on the part of the OP, which is against the welfare and benefit of the Informants and comes under the purview of the Commission. It has been alleged by the Informants that the OP has diverted/misused the hard earned money of the Informants for three years and has deliberately not commenced the project



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on time and has further, refused to pay back the balance refund amount on the plea of brokerage charges. The Informants have relied on the order passed by the Commission in *DLF Ltd. vs. Beldaire Owners Association (Case No. 19/2011)*.

6. In light of the above facts and allegations, the Informants have prayed the Commission, *inter alia*, to take action against the OP for loss and damages caused to the Informants and to order for payment of the balance amounts of Rs.1,90,191/- and Rs.1,90,000/- each with interest at the rate of 18% per annum against the total amount paid by the Informants till March, 2016 and to impose a penalty of Rs. 10 Lacs for physical and mental suffering and fraud/cheating caused to the Informants during all these years. Also, any other relief or penalty deemed fit by the Commission in the interest of justice may be granted.
7. The Commission has considered the information and the material available on record. After a careful perusal, the Commission notes that the Informants are, *inter-alia*, mainly aggrieved by the following conducts of the OP: (a) delay in the development of the Project 'Wave City Centre', in which the Informants had booked residential flats, (b) non-refund of the full amount paid by the Informants for these flats and (c) non-payment of any interest.
8. Section 4 of the Act provides that no enterprise or group shall abuse its dominant position and the term 'dominant position' has been defined as a position of strength, enjoyed by an enterprise, in the relevant market, in India, 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. In order to assess whether an entity is abusing its dominant position under Section 4 of the Act, it is necessary to first delineate the relevant market. Then, it needs to be assessed whether the enterprise is dominant in the relevant market. Once dominance is established, the question of examination of the allegations of the Informants would arise.



9. As per Section 2 (r) of the Act, the relevant market may be defined either in terms of relevant product market or relevant geographic market or both.
10. As per the facts stated in the information, the Informants had booked serviced residential apartments in Wave City Centre Project of the OP in Noida. The relevant product market as defined under Section 2(t) of the Act means *a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.*
11. The Allottee(s) Arrangement document annexed with the information refers to the project as a mix of commercial and residential segments. However, in the instant case, the Commission observes that the Informants have booked one residential space each in a project to be developed by the OP. In this regard, it may be noted that the requirement, scope and prospect of buying a residential unit is different from that of a commercial unit. Further, buyer wishing to purchase a residential unit may not prefer to substitute it with a commercial unit and *vice versa* because of product characteristics and intended use. Even within the residential segment, buying a plot or residential unit/apartment/flat are the various options available to a buyer but again owing to product characteristics and intended use, these options are neither substitutable nor interchangeable. While plots allow the buyers to decide the floor plan, number of floors, structure and other specifications as per their own choice, the same is not the case with booking/buying of an apartment/flat. Thus, from the buyer's perspective/demand side, the Commission observes that a residential apartment/flat is a distinct product which is not substitutable or interchangeable with a piece of plot or a commercial space. Based on the factors considered above, the Commission is of the view that the relevant product market in the instant matter would be *"provision of services relating to development and sale of residential apartments/flats"*.



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12. Section 2(s) of the Act defines the relevant geographic market which *means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighboring areas*. With regard to relevant geographic market, the Commission notes that the project of the OP is located in Noida. A buyer who has decided to buy a residential space in Noida or Greater Noida as per his needs, requirements and willingness or otherwise, would not opt for any other location of Uttar Pradesh or National Capital Region (hereinafter “NCR”) such as Delhi, Gurgaon, Ghaziabad, Faridabad, Sonapat *etc.*, because of factors like differences in price of land, commuting facilities, different regulatory bodies/authorities for approval, quality of essential services *etc.* Geographic region of Noida and Greater Noida exhibits homogenous and distinct market conditions. Therefore, the Commission is of the opinion that the relevant geographic market in the present case would be “*Noida and Greater Noida*”.
13. In light of the factors discussed above, the Commission is of the view that the relevant market in the instant case would be “*provision of services relating to development and sale of residential apartments/ flats in Noida and Greater Noida*”.
14. With respect to the position of dominance of the OP in the aforesaid relevant market, it is noted that the OP is one of the real estate developers engaged in the provision of services relating to development and sale of residential flats in the relevant market. From the data/information available in the public domain, it is observed that several major real estate developers like Amrapali, Jaypee Infratech Limited, The 3C Company, Unitech, Omaxe, Supertech Limited, Gaur Sons, *etc.*, are operating in the aforesaid relevant market, apart from many other small real estate developers. These developers are competing with each other in the relevant market. Presence of such players with comparable projects



in the relevant market indicates that buyers have various options while buying residential apartment and that they are not dependent on the OP alone for the same. The services offered by these developers, thus, pose competitive constraints upon the OP in the relevant market.

15. Based on the above, the Commission finds that *prima facie* no case is made out against the OP for contravention of the provisions of Section 4 of the Act in the instant matter. The matter is, hence, ordered to be closed under the provisions of Section 26(2) of the Act.

16. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S .L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

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

New Delhi
Dated: 17.01.2017