



COMPETITION COMMISSION OF INDIA

Case No. 70 of 2016

In Re:

**Dr. AR Subramanian,
SU 218, Block C,
Silver Springs Township, Phase-I,
A B Bye Pass Road,
Indore-452020 (MP)**

....Informant

And

**Mr. Mohit Arora, Managing Director,
M/s Supertech Limited,
Supertech House,
B 28-29, Sector-58,
Noida-201307**

....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

Mr. Justice G. P. Mittal

Member

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

1. The present information has been filed under Section 19(1) (a) of the Competition Act, 2002 (hereinafter, the “**Act**”) by Dr. A. R. Subramanian (hereinafter, the “**Informant**”) against Mr. Mohit Arora, Managing Director, M/s Supertech 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 Informant had booked a residential apartment/flat in one of the projects of M/s Supertech Limited, namely “Eco Village-II, Unit No. R0190F30501, 5th Floor, Tower 3, Phase –II, Noida”, in 2010.



3. It has been stated by the Informant that he had deposited a total sum of Rs. 6,44,225/- (Rupees Six Lakhs Forty-Four Thousand Two Hundred and Twenty-Five only) from 2010 to July, 2013 as per the demands raised by the OP from time to time.
4. The Informant has stated that the construction of the project was stopped between 2011-2014, owing to land disputes between the farmers and Noida Authority and the amount deposited by the Informant was lying with the OP during this time. The construction work was resumed by the OP in the said project from the year 2015 onwards. It is alleged that the OP however, raised demands for the remaining payment arbitrarily alongwith charging 18% interest per annum on delayed payments from the flat buyers including the Informant. It is claimed that this was done in order to draw more money from the buyers who have booked flats in the aforesaid project.
5. The Informant has annexed various emails which were exchanged between him and the OP from 8th July, 2013 to 29th February, 2016. It is evident through these emails that the Informant had tried to enquire about the status of the project. *Vide* email dated 23rd June, 2015, the Informant sought to cancel the booking of the flat owing to failure in delivery of the flat as per the terms of allotment. The Informant further requested the OP to return the amount already deposited by him alongwith 18% interest as per the terms of allotment. The Informant also warned the OP of legal consequences if his grievance is not addressed by the OP as per the agreement. However, *vide* email dated 25th June, 2015, the OP requested the Informant to continue with his booking and advised that if in case he still wishes to cancel the booking of the flat, the same would be processed as per the policy of the OP.



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6. The Informant *vide* emails dated 25th June, 2015 and 26th June, 2015 conveyed to the OP to return the amount deposited by him alongwith interest on account of delay in the delivery of possession of the flat/apartment. In response to these emails of the Informant, the OP informed that the penalty for delay in possession would be dealt with at the time of possession as per the agreed terms and conditions of the allotment letter. Subsequently, email dated 4th July, 2015 was again sent by the OP to the Informant wherein he was informed that the construction was again in full swing and the expected date of handing over of the project will be in March, 2016. Thereafter, *vide* email dated 9th January, 2016, the OP reassured the Informant that the expected date of possession of the Tower-F3 would be in May, 2016. However, the Informant got to know through his friend that the OP had cancelled the booking of the flat which was allotted to him initially.
7. It has been alleged that the act of the OP, of cancelling the flat which was booked by the Informant unilaterally *i.e.*, without giving any notice to the Informant amounts to abuse of dominant position. It has also been alleged that the OP is trying to forfeit the entire amount of Rs.6,44,225/- (Rupees Six Lakhs Forty-Four Thousand Two Hundred and Twenty-Five only) deposited by the Informant with the OP. Further, it has been submitted that the OP is trying to impose hefty and unfair penalty, computed on compound interest basis, for the delay in payments made by the Informant. The OP is alleged to have been abusing its dominant position by forfeiting the amounts deposited by the buyers including the Informant, through exercise of discriminatory and unethical practices with an intent to cheat the customers, leading to unjust enrichment of the OP.
8. Based on the above, the Informant has, *inter alia*, prayed to the Commission to direct the OP to either refund the money deposited by him alongwith



interest @ 24% per annum, which the OP has charged from its customers for the delay in payments or provide an alternative flat on the same floor of equivalent area as booked by the Informant.

9. The Commission has considered the information and materials available on record. It is noted that the Informant has not submitted/annexed any agreement signed between him and the OP regarding the purchase of the aforesaid flat. Moreover, the Informant has also not provided any evidence regarding the total consideration agreed between the parties for the purchase of the said flat except a few details of part-payments which he had made from time to time.
10. It is observed that the allegations of the Informant pertain to abuse of dominant position by the OP in cancelling the flat booked by the Informant without giving a prior notice, charging hefty rate of interest on delayed payments and forfeiting the amount initially deposited by the Informant for booking of the aforementioned unit with the OP at Noida.
11. 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 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 or not, it is necessary to first establish that it is dominant in the relevant market. Hence, the need for defining a relevant market arises. The relevant market may be defined either in terms of relevant product market or relevant geographic market or both as per Section 2 (r) of the Act.



12. As per the facts stated in the information, the Informant had booked a flat in one of the projects of M/s Supertech Limited, namely Eco Village-II, Unit No. R0190F30501, 5th Floor, Tower 3, Phase –II in Noida, which is situated in the State of Uttar Pradesh.
13. 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.
14. From the buyer's perspective/demand side, the Commission observes that a residential flat is a distinct product which may not be substitutable or interchangeable with a piece of plot or other residential units. Developing a residential plot allows buyers to decide the floor plan, number of floors, structure and other specifications as per their own choice, however, it is a costly proposition these days to construct a house or buy an independent house. On the other hand, a buyer booking a flat in a project developed by a real estate developer, usually gets good amenities such as gym, swimming pool, car parking, party lawn, playground, clubhouse, community centre, convenience shops *etc.*, which may not be available in case of constructing a house or buying an independent house. Moreover, budget wise too, flats are very economical as compared with buying a plot and constructing thereon or buying an independent house. Although no hard and fast rule can be applied while discerning the product market, but it has to be realistically decided keeping in view the factors enumerated in the Act. Based on the factors considered above, the relevant product market in the instant matter appears to



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be “*provision of services relating to development and sale of residential apartments/ flats*”.

15. 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 neighbouring areas. As per the website of M/s Supertech Limited, the Commission notes that, the project Eco Village-II is located in Greater Noida (West), though the Informant has stated in the information that it is located in Noida. It is noted that Noida and Greater Noida are adjacently located and form part of the district Gautam Budh Nagar (UP). The Commission notes that the conditions of competition for supply and demand for development and sale of residential apartments/flats within Noida and Greater Noida can be considered as homogenous and can be distinguished from other areas of the National Capital Region (NCR) such as Delhi, Gurgaon, Ghaziabad, Faridabad, Sonapat *etc.*, in terms of factors such as price, land availability, distance and commuting facilities to the offices of Multi-National Companies, proximity and connectivity to airport, regional or personal preferences *etc.* Hence, Commission is of the view that the relevant geographic market in the present case is “*Noida and Greater Noida*”.

16. Accordingly, the relevant market in terms of the provisions of Section 2(r) of the Act, in the instant case, appears to be the “*provision of services relating to development and sale of residential apartments/ flats in Noida and Greater Noida*”.

17. With respect to the position of dominance of the OP, 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, Omax, Ansal Properties, *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 the option to choose from various developers in the relevant market. These developers, thus, pose competitive constraints upon the OP in the relevant market.

18. It is pertinent to note that the facts and circumstances of the present case are more or less similar to Case No. 03/2013 (*Mr. Ajit Mishra v. Supertech Limited*), in which the Commission *vide* order dated 31st May, 2013 passed under Section 26(2) of the Act held that M/s Supertech Ltd. (the OP) is not in a dominant position in the relevant market as defined above.
19. As per the information available on record and in the public domain, the OP does not appear to be dominant in the relevant market. The Informant has also not produced any material(s) that indicates the dominance of the OP in the relevant market. In the absence of dominance of the OP, the question of examination of abuse of dominance does not arise. Further, no case under Section 3 of the Act is alleged or made out.
20. In light of the above observations and analysis, the Commission is of the opinion that no case has been made out against the OP for violation of either of the provisions of Sections 3 or 4 of the Act. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.



21. 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

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

New Delhi

Dated: 25.10.2016