



**COMPETITION COMMISSION OF INDIA**

**Case No. 63 of 2016**

**In Re:**

**Mr. Anant @ Shyam Damodar Patkar  
83/4, Azad Road, Opposite Shani Temple  
Vasant West, District-Palghar, Pin- 401201**

**Informant**

**And**

**M/s Pam Infrastructure  
A/19, 1<sup>st</sup> Floor, Mirza Shopping Center  
Opposite Railway Station, Virar (E)  
Taluka-Vasai, District-Palghar, Pin- 401201.**

**Opposite Party 1**

**Mr. Hemant R. Mhatre  
(Partner M/s Pam Infrastructure)  
A/19, 1<sup>st</sup> Floor, Mirza Shopping Center  
Opposite Railway Station, Virar (E)  
Taluka-Vasai, District-Palghar, Pin- 401201.**

**Opposite Party 2**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

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

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**



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

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

1. The information in the present case has been filed by Mr. Anant @ Shyam Damodar Patkar (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s Pam Infrastructure (hereinafter, '**OP-1**') and Mr. Hemant R. Mhatre (hereinafter, '**OP-2**') (OP-1 and OP-2 collectively referred to as '**OPs**'/ '**Opposite Parties**') alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. The Informant is a resident of Vasai West, Palghar District, Maharashtra. The Informant is stated to be a member and shareholder of Vasai Vikas Sahakari Bank Ltd. (hereinafter, the '**Bank**'). OP-1 is stated to be a partnership firm registered under the Indian Partnership Act, 1932 and engaged in development and sale of Real Estate Projects/Properties. OP-2 is a partner of OP-1 and is also the Chairman of the Bank.
3. The brief details of the facts and allegations presented in the information are as follows:
  - 3.1. The Bank entered into a Memorandum of Understanding (hereinafter, '**MOU**') with OP-1 on 22<sup>nd</sup> January, 2010 for purchasing of a plot alongwith the building therein, for its new Corporate Office premises at Malonde Village, Vasai Taluka, Thane District (at present Palghar District), Maharashtra. As per the MOU, the Bank agreed to pay a total consideration of Rs.4,29,00,000/- (Rupees Four Crore and Twenty Nine Lakh only). However, without executing any further agreement, the Bank is stated to



have paid an amount of Rs.6,36,00,000/- (Rupees Six Crore and Thirty Six Lakh only) to OP-1 between January, 2010 to July, 2013.

- 3.2. Subsequently, the Bank entered into a Registered Agreement for Sale (hereinafter, "Bank Agreement") with OP-1 on 26<sup>th</sup> July, 2013 wherein the total consideration was fixed at Rs.7,97,66,670/- (Rupees Seven Crore Ninety Seven Lakh Sixty Six Thousand and Six Hundred Seventy only). The Bank also paid stamp duty of Rs.48,00,000/- (Rupees Forty Eight Lakhs only) and registration charges of Rs.31,760/- (Rupees Thirty One Thousand Seven Hundred and Sixty only). The Informant has submitted that that the Bank increased the consideration amount exorbitantly from Rs.4,29,00,000/- (Rupees Four Crore and Twenty Nine Lakh only) to Rs.7,97,66,670/- (Rupees Seven Crore Ninety Seven Lakh Sixty Six Thousand and Six Hundred Seventy only) *vide* resolutions dated 4<sup>th</sup> July, 2013 and 24<sup>th</sup> July, 2013 which has resulted in private gain to OP-1. The Informant has alleged that OP-2, for his personal profiteering, has misused his position as Chairman of the Bank in sale of the Common Facility Centre (hereinafter, 'CFC') plot of OP-1 to the Bank.
- 3.3. The Informant has submitted that as per clause 2 of the Bank Agreement, the Bank had agreed to purchase from OP-1, a CFC Plot and building premise for the bank consisting of basement area, ground, first, second and third floors alongwith stilt parking and open terrace in its project known as 'Solitaire Castle' (hereinafter, the '**Project**'), being developed at Taluka Vasai, Thane District.
- 3.4. The Informant has stated that the Bank, instead of purchasing the CFC building on the basis of actual carpet area, had purchased the same on the basis of area in excess of actual carpet area and paid additional amount for the same, despite the ruling of the Hon'ble Supreme Court of India that stilt parking area cannot be sold separately.



- 3.5. The Informant has further alleged that OP-1 has sold the CFC plot alongwith building including the stilt parking and terrace area in contravention of the Rule 4.3.2 of the Development Control Regulation, 2001 (hereinafter, 'DC Regulations') approved for Vasai Virar Sub-Region. According to the DC Regulations, CFC plot cannot be sold for commercial gains as it is supposed to be for the common use of the public. Clause 4.3 of the DC Regulations provides that a CFC plot cannot be sold by a Developer/Owner. The said provision allows the owner either to develop and maintain the facility for public on no loss no profit basis or surrender the CFC Plot to the competent authority free of cost and free of all encumbrances. It has been further alleged that the Bank had manipulated the area of the building and violated the provisions of the Maharashtra Ownership Flat Act, 1963 (hereinafter, the '**MOFA Act**').
- 3.6. The Informant has alleged that the Opposite Parties have abused their dominant position on two counts, *firstly* by selling CFC plot and the building therein to the Bank and *secondly* by imposing an unfair condition upon the buyers while selling residential flats under the same project that the residential flat buyers will grant no objection to OP-1 in selling, transferring, conveying and assigning the CFC Building to the Bank. In support of the said claim, the Informant has also enclosed a copy of the agreement dated 29<sup>th</sup> October, 2013 entered by OP-1 with one of the buyer (hereinafter, '**Flat Owner Agreement**'/ '**FOA**') in the said project.
- 3.7. The Informant has also claimed that clauses 12, 16, 33 and 38 of the FOA were biased in favour of OP-1 and these clauses were abusive as they are discriminatory, one-sided and unfair. Clause 12 of the FOA conferred right to OP-1 to change, alter and amend the layout plan/project without the consent of the purchaser and purchaser is deemed to have irrevocably consented for the same. Further clause 12 puts a condition on the purchaser that he will have no objection to sale and transfer of CFC Building to the Bank on ownership basis. Clause 16 of the FOA stipulated that the purchaser shall not



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ask for conveyance of the building until completion of development of the said project and until sale of all residential, commercial, office space *etc.* in the project. Clause 33 reserves the right of putting up of advertising hoardings on the said property/project in favour of the Opposite Parties and Clause 38 of the FOA restricted the purchaser from transferring, assigning, conveying his right, title and interest under the FOA to any other person for a period of 24 months from the date of execution of the FOA.

4. On the basis of the above stated facts, the Informant has prayed before the Commission, *inter alia*, to direct the Director General to investigate the entire transaction of sale of CFC building to Bank alongwith stilt parking area and open terrace and declare that clauses 12, 16, 33 and 38 of the FOA are unfair, arbitrary, one-sided and abusive. The Informant has also prayed imposition of penalty for the exercise of the abuse of dominant position held by the Opposite Parties. In addition, the Informant has also prayed for the direction of cease and desist from unfair practices, modification of the referred clauses, declaration that the agreements referred are not binding and not legally enforceable.
5. The Commission has given a careful consideration to the information and material available on record.
6. It is observed that the Informant has raised two sets of concerns against the OPs. *First*, the OPs have not complied with DC Regulations and MOFA Act regarding the sale of CFC plot alongwith the building and OP-2 has misused his position in the bank for personal profiteering. *Second*, allegations of abuse of dominant position have been made in relation to the terms and conditions of the FOA.
7. The Commission notes that the allegations of the Informant regarding non-compliance of DC Regulations and MOFA Act, and misuse of official position in the Bank do not raise any competition concerns and thus, cannot



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be subject matter of examination under the Act. Accordingly, these allegations are not dealt further.

8. Coming to the allegations of abuse of dominant position regarding unfair terms and condition in the FOA, the Commission notes that for the purpose of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter, it is required to assess whether OPs enjoy a position of strength required to operate independently of the market forces in the relevant market. Only when such a position is enjoyed by OPs, it is imperative to examine whether the impugned conduct amounts to an abuse.
9. The information has raised concerns regarding the sale of residential flat to individual buyers in the project of the OPs viz. 'Solitaire Castle' situated at Vasai Taluka. Although Vasai Taluka was part of the Thane District in 2013 when the FOA was executed, it is now a part of the newly constituted Palghar District from 1<sup>st</sup> August, 2014. The Commission has analyzed the instant case keeping in mind the conditions of competition prevailing in the relevant market during 2013 when the project was part of Thane district and when the FOA was entered into by the parties.
10. It is noted that the Opposite Parties have only one project in Thane and the said project provides for residential and some commercial space. The Opposite Parties are mainly developing residential flats in the aforesaid project by offering 2, 3 and 4 bedroom flats, although the number of units being developed has not been provided by the Informant.
11. 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. From the buyer's perspective, the Commission observes that residential flat is a distinct product which may not be substitutable or interchangeable with a residential



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plot or other residential units. While a residential plot allows buyers to decide the floor plan, number of floors, structure and other specifics at their own discretion; design and construction of a residential flat is formulated and completed by the builder without providing much opportunity to the buyers. Generally, when a consumer buys a flat in an apartment being developed by a real estate developer, the buyer gets some amenities such as gym, swimming pool, party lawn, playground, clubhouse, community center, convenience shops *etc.*, which may not be the case if a buyer purchases a plot or an independent house. The factors considered by the consumers while choosing to buy a residential flat are different from those considered while buying a residential plot. Considering the facts of the instant case, the relevant product market appears to be “*market for the provision of services relating to development and sale of residential flat*”.

12. Section 2(s) of the Act defines 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. As seen from the information, the Informant has alleged that the Opposite Parties have also abused their dominant position by selling residential flats in a project located at Vasai in the district of Thane in Maharashtra. It is observed that the conditions of competition for the provision of development and sale of residential flat and commercial space in Thane were distinctly homogeneous and could be distinguished from the conditions of competition prevailing in the neighbouring districts like Pune and Ahmadnagar in terms of factors like price, land availability, distance and commuting facilities from Mumbai, regional and personal preferences *etc.* The abovementioned factors make Thane a distinct relevant geographic market. Thus, considering the factors discussed above, the relevant geographic market in this case would be ‘*Thane*’.



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13. Based on the above discussion, the relevant market in the instant case is the “*market for provision of services relating to development and sale of residential flat in Thane*”.
14. With respect to the position of dominance of the OP-1, it is noted that OP-1 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. The data/information available from the public domain brings out that several major real estate developers like Kalpataru, Lodha, Wadhwa Group, Prescon Realtors and Infrastructure Pvt. Ltd., Piramal Realty, Viva Group, HDIL, VBHC *etc.*, were also operating in the aforesaid relevant market and were engaged in the provision of services relating to the development and sale of residential flats, apart from many other small real estate developers. The Informant has not provided any material to demonstrate the dominance, if any, of the Opposite Parties. However, the presence of a number of other players in the relevant market indicates that consumers have wide/multiple options to purchase residential flats and that they are not dependent only on OP-1 in the relevant market. These developers, thus, pose competitive constraints to OP-1 in the relevant market. Therefore, OP-1 does not enjoy a position of strength which enables it to operate independently of competitive forces prevailing in the relevant market. The Commission further notes that even in the newly carved out Palghar District where the Project is presently located, there are number of players including Viva Group, Housing Development and Infrastructure Limited, VBHC and KK Group offering similar services to the consumers. This again suggests that Opposite Parties do not enjoy dominant position. Accordingly, the question of abuse does not arise in the instant matter and no case is made out under Section 4 of the Act against the Opposite Parties.
15. In view of the foregoing, the matter is closed in terms of Section 26(2) of the Act.





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

**New Delhi  
Dated: 25.10.2016**