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 (DTCP)	**Opposite Party No. 1**
Haryana Urban Development Authority (HUDA)	**Opposite Party No. 2**

ORDER

1. The present Information was filed under Section 19(1)(a) of the Competition Act, 2002 ('Act') by Confederation of Real Estate Developers Association of India - NCR ('Informant'/CREDAI-NCR) against Department of Town and Country Planning, Government of Haryana ('OP-1'/DTCP) and Haryana Urban Development Authority ('OP-2'/HUDA) (OP-1 and OP-2 collectively referred to as the 'OPs') alleging contravention of the provision of Section 4 of the Act.

2. The Informant is the National Capital Region ('NCR') Chapter of the Confederation of Real Estate Developers Association of India (CREDAI), which is an organisation representing around 12,000 real estate developers spread across 23 States. Further, all leading real estate developers of NCR are stated to be its members.

3. OP-1 is a Department of the Government of Haryana empowered to regulate urban development in the State of Haryana. The policies of OP-1 aim at encouraging healthy competition amongst various private

developers and public sector entities for integrated planned urban development. OP-2 is an authority created under the Haryana Urban Development Authority Act, 1977 (‘HUDA Act’). It has been delegated the task of planning development of urban areas in Haryana.

4. It is stated in the Information that on 15.11.2012, OP-1 had issued the Sohna Master Plan, 2031 (‘Sohna Master Plan’) for Group Housing Colony in the Sohna Tehsil of Gurugram District of Haryana. Based on this plan, various developers submitted their bids and thereafter, the Sohna Letter of Intent (‘Sohna LOI’) was executed between each developer and the Director of OP-1. It is stated that before the execution of the LOI, the developers had to fulfill the conditions stipulated under the Haryana Development and Regulation of Urban Areas Development Act, 1975 (‘Haryana Development Act’) and the Haryana Development and Regulation of Urban Areas Development Rules, 1976 (‘Rules of 1976’) including submission of the bank guarantee towards External Development Charges (‘EDC’), Infrastructure Development Charges (‘IDC’) and other charges and fees *viz.* conversion charges, license fee and scrutiny fee. Thereafter, bilateral agreements (‘Sohna Agreement’) between developers and Director of OP-1 were executed and licences (‘Sohna Licence’) were issued to the developers.

5. It is alleged that some of the terms and conditions of the Sohna Licence, Sohna LOI and Sohna Agreement are unfair and discriminatory. It is averred that through the Sohna LOI, the OPs imposed unfair and extensive obligations on the developers in terms of the development works that the Informant must carry out in the specified territory and the charges levied on them are also required to be paid within strict timelines. Further, the conditions therein obligate the Informant to pay EDC as and when demanded. However, no claim for damages lies against the OPs for delay in provision of external infrastructure development.

6. It is further alleged that the charges and payment schedule in the Sohna Master Plan has been decided by the OPs unilaterally without making available the basis of calculation of these charges or implementation schedule of the external infrastructure development work. The Informant has submitted that although the OPs were obligated under the Haryana Development Act to carry out external infrastructure development, there is no mechanism for enforcement of these obligations under the Sohna LOI / Sohna Agreement / Sohna Licence.

7. It is also alleged that under the terms of the Sohna Licence, EDC are subject to revision as per the actual charges incurred including any enhanced land acquisition costs, which is to be worked out later and the developer is liable to pay an additional amount as and when directed. Furthermore, the assumption on cost or timelines with respect to the creation of external infrastructure development by the OPs has also not been disclosed. In addition, the Sohna LOI obligates the developers to pay exorbitant rate of interest on delayed payment of EDC and IDC to the OPs, which has not been contemplated in the Haryana Development Act.

8. Further, it is also been alleged that no activity on external infrastructure development has been initiated by the OPs, which has further delayed the development of the projects. But under the Sohna licence, the charges and interest continue to be levied on the developers causing undue hardship in the development of their respective projects. It is averred that in the light of inaction by the OPs, the developers are faced with the impossible task of fulfilling their obligations under the Sohna LOI, Sohna Agreement and Sohna Licence within strict timelines and potential penalties.

9. The Commission, after considering the material available on record, submissions of the Informant and the response of OP-1 thereto *vide* its order dated 06.04.2018 passed under Section 26(1) of the Act opined that *prima facie* a case of contravention of provisions of Section 4 of the Act by OPs was made out. Accordingly, the Director General (DG) was directed to cause an investigation to be made into the matter and submit a report.

10. Further, the Commission *vide* its order dated 01.08.2018 passed under Section 33 of the Act restrained the OPs from taking any coercive steps with respect to the payment of remaining installments of EDC from those developers who have paid 10% of EDC and deposited 25% of EDC in the form of bank guarantee. The Commission also directed that 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, it was directed that no coercive action shall be taken by the OPs with respect to the licences granted to the developers and *status quo* shall be maintained.

11. Pursuant to the directions issued by the Commission, the DG, investigated the matter and submitted the Investigation Report on 21.12.2018 finding OP-1/ DTCP to have contravened the provisions of Section 4(2)(a)(i) of the Act. However, no finding of contravention was recorded against OP-2/ HUDA. Accordingly, the Commission vide its order dated 13.02.2019 decided to forward copies of investigation report to Informant/ OPs for filing their respective objections/ suggestions thereto. The Commission also directed forwarding of investigation report to the four officers of DTCP in terms of the provisions of Section 48 of the Act. The matter was directed to be listed for final hearing. The OPs as well as the four officers of DTCP were also directed to file their

financial statements/ ITRs.

12. Thereafter, a writ petition (No. 5308 of 2019) was filed by the four officers of DTCP before a Ld. Single judge of the Hon'ble High Court of Delhi impugning the order dated 13.02.2019. The writ petition was disposed of vide an order dated 15.05.2019 by noting that no serious prejudice was caused to the Petitioners (*i.e.* the four officers of DTCP) by directing them to submit their ITRs. The Hon'ble Court also noted that being public servants, in any event, they were required to maintain transparency regarding their financial affairs. As a result, the case was eventually heard by the Commission on 26.07.2019 whereupon the Commission reserved its order. Subsequently, an LPA (No. 520 of 2019) was preferred by the four officers of DTCP against the disposal of the aforesaid writ petition. *Vide* order dated 13.08.2019, the Hon'ble Division Bench of the Delhi High Court ordered as follows: "*Ad interim relief is granted till the next date of hearing to the extent of stay of proceedings before Competition Commission of India in Case No. 40/2017*".

13. In the aforesaid conspectus, the Commission notes that pursuant to the interim order passed by the Commission vide its order dated 01.08.2018, DTCP/ OP-1 issued an Order dated 20.05.2019 implementing the directions issued thereunder. For ready reference, the same is excerpted below:

ORDER

The Competition Commission of India (CCI) has passed an order dated 01.08.2018 in Case No. 40 of 2017 titled as Confederation of Real Estate Developers Association of India – NCR (CREDAI-NCR) vs. Department of Town and Country Planning, Govt. of Haryana and another. The case relates to levying off external development charges on the colonizers/ developers to whom the licences are granted for developing colonies under the provisions of the Haryana Development and Regulations of Urban Areas Act, *1975 and Rules, 1976. In order to implement above said directions of the Hon'ble CCI in letter and spirit, the following decision is taken in case of licences granted at Sohna Development plan area:-*

(i) For those cases where developers have paid 10% of EDC and submitted Bank Guarantees in respect of 25% of total EDC, all cancellation of license proceedings on account of default of EDC payments in Sohna Development Plan has been kept in abeyance till the outcome of Case No. 40 of 2017 in CCI and CWP No. 31106 of 2018 in Hon'ble Punjab and Haryana High Court,

(ii) For the purpose of any approval in such licences, including grant of license on additional land, payment of EDC beyond what has been prescribed in para (i) above shall not be insisted upon.

(iii) No interest or penal interest as indicated in the LC-IV agreements executed with the Department, shall be charged on the remaining instalments for such developers. The same may also be implemented in the online EDC statement generated by the Department.

14. At this stage, it is also pertinent to note a submission dated 24.07.2019 filed by the Informant itself before the Commission enclosing therewith copy of a resolution dated 24.07.2019 passed by CREDAI-NCR *i.e.* the Informant before the Commission for withdrawal of the present case pending before the Commission.

15. Having considered the aforesaid developments, the Commission is satisfied that DTCP has taken earnest steps to address the concerns of the builders as reflected in the aforesaid order passed by DTCP and consequent resolution passed by CREDAI-NCR seeking withdrawal of

the present case. Having bestowed thoughtful consideration, the Commission is of the opinion that no useful purpose would be served in proceeding with the present matter in light of the aforesaid developments. Accordingly, the Commission decides to close the matter forthwith against OP-1 and OP-2. As a result, nothing would survive against the four officers of DTCP viz. Shri Anurag Rastogi, Shri Arun Gupta, Shri T. L. Satyaprakash and Shri K. M. Pandurang – who were the Director(s) General and Director(s) at the relevant time of DTCP and the proceedings against them also stand closed forthwith.

Sd/-
Ashok Kumar Gupta
(Chairperson)

Sd/-
Sangeeta Verma
(Member)

Sd/-
Bhagwant Singh Bishnoi
(Member)

Date: 13/07/2022

New Delhi