

COMPETITION COMMISSION OF INDIA
[Case No. 21/2011]

Dated: 08.11.2011

**Mr. Jagmohan Chhabra and
Mrs. Shalini Chhabra
Address: Flat No. 560, Mount Kailash Tower No. III
East of Kailash, New Delhi – 110065**

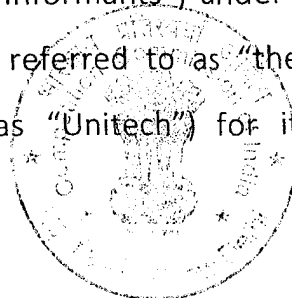
Informants

**M/s. Unitech Ltd.
GF, Signatures Towers,
South City 1,
NH 8, Gurgaon - 122001**

Opposite Party

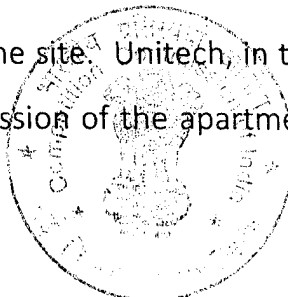
Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed by Mr. Jagmohan Chhabra and Mrs. Shalini Chhabra (hereinafter referred to as the "Informants") under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act") against M/s. Unitech Ltd. (hereinafter referred to as "Unitech") for its alleged abuse of



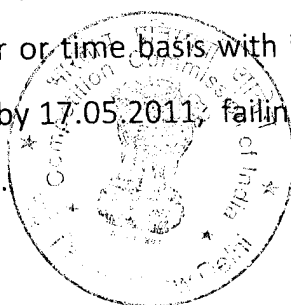
dominant position in the market of development of multi-storied residential apartments in city of Gurgaon, Haryana.

2. The brief facts and allegations of the case, as stated in the information, are as follows:
 - 2.1 As per the information, the informants are the residents of Flat No. 560, Mount Kailash Tower No. III East of Kailash, New Delhi. The Opposite Party, M/s. Unitech Ltd. is a public limited company incorporated under the Companies Act, 1956 and is engaged in the business of real estate development in India.
 - 2.2 It has been submitted that the informants booked two apartments in the project "ESCAPE" launched by Unitech during August, 2006 in Sector 50, Gurgaon, Haryana. Accordingly, the 'Buyers Agreement' (hereinafter referred to as the "Agreement") was signed between the informants and Unitech on 24.08.2006.
 - 2.3 As per the informants, they have already made payment of about 72% of the cost of one flat and 42% of the cost of other flat to Unitech as on the date of submission of information. The said payments are made on calendar or time basis instead of construction linked basis.
 - 2.4 As per the terms and conditions of the agreement the possession of apartments was to be delivered to the informants within three years from the date of agreement. However, there has already been delay of about one year and eight months in giving possession of flats and it will take nearly two and half years more for completion of the project.
 - 2.5 In this regard the informants had sent a letter to Unitech on 30.11.07 mentioning about dismal progress of work at the site. Unitech, in turn, had sent letters to the informants assuring that the possession of the apartments would be handed over

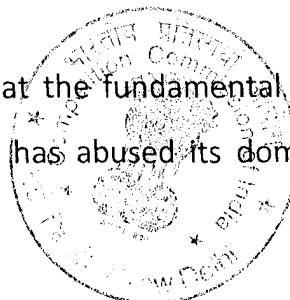


to them during the fourth quarter of 2009. In response to subsequent communication from the informants, on 17.01.11 Unitech replied that Tower 5 would be handed over in the second quarter of 2010 and also acknowledged delays in construction of the project. Further, on 11.04.11 it extended the date of possession to the 2nd Quarter of 2011 for Tower 5 and 3rd Quarter of 2011 for Tower 6.

- 2.6 Since there was no satisfactory progress of work at the project site, the informants wrote to Unitech on 07.06.10 that they were withholding its further payments towards the cost of the apartments till the time project was completed as per the schedule. As per the informants delay in the project is part of deficiency in service, because of which they have withheld further payments of Unitech towards the cost of the apartments.
- 2.7 According to the informants, the terms and conditions of the agreement are one sided and favorable to Unitech. For instance, for delay in delivery of the apartments to the buyers, Unitech is to compensate Rs.5 per Sq ft/ per month, while if there is a delay in installment payments towards the cost of the apartments, the buyers have to pay at the rate of 18% per annum on quarterly compounded basis.
- 2.8 The informants have submitted that such one sided terms and condition are not acceptable to them and have also claimed that the compensation for delay in delivery from Unitech should be same at the rate of 18% per annum.
- 2.9 As the informants stopped further payments, Unitech sent a letter on 02.05.2011 to the informants warning them to pay the subsequent installments towards the cost of the apartments on calendar or time basis with interest at the rate of 18% per annum compounded quarterly by 17.05.2011, failing which the flats allotted to the informants would be cancelled.



- 2.10 The informants have alleged that because of its dominant position Unitech is diverting/misusing the funds collected from the buyers for the construction projects because of which the project has not been completed in due time. It has also been submitted that Unitech had malafide intentions right since the inception of the project and for this very reason it compelled the buyers to make payment on the basis of time period *i.e.* calendar basis rather than the “construction linked basis” which is a normal industry practice.
- 2.11 The informants have alleged that the above acts of Unitech amount to abuse of dominant position which is anti-competitive as per Section 4 of the Act.
3. The Commission considered the matter in its meeting held on 18.05.2011 and decided to hear the informants on 31.05.2011. The informants appeared before the Commission and explained their allegations vis-a-vis the provisions of the Act and also filed certain additional documents/information to the Commission. The matter was subsequently considered by the Commission in its meetings held on 12.07.2011, 03.08.2011, 26.08.2011 and 04.10.2011.
4. The Commission has carefully considered all the facts and allegations mentioned in the information together with all the relevant materials available on record.
5. The Commission notes that the Unitech is a company registered under the Companies Act, 1956 and is engaged in providing services for the development of real estate in India. Therefore, the activities being performed by the Unitech are covered under the definition of “enterprise” provided in Section 2(h) of the Act.
6. The Commission observes that the fundamental allegations of the informants in the matter are that Unitech has abused its dominant position by imposing one



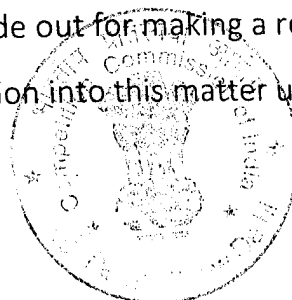
sided and unfair terms and conditions and by not giving possession of apartments within the agreed time to the buyers including the informants.

7. The Commission is of view that in order to determine whether any enterprise is abusing its position of dominance, it is necessary to first find out the relevant product and relevant geographic market with reference to which that enterprise is alleged to be dominant. If it is found that the enterprise is indeed enjoying a position of dominance in that relevant market, then the second issue would be whether it is abusing its dominant position in any manner in that market in terms of Section 4 of the Act.
8. On examination of the information submitted by the informants and materials available in the public domain, the Commission notes that the cost of each unit of apartment in the case comes to around Rs.95 lakh. The brochure of the property provides for amenities and facilities like swimming pool, club, kids pool, gymnasium, squash court, play courts etc. These are not the features that would be available for all residential apartments in general. These features along with the cost of the apartments indicate that these apartment units belong to a category different from the normal. Looking at the present socio-economic reality, it would be logical to categorize them as 'high end' residential units. The customers of such a segment would definitely be different from those who are looking for just a roof on their heads. Therefore, the relevant product market in the present case ought to be the market of the services provided by the developers for providing high end residential apartments to the customers.
9. As regards relevant geographic market, the Commission notes that the decision of "investment" in a residential unit centres on locational preference of the purchaser and this preference is not interchangeable or substitutable. A better apartment for lesser price may be available elsewhere but that would have no



value for the customer who has decided to buy a house in Gurgaon for some reason or consideration.

10. Considering above, the Commission holds that the relevant market in this case is the market of the services provided by the developers for providing high end residential apartments to the customers in geographical area of Gurgaon in Haryana.
11. The Commission observes that although Unitech is one of the known builders, there are other big developers and builders who are active in the relevant market. After making in-depth analysis, the Commission has already held DLF Limited to be the dominant player in the relevant market while determining issues and passing orders under Section 27 of the Competition Act, 2002 in Case No. 19 of 2010 and other related cases filed before it. Since the Commission has found DLF to be a dominant player, there cannot be another enterprise which can be held dominant in the same relevant market particularly when the period of analysis is almost identical. It cannot also be held that Unitech can operate itself independently of the competitive forces prevailing in the relevant market and can affect the competitors in its favour.
12. In view of aforesaid, the Commission is of the opinion that, *prima facie*, Unitech cannot be said to be a dominant enterprise in the relevant market under consideration. Since Unitech is not in a dominant position in the relevant market, any question of abuse within the meaning of provisions of Section 4 will also not arise in this case.
13. On a careful consideration of the entire matter, the Commission accordingly holds that *prima facie* no case is made out for making a reference to the Director General (DG) for conducting investigation into this matter under Section 26 (1) of the Act.



14. In view of foregoing, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.
15. The Secretary is directed to communicate the decision of the Commission to the informants accordingly.


Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (G)

Certified True Copy



P. Gahlaut
11/11/2011
P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi