



COMPETITION COMMISSION OF INDIA

Case No. 28 of 2023

In Re:

**Rekha Oberoi
Vikas Oberoi
Akash Oberoi**

**Informant No. 1
Informant No. 2
Informant No. 3**

(All residents of
5 Oak Drive Farms Chhatarpur
New Delhi 110074)

And

MGF Development Ltd.
17-B, Asaf Ali Road,
New Delhi-110002

Opposite Party No. 1

MGF Mall Management
Through Mr. Siddharth Gupta, Partner
3rd Floor, Annexe Building, MGF Metropolitan Mall
MG Road, Gurugram-122001
Haryana

Opposite Party No. 2

MGF Promotion and Events Pvt. Ltd.
3rd Floor, Annexe Building, MGF Metropolitan Mall
MG Road, Gurugram-122001
Haryana.

Opposite Party No. 3

Mr. Shravan Gupta
44, Amrita Shergill Marg, New Delhi-110003

Opposite Party No. 4

Mr. Sidharth Gupta
50, Golf Links New Delhi-110003

Opposite Party No. 5

Mr. Rajiv Gupta
50, Golf Links New Delhi-110003

Opposite Party No. 6



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NSR Farms Pvt. Ltd.

173, Jhandewalan Extension,
New Delhi-110055

Opposite Party No. 7

The Motors & General Finance Ltd.

(formerly M/s MGF (India), Ltd.)
17-B, Asaf Ali Road,
New Delhi-110002

Opposite Party No. 8

Columbia Holdings Pvt. Ltd.

D-26, Defence Colony, New Delhi-110024

Opposite Party No. 9

MGF Metropolitan Mall & MGF Events Co.

3rd Floor, Annexe Building, MGF Metropolitan Mall
MG Road, Gurugram-122001
Haryana

Opposite Party No. 10

The Town and Country Planning

through Director General
Plot No. 3, Sec-18A, Madhya Marg,
Chandigarh-160018

Opposite Party No. 11

Dakshin Haryana Bijli Vitran Nigam (DHBVN)

Vidyut Sadan, Vidyut Nagar,
Hisar -125005

Opposite Party No. 12

Haryana Electricity Regulatory Commission

Through Secretary
MVV4-3V4, Sector – 4, Panchkula
Haryana-134112

Opposite Party No. 13

CORAM

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member



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

1. The present information has been filed by Ms. Rekha Oberoi, Mr. Vikas Oberoi and Mr. Akash Oberoi (**'Informants'**) alleging contravention of provisions of Section 3 and 4 of the Competition Act, 2002 (**'Act'**) by MGF Development Ltd (**'OP-1'**), MGF Mall Management (**'OP-2'**), MGF Promotion and Events Pvt. Ltd. (**'OP-3'**), Mr. Sharavan Gupta (**'OP-4'**), Mr. Sidharth Gupta (**'OP-5'**), Mr. Rajiv Gupta (**'OP-6'**), NSR Farms Pvt. Ltd. (**'OP-7'**), the Motor & General Finance Ltd. (**'OP-8'**), Columbia Holdings Pvt. Ltd. (**'OP-9'**), MGF Metropolitan Mall & MGF Events Co. (**'OP-10'**), the Town and Country Planning through Director General (**'OP-11'**), Dakshin Haryana Bijli Vitran Nigam (**'OP-12'**) and Haryana Electricity Regulatory Commission through Secretary (**'OP-13'**) (OP-1 to OP-10 are referred to as the **'Opposite Parties'**/**'OPs'**).

Facts and Allegations as stated in the Information in brief

2. The Informants have averred that Metropolitan Mall, Gurugram (**'Mall'**) has an area of about 2.97 lakhs square feet comprising both carpet area and joint common areas (about 89,865 square feet) which was constructed/developed by OP-1 either jointly or in association/partnership with other companies/persons namely OP-4 to 10 and others. OP-1 sold certain areas to various buyers for their retail shop business on super area basis consisting of joint common area.
3. The Informants run their business in the name and style of *Indigo Metro* and have purchased SF-33 and SF-34 in the Mall. The Informants also agreed to take on lease another shop, adjacent to SF-33 by letter of intent dated 21.04.2022. The conveyance deeds dated 19.04.2006 and 05.10.2007 executed in favour of the Informants provided that till such time the maintenance of the said complex is handed over to the association of shop owners, the necessary maintenance services of the Mall be handed over by OP-7 (partner companies of OP-1) to OP-2 which shall be solely responsible for providing maintenance services to the said Mall including supply of electricity. It is alleged that OPs are in dominant position/dominant enterprise with respect to the Mall (relevant market) as per the Act.



4. OP-1 is the enterprise having control over the Mall and has appointed OP-2 as its sole agent for maintenance of the Mall. It is averred that OP-4 and OP-5 are brothers and that OP-1 and OP-2 are being run by OP-4 and OP-5, respectively. OP-5 got the business of OP-2 (maintenance of the Mall) under family Settlement in clandestine manner and in contrary to the stipulation in the conveyance deed and deed of declaration dated 06.05.2003. It is alleged that OP-2 runs the maintenance of the Mall including the illegal supply/sale of electricity and charging illegal exorbitant electricity charges (contrary to the provisions of the Electricity Supply Act) and maintenance charges from the owners of the Mall. OPs were responsible for the construction of the Mall. OP-11 is the Director, Town and Country Planning of the Government of Haryana which had given the approval to the building plan and OP-12 is a supplier of electricity to the Mall. OP-13 is a statutory body in the State of Haryana tasked with the matter concerning generation, transmission, distribution and trading of electricity.
5. The Informants have stated that they purchased the retail space (shops) on super area basis comprising both carpet area and joint common area from OPs. These were earlier sold to the previous buyer(s)/investor(s) through Builder Buyer Agreements and the Informants purchased the said premises from the previous buyer(s)/investor(s) through a separate Sale Deed and thereafter they entered into two separate conveyance deeds. The joint common area exclusively belongs to the legitimate buyers including the Informants, as sanctioned by OP-11.
6. The Informants have averred that the conveyance deed stipulated that the day-to-day management of the Mall would be handed over to the association of the owners of the Mall. However, the same was given to an association controlled by OP-1 and OP-2. This was done to create unfair trade practices and to bully the genuine shop owners in the same Mall and take over their joint common areas and use the same for the benefit of OP-1 to OP-6 in criminal conspiracy with OP-1 and their associates/partners from OP-7 to OP-10, and others.
7. The Informants have stated that the joint common areas of the Mall belong to retail owners in the Mall jointly and is indivisible. The retail purchasers such as the



Informants have been paying the maintenance charges for the joint common areas since they purchased space on the basis of super areas. However, these common areas allegedly have been illegally encroached upon by OPs. These areas have been sold or rented out to third parties illegally by OPs in criminal conspiracy with its associates/partner companies leading to misappropriation of money collected out of the illegal sale/illegal rent/illegal hoarding and advertisements running into crores of rupees, taking advantage of their dominant position. One such sale transaction was carried out *vide* sale deed dated 16.06.2006. OP-1 and OP-2 have various associated companies/web of companies and carried out fraudulent transactions. When the Informants realised that most of the joint common areas have been encroached upon by OPs, they stopped paying exorbitantly high maintenance charges till OPs provided complete accounts of joint common areas of the Mall. This took place in 2018/2019 in a meeting between the Informants and OP-1 and OP-2.

8. The Informants have stated that OPs had sent a legal notice dated 21.09.2021 for default of monthly maintenance charges, electricity consumption charges and other charges when the Informants had requested for measurements. The Informants averred that till the time the issue of illegal sale or putting on rent of joint common areas are settled, the Informants cannot be forced to pay the maintenance for the joint common areas to their prejudice. Further, the electricity charges are far beyond the rates fixed by OP-12 to the detriment of healthy competition or the consumers who visit the Mall and thus, actions of OPs are violative of the Act. Nevertheless, the Informants made the payment of the entire electricity charges demanded by OP-1 and OP-2 on 01.10.2021 in terms of the legal notice dated 21.09.2021.
9. OPs have been harassing the Informants, their officers, employees as well as the general public who visit the shop purchased by the Informants in the Mall by threatening to disconnect the electricity supply. On some occasions, the OPs using their dominant position disconnected the electricity supply which was restored only with the intervention of the Police. The OPs indulge in disconnecting electricity supply in the shop of the Informant despite paying electricity charges. They also started restraining ingress and egress to the shops by visitors/customers of the Mall by putting their own security guards. These acts of intimidation by OPs with the sole malafide intention to



coerce the Informants to the illegitimate demands of the said OPs. This has affected the Informants' legitimate business interests. The Informants also served a legal notice dated 03.01.2022 to the original vendors and the illegal Mall management agency (including OPs) which was met by a threatening call by OP-2 on 07.01.2022. Informant No. 3 filed a police complaint on 09.01.2022. OP-2 responded to the legal notice dated 03.01.2022 *vide* letter dated 18.01.2022 stating that there is no privity of contract between the Directors of OP-1 and the Informants. OP-2 further stated that facility management agreement dated 15.03.2015 and event and parking management agreement dated 15.03.2015 were executed in favour of OP-2. The Informants have alleged that OP-2 in concert with OP-1 forced the retail shop owners to sign these agreements however, the Informants did not sign them and hence, the cause of their harassment. On 28.04.2022, the officials of OP-2 sought a meeting with the Informants and Informant No. 3 was threatened with dire consequences of disconnecting electricity, restraining ingress/egress, positioning guards *etc.* The Informants on the same date sent another notice and called upon OP-2 not to indulge in such acts. The Informants have alleged that OP-2, in retaliation, disconnected the electricity supply of the shop (SF-32), after receipt of legal notice dated 28.04.2022. The Informant No. 3 again filed a police complaint on 02.05.2022. OPs responded to the notice dated 03.01.2022 on 03.05.2022. OP-1 and OP-2 responded to legal notice dated 28.04.2022 on 04.05.2022 and *inter alia*, advised the Informants not to conduct their business unless dues are cleared. This was followed by a rejoinder dated 17.05.2022 by the Informants to notice dated 28.04.2022.

10. OP-2 abused its dominant position by unilaterally incorporating certain anti-competitive clauses in maintenance agreement dated 21.05.2022 which was sent to the Informant for signature. The said agreement allegedly gives unfettered and unqualified right of lease or permit the use of kiosk to any person and the shop owner is not entitled to raise any grievance or claim on any ground. The Informant refused to sign the same since maintenance agency cannot dictate such terms to the occupants/owners of shops in the Mall. This agreement alleged to have the support of OP-1 and OP-3 to OP-10.
11. The Informants approached the District Court, Gurugram (Suit No. 2993 of 2022) for grant of relief of permanent injunction against OP-1 and OP-2 for their conduct of



disconnecting electricity, restraining ingress/egress or installing security guards in front of shops. This was filed without prejudice to their rights to approach the Commission under the Act. The Informants were forced to pay 25% of the total amount under protest to get an interim injunction.

12. The Informants have sought to rely upon various applications and documents including videography of joint common areas filed by it before the civil court.
13. The Informants have alleged that there is huge discrepancy between the Builders Buyers Agreement entered into between the parties for the purchase of shops in the Mall and the actual Conveyance Deed which demonstrates malafide intention of OPs. The deed of declaration dated 06.05.2003 signed by the Developers of the Mall (OPs and their associate companies/partners) submitted before the Registrar of Societies clearly states that the Mall would be run by association of owners or entity nominated by association of owners. The same is allegedly false as for the formation of Maintenance Agency (OP-2) no consent was taken of the Informants and other retail owners and OP-2 continues to charge high and illegal maintenance and electricity charges, taking advantage of its dominant position. It was given to understand that the Mall would be handed over to the shop owners of the Mall but OPs had other intentions because they wanted to assert dominant position and create unfair trade practices of selling common areas, charging inflated maintenance and electricity charges and other illegal charges. OPs have contravened clause 10 of the Conveyance Deed. It has been submitted that other international maintenance agency (Jones Lang Lasalle Building Operations Pvt. Ltd./JLL) does not charge for any contingency fund. The Informants have alleged that there is huge difference between the bills (maintenance and electricity charges) raised by OP-2 and other maintenance agencies. For example, the Informants have alleged that towards Common Area Maintenance (CAM), OP-2 charges ₹39.89 per square feet [₹29.40/- as CAM alongwith illegal service fee @ 15% and GST 18%] as compared to JLL which charges ₹27.47/- [₹23.28/- as CAM alongwith GST 18% only]. Similarly, electricity charges are imposed at the rate of ₹13.03/- by OP-2 as against ₹7.73/- being charged by JLL.



14. According to the Informants, under the Conveyance Deed, OPs ought to have given the liberty to the actual owners to form an association to carry out the maintenance work of the Mall including the supply of electricity. OP-2 is in violation of provisions of Electricity Supply Act. The Informants have added that there are about 115 retailers out of whom only 15 retailers/actual owners are doing their business and most of the owners have given the premises on rent who are least concerned about these issues. The Informants have stated that the cartel of OPs is strong and no one objects to it. The Informants have also alleged criminal antecedents of some of OPs.
15. The Informants have alleged that OPs from the inception of the Mall have defrauded the genuine owners/occupiers of the Mall a sum of ₹51 crores for 20 years on account of excess inflated and illegal trading in electricity charges. All in all, OP-2 at the behest of OP-1 and OP-3 to OP-10 are misusing their dominant position charging exorbitantly high maintenance, inflated charges of electricity *etc.* They have allegedly formed a cartel to limit or control of services of the Mall to the detriment of the legitimate owners of the Mall like the Informant. According to the Informants, there has been a total fraud of approximately ₹23,896.11 crores.
16. Thus, OPs have created a dominant position causing appreciable adverse effect on competition (AAEC) under Section 4 of the Act resulting in denial of market access to the owners/occupiers of the Mall and are also violative of Section 3(3)(a) to Section 3(3)(c) of the Act and can only be investigated under the Act.
17. The Informants have, *inter alia*, prayed for the following reliefs under Section 33 of the Act:
- 17.1. Pass an order in favour of the Informants and against OPs whereby restraining the OPs not to take any coercive action against the Informants jeopardising their legitimate rights, entitlement, interests in the Mall to do their legitimate business and to stop OPs from squashing the voice of the Informants against the illegal acts of OPs by misusing their dominant position;
- 17.2. Pass further order, especially in view of the criminal antecedents of OPs to provide full security to the Informants, their family members, allow entry and



exit of merchandize goods as well as not to hinder the legitimate business activities of the Informants;

- 17.3. Direct forensic audit of the entire expenditure claimed by OP-2 in connivance with other OPs namely OP-1 and OP-3 to OP-10 right from the date of inception of the Mall to discover the financial embezzlement so far indulged into by OPs;
 - 17.4. Direct OPs to charge maintenance and electricity charges as per actuals in consultation with the entire Mall retail owners or by a committee to be appointed by the Commission or in the alternative appoint any eminent person as Administrator to take charge of the Mall till the final disposal of the present petition;
 - 17.5. Restrain OPs from selling any area of the Mall including the food court located in the Mall to any third parties till the final disposal of the present complaint; and
 - 17.6. Direct OP-11 (Director Town and Country Planning, Haryana) to confirm the actual sanctioned area of the Metropolitan Mall and how much of the joint common areas are encroached by OPs.
18. The Informants in the main Information have, *inter alia*, prayed the following:
- 18.1. Pass an order directing the Director General of Investigation of the Commission to investigate the matter thoroughly to see whether OPs have indulged in contravention of any of the provisions of the Act especially Sections 3(1), Section 3(2) Section 3(3)(b) read with Section 4(1), Section 4(2)(a)(i), Section 4(2)(b)(ii), and 4(2)(c) or any other relevant provisions of the Act;
 - 18.2. Pass an order against OPs to cease and desist;
 - 18.3. Direct the OPs to hand over the maintenance of the Mall to the actual owners as per existing Conveyance Deeds and Sale Deeds with the retail space of the Mall so that none of OPs shall have any control, direct or indirect or otherwise, in the maintenance of the Mall or through its proxy of association/agent;



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- 18.4. Direct OPs to pay and restore all amount received by them illegally/fraudulently by selling/renting/occupying joint common areas of the Mall belonging to all the actual owners and to duly refund the said amount received by OPs for the past 20 years amounting to over ₹23896.11 Crores;
 - 18.5. Direct OPs to vacate all the illegally encroached joint common areas (sold/put on rent) in order to restore the rights of all the shop owners/occupiers/visitors to the joint common area of the Mall;
 - 18.6. Direct OPs to restore all the benefits derived out of illegal sale of joint common areas, other spaces in the Mall and illegal/inflated charges (electricity charges, maintenance charges, service charges alongwith contingency fund) running into more than Rs. 23896.11 Crores alongwith punitive interests to the legitimate buyers including the Informants at the rate of 24% per annum.
 - 18.7. Impose such penalty as contemplated under Section 27 of the Act for the abuse of the dominant position under Section 4 as well as for contravention of Section 3 of the Act in favour of the Informants/Complainants and against OPs;
 - 18.8. Allow costs including exemplary costs in favour of the Informants and against the OPs for dragging the Informants into unwanted litigation; and
 - 18.9. Pass such other or further order/orders against OPs and in favour of the Informants in the interest of justice.
19. In its meeting held on 31.01.2024, the Commission decided to pass an appropriate order in due course.

Analysis of Commission

20. From the facts, the Commission notes that the Informants are the retail shop owners in the Mall and are aggrieved by the way Mall has been managed. The gravamen of grievance is that the management of the Mall has not been handed over to the association of the owners of the Mall (buyers of the retail space in the Mall) and it continues to be in the hands of OP-1 acting through OP-2 (maintenance agency);



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charging of high maintenance and electricity charges; selling joint common areas without consent of the shop owners. The Commission also notes that the Informants have claimed the Mall to be a relevant market and the conduct of OPs causing AAEC in such market.

21. The Informants have already filed a civil suit against OPs claiming permanent injunction against OPs.
22. The Commission notes from the information available in public domain that Metropolitan Mall is not the only mall situated in Gurugram and there are other malls situated in Gurugram and nearby areas. Thus, the Commission is of the view that the case does not merit any narrow delineation of relevant market for the purposes of Section 4 of the Act. As far as the alleged abuse is concerned, the Commission is of the view that the grievances of the Informants like payment of maintenance and electricity charges, rights and entitlement to joint common areas *etc.* are in the nature of contractual/civil issues/disputes. Further, the Informants have alleged that OPs are acting as a cartel. The Commission notes that the Informants have failed to demonstrate which similar trade or activity they are engaged in to fulfil requirements of horizontal relation as per Section 3(3) of the Act. The Commission also does not find any merit in the case for its examination under Section 3(4) of the Act. Thus, the Commission is of the view that no competition concerns seem to arise in the present matter given the nature of allegations and the alleged conduct of the parties so arrayed by the Informant.
23. The Commission is, thus, of the opinion that there exists no *prima facie* case of contravention of the provisions of Section 3 and Section 4 of the Act against the OPs in the present case and therefore, the matter be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant for relief as sought under Section 33 of the Act arises and the same is disposed of accordingly.
24. It is clarified that this order is from the perspective of the Competition Act, 2002 and the Commission has not expressed any opinion on the merits of the litigation pending between the parties.



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25. The Secretary is directed to communicate the decision of the Commission to the Informants, accordingly.

**Sd/-
(Ravneet Kaur)
Chairperson**

**Sd/-
(Anil Agrawal)
Member**

**Sd/-
(Sweta Kakkad)
Member**

**Sd/-
(Deepak Anurag)
Member**

**New Delhi
Date: 12/03/2024**