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## COMPETITION COMMISSION OF INDIA

Case No. 06 of 2019

**In Re:**

**Ms. Dejee Singh**

Q1/236, Ground Floor,  
South City-II, Gurugram  
Haryana- 122018

**Informant No. 1**

**Mr. Salag Ram Baveja**

A-77, Ground Floor  
South City-II, Sohna Road  
Gurugram, Haryana - 122018

**Informant No. 2**

**Mr. Kamal Kumar Luthra**

G-73, Ground Floor  
Vikaspuri  
Delhi- 110018

**Informant No. 3**

**Mr. Parveen Saluja**

Flat no. 0903, Block A,  
Premier Urban Society,  
Sector- 15, Part 2,  
Gurugram, Haryana - 122001

**Informant No. 4**

**Mr. Rakesh Kumar**

B- 1202 A, La- Lagune Apartments  
Sector- 54, Gurugram  
Haryana - 122011

**Informant No. 5**



**Mr. Satish Kumar Bhatti**

B- 24, AyudhVihar  
Plot- 3, Sector- 13, Dwarka  
New Delhi- 110078

**Informant No. 6**

**Mr. Surinder Singh Mathur**

House No. 456, Sector- 21  
Gurugram, Haryana – 122016

**Informant No. 7**

**Mr. Arun Khanna**

404, Plot No. Gh - 48  
Alankar Society, Sector- 56  
Gurugram, Haryana – 122011

**Informant No. 8**

**Mr. Ravinder Singh**

F – 207, Lado Sarai,  
Delhi – 110030

**Informant No. 9**

**Ms. Naresh Ahuja**

Through Special Authority Holder,  
Mr. Rajan Ahuja  
L – 201 Green Valley Apartments,  
Plot no. 18, Sector 22,  
Dwarka, Delhi – 110077

**Informant No. 10**

**And**

**M/s SANA REALTORS PRIVATE LIMITED**

Through Its Directors  
H 69, Upper Ground Floor,



Connaught Circus, Connaught Place,  
New Delhi – 110001



**OP**

**CORAM**

**Mr. Ashok Kumar Gupta**

**Chairperson**

**Mr. U.C. Nahta**

**Member**

**Ms. Sangeeta Verma**

**Member**

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

1. The present information has been filed by Ms. Dejee Singh and Others (hereinafter the '**Informants**') on 15.02.2019 under Section 19(1) (a) of the Competition Act, 2002 (hereinafter the '**Act**'), alleging abuse of dominant position by M/s Sana Realtors Private Limited (hereinafter the '**OP**') under Section 4(2) (a) of the Act in the real estate market for "Small Office Home Office" (hereinafter "**SOHO**"). As per the brochure of the OP, provided as Annexure C-2 by the Informant(s), the SOHO units are modern architectural masterpiece that will serve as a home as well as an office. It takes care of all the basic needs so that one can work from the comfort of a home.
2. The Informant has, *inter alia*, also alleged violation of Section 3 (d) of the Act by the OP. (The Commission notes that no such provision exists under the Act).
3. The Informants have alleged that the OP under the name and umbrella of 'Gambhir Housing India' launched a project by the name and style of 'Precision Soho Towers' at Sector-67, Gurugram, Haryana in the year 2009 with its unique offering of concept named SOHO, being the first project in the



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geographic region of Gurugram. The OP is stated to have widely advertised in its Brochure/ Website/ Advertisement Video on Social Media (YouTube) this new and unique concept of SOHO.

4. Informants herein have alleged that they booked units during the period 2009-2010 in the project of OP, pursuant to the above advertisements, and for which they executed agreements with the authorized signatory of the OP. The agreement dated 17.2.2010, executed with Mr. Kamal Kumar Luthra (Informant No. 3), has been filed along with the Information to show various abusive clauses entered into by the OP with its customers (hereinafter referred as the “**Agreement**”).
5. As per the Information, the OP was required to deliver possession of the units to the Informants and other similarly placed customers by 2013. The Informants, however faced enormous delay in delivery of their respective units, and are stated to have made various complaints to authorities like Chief Minister Grievances Redress & Monitoring System, Haryana, Directorate of Town and Country Planning, Haryana, Ilaka Magistrate, Gurugram, *etc* to redress their grievance.
6. The Informants, in the aforementioned complaints, *inter alia*, alleged that the OP acted in a sly manner by selling the units before building plan was approved, applying for occupation certificate on 21.05.2015 and obtaining conditional occupation certificate on 18.07.2017 despite being obligated under the Agreement to keep the units ready and deliver the final possession in the month of February/ March, 2013, etc.
7. The Informants have expressed concerns regarding violation of the Act as well and have alleged that the OP has abused its dominant position in the market by entering into one-sided agreement with the Informants and demanding exorbitant payments from the Informants with respect to external development charges/ infrastructure development charges, parking and maintenance charges, etc. and by including arbitrary and unfair clauses in the agreement.
8. As per the Informant, the market for the services provided by the OP is “Small Office Home Office” which is distinct from the services of selling residential



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apartments, commercial space, office space, etc. While other enterprises offered to sell residential apartments, commercial spaces or office spaces during the relevant time, the services offered by the OP consisted of both office cum home space in one unit at reasonable rates. The said distinct concept is therefore stated to have lured large number of consumers intending to buy both office cum home space in one unit at reasonable rates containing the option of dual units. According to the Informants, the other enterprises in the market did not offer such a combination of “Small Office Home Office” at the relevant time and thus did not operate in the same market where the OP was offering its product and therefore there is no substitutability in the services offered by the OP and other enterprises in the real estate market.

9. The Informants have stated that the OP in the present case has abused its dominant position by :

- a. Imposing unfair and discriminatory conditions in the flat buyers agreement by giving itself arbitrary and discretionary powers. The Informants have highlighted thirty one clauses in the agreement wherein it has been alleged that the OP has abused its dominant position by including unfair/abusive terms.
- b. Imposing unfair exorbitant charges on the allottees for usage of the unit in the project as well as carrying many hidden charges.
- c. Denying undivided equal rights to the allottees with respect to the project.
- d. Imposing exorbitant penalties and forfeiture of earnest money on the allottees for non compliance of the terms and conditions of the flat buyers agreement, with no such commensurate provision for payment of penalty to allottees in case of non compliance by the developer.

10. The Commission notes from the submissions made by the Informants, as mentioned in para 5 above, that the primary grievance of the Informant seems to stem from delay in handing over of possession of the units which was promised to be delivered by the OP by the year 2013 as per the Agreement, and which



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according to the Informants has violated the provisions of Section 4 (2) (a) of the Act.

11. The Commission observes that for examination of the alleged conduct on the part of OP in the present case, firstly, the OP has to fall within the definition of “enterprise” under Section (2)(h) of the Act. The Commission notes that the OP provides services in connection with the business of real estate and undertakes economic activity and as such falls within the definition of enterprise under Section 2 (h) read with Section 2 (u) of the Act.

12. Furthermore, for examination of the alleged abusive conduct on the part of the OP, it is firstly required to delineate the relevant market and then to assess whether OP is dominant in the relevant market so delineated. This shall be followed by examination of the conduct of the OP as to whether it has abused its dominant position in such relevant market.

13. The Informant has asserted that the relevant product market in this case pertains to provision of the services of developing and selling new and unique project *i.e.* “small office home office” offering the facility of both office cum home in one unit.

14. The Commission, however, notes that the OP has advertised the model of Small Office Home Office as “small and affordable office space to ensure beauty and comfort catering to the needs of the corporate, small and medium enterprises”. The Commission therefore is of the view that the primary use of the space, therefore, relates to office use only. Furthermore, the particulars of the place are marked as office in the Agreement as well. The only distinguishing feature of the project for office space offered by the OP is the unit for a bedroom in the proposal, allowing the comfort of a home office. Though OP has stated in his offering that this is an additional feature that might make the OP’s product preferable to consumers/ buyers in a differentiated product market, the Commission notes that such an additional feature can be added by the consumer on his own in any office space he/ she prefers, as it is upto the discretion of the consumer to style his/ her office space in the way he/ she desires, subject however to any limitations under the contract or any law. The said feature,



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therefore, is not sufficient to qualify the product as a separate relevant product market altogether.

15. The Commission, therefore, is of the opinion that the relevant market in the present case may be defined as “market for commercial units for office space”.

16. Choice of a consumer for office space depends on various factors such as development of the region, supply of land, location of business establishment, *etc.* A buyer of office space is likely to take into account all these factors while exercising his choice, and therefore a buyer desirous of setting office in Gurugram may not be willing to establish office in areas other than Gurugram, as market conditions that exist in Gurugram can be distinguished from the conditions prevailing in the neighbouring areas. This may be due to factors like proximity of his/ her customers, better connectivity/ transport facilities/ infrastructure, *etc.* to name a few. Thus, geographical area of Gurugram region has to be taken as the relevant geographic market in the instant case, and “*the market for commercial units for office space in Gurugram*” is accordingly considered as the relevant market in the instant case.

17. As per information available in the public domain, there have been many established and bigger organised real estate companies such as DLF Limited, Omaxe, *etc.* offering their projects in the relevant market at the relevant time. The Commission notes that the presence of other players in the relevant market indicates that competing products are available to consumers in the relevant market and the OP, therefore, doesn't appear to be dominant in the relevant market as delineated above. In the absence of dominance, its conduct cannot be examined under the provisions of Section 4 of the Act.

18. The Commission further notes that no facts, evidence, or even appropriate provisions of Section 3 of the Act are set out in the Information. Thus no case of contravention of Section 3 of the Act is also made out in the present case.

19. In view of the foregoing, the Commission is of the view that based on Information filed, no case of contravention of the provisions of the Act is made



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out against the OP and the matter is ordered to be closed in terms of the provisions of Section 26 (2) of the Act.

20. Secretary is directed to communicate this order to the Informants accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(U.C. Nahta)**  
**Member**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**New Delhi**  
**Date : 23.04.2019**