



**COMPETITION COMMISSION OF INDIA**

**Case No. 40 of 2017**

**In re:**

**Confederation of Real Estate Developers  
Association of India-NCR (CREDAI-NCR)**

**Informant**

**And**

**Department of Town and Country Planning,  
Government of Haryana**

**...OP-1**

**Haryana Urban Development Authority**

**...OP-2**

**CORAM**

**Mr. Sudhir Mital  
Chairperson**

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

**Justice G. P. Mittal  
Member**

**Appearances:**

*For Informant* Mr. Ramji Srinivasan, Senior Advocate  
Mr. G. R. Bhatia, Advocate  
Mr. Abdullah Hussain, Advocate  
Mr. Arjun Nihal, Advocate  
Mr. Tushar Bhardwaj, Advocate



Mr. Aniket Ghosh, Advocate  
Mr. Sushant Gupta, Director – CREDAI NCR  
Mr. Aseem Mohan, General Manager Legal, CREDAI

*For OPs*

Mr. Utkarsh Srivastava, Advocate  
Mr. Sanjay Kumar, District Town Planner, Department of  
Town and Country Planning, Haryana  
Mr. K.K. Kamboj, Accounts Officer, Department of Town and  
Country Planning, Haryana  
Mr. Amit Kumar, Section Officer, Department of Town and  
Country Planning, Haryana

### **Order under Section 33 of the Competition Act, 2002**

1. The instant matter filed by the Confederation of Real Estate Developers Association of India - NCR (**Informant/ CREDAI-NCR**) against the Department of Town and Country Planning, Government of Haryana ( **OP-1/ DTCP**) and the Haryana Urban Development Authority, (**OP-2/ HUDA**) was referred by the Commission to the Director General (**DG**) for investigation *vide* order dated 06.04.2018 passed under Section 26(1) of the Competition Act, 2002 (**Act**). In the said order, the Commission had held that there exists a *prima facie* case of contravention of the provisions of Section 4(2)(a)(i) of the Act by the OPs.
2. On 01.05.2018, the Commission considered the application filed by the Informant under Section 33 of the Act. In its application, the Informant has prayed that till the Commission decides the matter, the OPs should be (i) restrained from invoking the bank guarantee against the developers; (ii) directed to cease and desist from compelling the developers to pay any pending External Development Charges (**EDC**) and Infrastructure



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Development Charges (**IDC**) or any increase thereof, alongwith interest till the disposal of the case; (iii) directed to cease and desist from compelling the developers to pay any penal interest; and (iv) directed to cease and desist from taking any coercive action against the developers.

3. The Commission heard the parties on 11.05.2018 and 31.05.2018 and also considered the submissions placed by them on record.

4. The submissions and contentions of the Informant are as follows:

(i) The Sohna Master Plan 2031 (**Sohna Master Plan**) for Group Housing Colony in the revenue estate of Tehsil Sohna of Gurugram District in Haryana was issued in 2012 and based on this plan, various developers submitted their bids. Thereafter, the Sohna Letter of Intent (**Sohna LOI**) and bilateral agreements were executed by them with the Director of OP-1 and licenses were issued to them. However, till date the OPs have not carried out the requisite infrastructural and External Development Works in the periphery of the residential housing colonies located in the area as per the plan.

(ii) In light of complete inaction by the OPs, the developers are faced with the impossible task of fulfilling their obligations under the Sohna LOI, bilateral agreement and licenses within strict timelines and under threat of potential penalties, covering land that has not even been acquired by the OPs. Additionally, the developers are also exposed to hefty claims from the consumers under the Consumer Protection Act, 1986 for failing to allot plots to them within the timelines stipulated under the arrangements between the developers and the consumers.

(iii) Moreover, the OPs permit the developers to pass on such EDC and IDC to the allottees. Thus, while the OPs have regularly imposed EDC



and IDC upon the developers which is being passed on to allottees, the OPs have carried out no Infrastructural or External Development Works on the land. The ultimate consumers *i.e.* the allottees are disadvantaged and forced to bear the burden of paying EDC and IDC without enjoying the benefits of the corresponding development works, a situation for which the OPs are solely and exclusively liable.

- (iv) In response to an application filed under the Right to Information Act, 2005 (**RTI Act**) as well as counter-affidavit filed with the Commission, OP-1 has stated that, with respect to 41 licences issued by it under the Sohna Master Plan, an amount of Rs. 406.75 crores has been collected towards EDC and Rs. 137.18 crores towards IDC. In addition, 25% of the EDC amount is secured with it in the form of bank guarantees. Despite this, the OPs have not even commenced the process of acquisition of land for External Development Works.
- (v) Irrespective of the fact that no development work has been undertaken by the OPs, they continue to levy the charges and interest on the developers and are resorting to coercive action against them causing undue hardship to them in the development of their respective projects. After the present information was filed and preliminary hearing in the case was held by the Commission in September 2017, OP-1 issued various notices threatening to take legal action against several developers.
- (vi) With respect to the onerous clauses in the Sohna LOI and licenses and conduct of the OPs, the Commission has already formed a *prima facie* opinion of abuse of dominance. It is prayed that the interim relief sought by the Informant be granted to restrain the OPs from implementing the one-sided agreements on a continuous basis.



5. The submissions and contentions made by the OPs are summarised below:
- (i) The conditions imposed in the Sohna LOI including the furnishing of bank guarantee equivalent to 25% of the tentative EDC and the execution of LC-IV/ bilateral agreement before grant of license are a matter of record. The final license is granted to the developer only if the conditions mentioned in the LOI are acceptable to the developer. LOI as well as conditions of license stipulate that the provision of external development facilities by HUDA may take a long time and the applicant shall not claim any damages against the department for loss occurred, if any.
  - (ii) Most of the licenses to the developers in Sohna were granted in the year 2014 and thereafter. The developers had executed the bilateral agreement with open eyes and were well aware that Sohna, being a new urban estate, HUDA would take time to execute External Development Works and it was never stipulated in the agreement that the development works would be executed in proportion to the amount paid by the developer. Hence, they are estopped at this stage to allege that there should be immediate development of the area by HUDA.
  - (iii) It is wrong to allege that no development work has been executed by the Government agencies in Sohna. It is submitted that the Government through various agencies has already executed various works such as fire station, boosting station, sewerage treatment plan, stadium, civil hospital, slaughter house and electric substation.
  - (iv) Most of the developers getting license in Sohna have failed to pay the due installment of EDC. Therefore, unless the developers pay full amount of EDC, the balance development works cannot be executed.



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6. The Commission has given careful consideration to the submissions/contentions of the Informant and the OPs.
  
7. The Commission notes that earlier OP-1 had mentioned that the issues raised in this case by the Informant have already been examined and decided by the Hon'ble High Court of Punjab and Haryana in *CWP No. 9558 of 2015* titled *VPN Buildtech Pvt. Ltd. v. State of Haryana and Others* and other connected petitions, *vide* order dated 15.12.2015. It was also stated that against this order, some of the developers have filed Special Leave Petitions (SLP) before the Hon'ble Supreme Court, which are pending, including the main *SLP No. 5459 of 2016* titled *Magnolia Propbuild Pvt. Ltd. v. State of Haryana and Others*. Further, it was stated that the Hon'ble Supreme Court, *vide* interim order dated 31.03.2016, has already restrained OP-1 from encashing the bank guarantees submitted by the developers, on account of non-payment of EDC. In this regard, during the hearing on 11.05.2018, the Commission had *inter alia* asked the Informant to clarify as to the relief being sought from the Commission keeping in view the relief already granted by the Hon'ble Supreme Court. The Informant in response has submitted that SLP No. 5459 of 2016 before the Hon'ble Supreme Court of India is in relation to EDC being charged from the developers for their individual projects relating to various master plans in the State of Haryana and the same are not concerned with the Sohna Master Plan. Moreover, the relief granted by the Hon'ble Supreme Court of India is only *qua* the 10 developers who have approached it and not a blanket stay on the bank guarantees of all other developers operating in the State of Haryana including the 41 licensees under the Sohna Master Plan. During the hearing, the learned counsel for the OPs accepted this fact and further stated that due to the direction of the Hon'ble Supreme Court in the said SLPs, the OPs as a matter of practice are not invoking bank guarantees for EDC in all cases. Considering the fact that the Hon'ble



Supreme Court cases are not related to Sohna Master Plan at all, it is evident that the Commission can proceed to deal with the present application.

8. At the outset, the Commission notes that in the case of *M. Gurudas and Others v Rasaranjan and Others (AIR 2006 SC 3275)*, the Hon'ble Supreme Court has categorically recorded that:

*“While considering an application for injunction, it is well-settled, the courts would pass an order thereupon having regard to: (i) Prima facie case (ii) Balance of convenience (iii) Irreparable injury”*

9. In light of the above decision, the Commission proceeds to decide the application of the Informant for interim relief. With respect to the first factor *i.e.* the existence of a *prima facie* case, it is noted that, the Commission in its order dated 06.04.2018 passed under Section 26(1) of the Act has already found a *prima facie* case of abuse of dominant position in the relevant market by the OPs. The relevant portion of the order is recorded below:

*“....though the terms of Sohna LOI, Sohna Agreement and Sohna Licence relating to EDC/ IDC emanate largely from the statutory provisions of the relevant statutes, prima facie the terms of these documents appear to be one-sided and in favour of the OPs. Further, the alleged conduct of the OPs such as failure to adhere to its obligations under the Sohna Master Plan in a time-bound manner and imposing onerous obligations on the developers to pay EDC/ IDC, prima facie, appears to be abusive. In response to the allegations, OP-1 has not denied that it has not provided External Development Works in accordance with the Sohna Master Plan, rather it has justified that it is not possible to provide such services unless the entire EDC/ IDC amount is paid by the developers alongwith interest and penal interest. The Commission finds that the conduct of the OPs*



*whereby they have not undertaken any External Development Works related to the Sohna project is ultimately affecting the end consumers i.e. the allottees/ home-buyers, as because of non-development by the OPs, the completion of the project is getting delayed and the same is rendered uninhabitable. Thus, in view of foregoing, the Commission is of the opinion that the conduct of the OPs prima facie appears to be in contravention of the provisions of Section 4(2)(a)(i) of the Act.”*

10. However, the Commission also notes the Hon’ble Supreme Court’s decision in *Competition Commission of India v Steel Authority of India [(2010) 10 SCC 744]*, wherein the Hon’ble Court has laid down the factors and circumstances to be considered while granting interim relief under Section 33 of the Act. The relevant extracts of this judgment are as follows:

*“During an inquiry and where the Commission is satisfied that the act has been committed and continues to be committed or is about to be committed, in contravention of the provisions stated in Section 33 of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders, without giving notice to such party where it deems it necessary. .... The Commission, while recording a reasoned order, inter alia, should : (a) record its satisfaction (which has to be of much higher degree than formation of a prima facie view under Section 26(1) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed; (b) it is necessary to issue order of restraint and (c) from the record before the Commission, there is every likelihood that the party to the lis would suffer irreparable and irretrievable damage, or there is definite apprehension that it would have adverse effect on competition in the market”.*





*The power under Section 33 of the Act, to pass a temporary restraint order, can only be exercised by the Commission when it has formed prima facie opinion and directed investigation in terms of Section 26(1) of the Act, as is evident from the language of this provision read with Regulation 18(2) of the Regulations.”*

11. In context of the above observations of the Hon'ble Supreme Court, the Commission deems it pertinent to take into consideration the conduct of the OPs beyond the passing of the order under Section 26(1) of the Act.
12. The information in this case was filed with the Commission in July 2017 and the preliminary hearing took place in September 2017. The alleged facts as they stood on the date of filing of the information remain unaltered till date despite the passing of the order by the Commission for investigation by the DG. One of the contentions against the OPs in the information is that they have not commenced any external development work despite continuous collection of EDC from the developers. During the hearing on the application for interim relief, the Informant filed a submission dated 11.05.2018 wherein he brought to notice a response dated 09.02.2018 given by OP-2 to an RTI application, in which OP-2 had stated that “*no external development work has been executed by HUDA in Sohna Town and that the expenditure booked under EDC service may be considered as NIL*”. This has not been disputed by the OPs rather they confirmed that the situation remains the same till date.
13. However, the OPs in their counter-affidavit filed during the hearing on 31.05.2018 have submitted that the Government through various agencies has executed some of the infrastructure works such as fire station, boosting station, sewerage treatment plan, stadium, civil hospital, slaughter house and electric substation for the benefit of Sohna town including the colonies being



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developed by the Informant. In this regard, the Commission has perused the definition of 'External Development Works' given under Section 2(g) of the Haryana Development And Regulation of Urban Areas Act, 1975 (**Act of 1975**), which reads as under:

*"External Development Works" include water supply, sewerage, drains, necessary provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal, slaughter houses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc. and any other work which the Director may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area"*

14. Upon consideration of this definition, it is evident that the infrastructure works claimed to have been done by the OPs do not cover basic facilities like water supply, sewerage, drains, roads, electrical works, etc. which are to be provided as External Development Works. It goes without saying that unless these basic facilities are provided by the OPs, the projects of the developers would remain incomplete/ uninhabitable for the allottees/ home buyers. When during the hearing, the learned counsel for the OPs was asked about the progress of the work with respect to these basic facilities, he admitted that no steps have been taken by the OPs in this direction till date. It was acknowledged that even the process to acquire land for these purposes has not been initiated by the OPs.
15. At the same time, it is noted that the OPs are continuing to collect EDC from the developers to whom licenses have been granted in Sohna. In the counter-affidavit filed by the OPs on 08.12.2017, the OPs have submitted that an amount of Rs. 390 crore (approximately) towards EDC has been paid by the said developers till 21.11.2017. In the counter-affidavit filed on 31.05.2018,



it was submitted that an amount of Rs. 401 crore (approximately) towards EDC has been collected from the developers till 17.05.2018. Thus, it is evident that the OPs are continuing to collect EDC without committing any amount towards External Development Works in the said area.

16. Moreover, despite taking no steps towards carrying out External Development Works even after the passing of the order under Section 26(1) of the Act by the Commission, OP-1 is not only continuing to raise demands towards payment of EDC but also charging interest/ penal interest and threatening cancellation/ non-renewal of the licenses of the developers. Further, EDC is being charged despite non-finalisation of any rates. While OP-1 has published a policy clarifying the imposition of EDC in medium and low potential zones in 2010, allowing relaxations in terms of payment of EDC for developers in these zones by granting them waiver from payment of EDC till the finalisation of rates, in the interest of promoting development; no such policy has been issued till date with respect to payments in the high potential zone. As per the policy for medium and low potential zones, the developers in these zones are exempted from depositing EDC when the same has not been charged from the allottees and they would also receive the benefit of interest on EDC already paid as decided by OP-2 till such date the EDC is finally decided. However, no similar relief has been given to the developers in high potential zones.
17. Further, in respect of IDC collected by OP-1, it is observed that approximately 60% (sixty percent) has been transferred and used as loan for refund purposes in other schemes floated by OP-2.



18. Thus, the Commission considers that the above factual situation shows that the alleged anti-competitive conduct by the OPs is continuing to be committed and the consumers continue to be adversely affected by such conduct.
19. Next, the Commission has to contemplate whether the balance of convenience lies in favour of allowing interim relief to the Informant and whether any irreparable harm or injury to it is being caused, *i.e.* whether justice would be best served by passing an interim order in this case restraining the OPs. In this regard, the Commission notes that on the aspect of irreparable harm or injury, the Hon'ble Supreme Court of India in *Dalpat Kumar and Anr. v. Prahlad Singh and Ors. [(1992)1 SCC 719]* has observed as follows:

*“.....The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in*



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*granting or refusing the relief of ad interim injunction pending the suit.”*

20. Coming to the facts of the present case, the Commission observes that the developers for the purpose of grant of license have to execute LOI and LC-IV agreement with OP-1 in which the condition regarding payment of EDC is also present. Such condition stipulates that the payment of EDC amount may be made by the developer either in lump-sum within 30 days from the grant of license or in 8/10 equal six monthly installments of 12.5% /10% of which the first installment shall be payable within a period of 30 days from the date of grant of license. Further, it is contained in the terms that where EDC amount is being paid in installments, the unpaid amount after the payment of first installment would carry an interest of 12% per annum and in case of any delay in payments of installments on the due date, an additional penal interest of 3% per annum would be levied, making the total payable interest as 15% per annum. In the instant case, most of the developers have exercised the installment payment option whereby they are paying interest on the unpaid portion. In case of delay in payment of instalments, the OPs are charging penal interest also. On the other hand, no external development work has been commenced by the OPs towards providing basic facilities for the area included in the Sohna Master Plan.
21. Apart from that, it has been brought to the notice of the Commission during the hearing that the developers have to get their license renewed every five years commencing from the date of grant of license and pay renewal fee on each occasion. Such fee has to be paid even if the reason for which the project is pending is non-completion of external development work by the OPs. This means that the developers who have been granted license in 2014 would have to pay the renewal fee in 2019 mandatorily if the External Development Works remain pending owing to the complacency of the OPs.



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22. The Commission is of the view that the interest of the developers in this regard can be protected through appropriate directions; whereas, in the absence of intervention by the Commission at this stage, neither can the extant position be restored at a later stage nor the likely damages to the developers and the consumers be compensated. Thus, in the given facts and circumstances, the Commission finds that the balance of convenience lies in granting the interim relief as sought by the Informant. It has been observed by the Hon'ble Supreme Court in *Zenit Mataplast P.Ltd vs State Of Maharashtra & Ors (2009) 10 SCC 388*:

*“Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.”*

23. In light of the factual situation as discussed in the preceding paras, the case in hand appears to be exceptional in nature, which merits intervention by the Commission. The Commission notes that the investigation in the present matter is likely to take some time. In the meanwhile, the members of the Informant could suffer irreparable harm by way of cancellation of licenses and levying of penal interest despite the OPs being at fault. The Informant has placed on record the fact that the OPs are not discharging their obligation under the agreement and yet have issued several notices to the developers for want of payment of due EDC amount, wherein it is stated that default by the developers would render their license null and void. Thus, the Commission finds it appropriate and necessary to intervene at this stage to safeguard the



members of the Informant against the irreparable and irretrievable losses that may be caused to them.

24. Regarding the scope of intervention in the form of interim relief, it is observed that the Hon'ble Supreme Court in *Dalpat Kumar (supra)*, has explained as under:

*"The phrases "prima facie case"; "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice."*

25. In view of the foregoing, the Commission finds that the facts of the case make it evident that there is a need for intervention to meet the ends of justice. While the Commission acknowledges that the collection of EDC is important for the OPs to undertake and carry out the External Development Works in the Sohna area, the fact remains that there is inaction on the part of the OPs to carry out their duties despite collection of Rs. 400 crore (approximately) for the said purpose. Keeping this in mind, the Commission finds it appropriate to restrain the OPs from taking any coercive steps with respect to the payment of remaining installments of EDC from those developers who have paid 10% (ten percent) of EDC and deposited 25% (twenty-five percent) of EDC in the form of bank guarantee. No interest or penal interest shall be charged on the remaining installments from such developers. However, if any amount has been collected by the developers from consumers towards EDC, the same shall be deposited with OP-1. Further, no coercive action shall be taken by the OPs with respect to the licenses granted to the developers and *status quo* shall be maintained. This order shall remain in operation till the final disposal of the proceedings before the Commission or till further orders, whichever occurs earlier.



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26. In the meanwhile, if the OPs initiate steps for acquisition of land for the purposes of undertaking External Development Works for the provision of basic facilities like water supply, sewerage, drains, roads, electrical works, *etc.*, in the area as per the Sohna Master Plan, they may approach the Commission for variation of this order.
27. It is noted from the interim relief application that the Informant has also sought relief with respect to payment of IDC as well, which the developers are required to pay to the OPs upfront in two instalments within six months. However, during the hearing, the Informant did not press for this relief. Further, the OPs have submitted that 90 percent of IDC has already been collected from the developers. Thus, the Commission finds that the prayer with respect to IDC does not merit interim intervention. Accordingly, no interim relief is granted with respect to IDC by way of this order.
28. The Secretary is directed to send a copy of this order to the parties forthwith.

**Sd/-**  
**(Sudhir Mital)**  
**Chairperson**

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

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

**New Delhi**  
**Date: 01.08.2018**